



Canadian Judicial Council  
Conseil canadien de la magistrature



# Annual Report 2011-2012

# Table of contents

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**Year in review**..... 1

    Streamlining Council Activities . . . . . 2

    A Clean, Crisp Website . . . . . 3

    Marking Council's 40<sup>th</sup> Anniversary . . . . . 4

    Judicial Conduct. . . . . 5

**Complaints** ..... 7

    Complaint 1 . . . . . 8

    Complaint 2 . . . . . 8

    Complaint 3 . . . . . 10

    Complaint 4 . . . . . 11

    Complaint 5 . . . . . 12

    Complaint 6 . . . . . 13

    Complaint 7 . . . . . 14

**Financial Statement**.....15



# Year in review

The Canadian Judicial Council works to enhance the quality of judicial service and provide Canadians with a judiciary they can trust. Here is an overview of the Council's specific achievements in 2011-12.

## STREAMLINING COUNCIL ACTIVITIES

The 2011-2012 period saw Council take stock of its myriad activities with the goal of streamlining efforts and making the most of our resources. Council members are committed to pursuing the broad goal of improving the quality of judicial service in Canada's courts. At the same time, key efforts are centred on the review of complaints against judges and on the professional development of judges.

In the current climate of fiscal restraint, Council is mindful that public funds must be expended with due regard to economy. Council has carefully reviewed all its activities to ensure the optimal use of finite resources.

This streamlined presentation of Council's Annual Report is a reflection of a new approach. Core information such as financial statements and an overview of judicial conduct work is presented as a yearly wrap-up, but in a summarized and succinct format. Our ongoing focus will be to provide updates and relevant information on the Council website, as it becomes available throughout the year. We encourage readers to visit often.

## A CLEAN, CRISP WEBSITE

People tend to more frequently visit web sites which are information-rich and free of clutter. We have embraced this goal and we are striving to bring further refinements and improvements to our web site. Some key features of the web site which were introduced in 2011-2012 include a new, optional online complaint form with which Canadians may express their concerns about the conduct of any federally-appointed judge; a new Frequently Asked Questions section; and a sample of complaints going back to 1990-91; along with a less cluttered look and feel. Our intention is to be as transparent, relevant and accessible as possible.

## MARKING COUNCIL'S 40<sup>th</sup> ANNIVERSARY

The Canadian Judicial Council recently marked 40 years of service to the judiciary and to Canadians. Council members are proud of the tradition of excellence they are pursuing on behalf of all Canadians.

While some time was spent reflecting on past lessons, challenges and successes, Council capitalized on the opportunity that this milestone offered to explore the future of the Canadian justice system and how the judiciary can continue to serve the ideals of justice to which all Canadians aspire.

Of note, federal and provincial judges met with special guests representing a broad swath of public, private and academic sectors to reflect on the future role of the courts given the upheaval in economic and regulatory realities currently underway.

*“Canada’s judiciary must demonstrate leadership in navigating the changes to the ways people are using the courts to help them resolve disputes. Canadians’ expectations are evolving and Canada’s demographic profile is evolving. The judiciary must be seen as sensitive to these changes and attuned to their long-term impacts”.*

– The Right Honourable Beverley McLachlin, on the occasion of Council’s 40<sup>th</sup> Anniversary

## JUDICIAL CONDUCT

Council's core function is to manage a fair, effective and efficient process by which complaints about federally appointed judges are reviewed. In 2011-2012, 185 complaints were received by Council. A statistical overview can be found below:

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### CJC Fiscal year Reports // 2012-2012 Complaints

Complaints carried over from fiscal 2010-11	42
Complaints received during fiscal 2011-12	185
<b>Total</b>	<b>227</b>
Complaints closed during fiscal 2011-12	190
Complaints under review at year end	37

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Significant amount of correspondence is received from members of the public who are asking questions pertaining to Council's mandate, or who express concerns about a judge's decision without making a clear allegation about the judge's conduct. In such cases, we will write to explain Council's mandate and to indicate that a complaint must name the judge and must provide details about the aspects of the judge's conduct that is of concern. In 2011-12, 163 such letters were sent to individuals seeking clarity on Council's mandate.

Some complaints become the subject of much media and public attention. When a matter becomes public, Council provides some key information about the review of that particular complaint. This helps foster a better understanding of what may or may not constitute judicial misconduct and the steps taken by the Council to foster the highest standards of conduct amongst members of the judiciary.

One matter that received significant public attention was the case of a judge who made certain comments in court in a sexual assault case. In that matter, Council received numerous complaints objecting to comments made by the judge after delivering a conviction for sexual assault. Many complainants found that the judge's comments were insensitive to women and reflected outdated gender stereotypes that cast blame on the victim.

The judge agreed that he had made a poor choice of words and offered his full apology. The judge

also agreed to undertake gender sensitivity training and committed to approaching social issues with greater care in the future. In considering this matter, the Vice-Chairperson of the Judicial Conduct Committee who had reviewed the matter accepted the judge's apology. In light of his awareness of the issues and his intent to learn from this event, the matter was closed.

Given the level of interest in this matter, Council issued a press release to inform the public about the results of its review of the complaints.

In some serious cases, Council constitutes a public Inquiry Committee to review the matter, as happened in the case of Associate Chief Justice Lori Douglas. During the course of the inquiry, Council has released regular updates and answered queries from media about developments.

Among other complaints which Council reviewed in 2011-2012 were some that offer a unique perspective or raise interesting issues. A sample of complaints is summarized in the following pages.



# Complaints received in 2011-12

Canada's judges preside impartially over thousands of matters each year. Of course, errors are sometimes made. In such cases, our system provides for an appeal to a higher Court. In some cases, whether or not a decision is right in law, someone will raise a concern about the conduct of a judge.

There are some 1,200 federally-appointed judges currently serving Canadians. Last year, they collectively decided thousands and thousands of matters raised before the courts. In total, fewer than 200 complaints were made about the conduct of a judge in relation to a court matter. In each case, the Canadian Judicial Council conducted a thorough review.

When Council receives complaints about Court decisions, we make every effort to communicate clearly with the complainants about the difference between judicial conduct and judicial decision-making. We try to write to the complainants in plain language, and give as much information as possible about their concerns. We also make sure we clearly explain our mandate and procedures. Where a judge has failed to uphold the high standards of conduct that Canadians expect, Council takes appropriate measures. All these steps are important to maintain public confidence in the process. Here are a few examples of recent complaints to the Council.

## COMPLAINT 1

Council received several complaints following comments delivered by a judge in a high profile murder trial. The comments made by the judge after a guilty verdict was announced by the jury and after the judge had delivered a life sentence with no possibility of parole for 25 years. The comments were seen by some as an attempt to absolve the convicted party of her actions due to the abuse she had endured in the home. The judge had said that the evidence of physical abuse and mental health issues was uncontested and contributed to the tragic loss of life. These remarks were interpreted by some as attempting to present an excuse for the violence which ensued or showed insensitivity to issues of violence suffered by women in certain conjugal relationships. Some believed that the judge showed gender bias against men.

A review of the record and the judge's response to the complaints showed that in delivering those comments, the judge was attempting to ensure that the woman convicted of the criminal offence would receive treatment for the severe mental problems that were exposed during the trial. The judge explained that his comments were not intended to excuse her from the severity of her actions and that he did not rely on stereotypes of preconceived notions in remarking on the cycle of abuse that was in evidence within the home.

After a review of all the circumstances, the Chairperson of the Judicial Conduct Committee found that a reasonable person, looking at the full record and not one isolated comment presented in various media accounts, could not conclude that the judge showed any bias against men generally and the complaints were dismissed.

## COMPLAINT 2

A number of complaints were filed by the same person, alleging that some judges did not reside in the jurisdiction of the Court to which they were appointed. Legislation governing the administration of superior courts often stipulates that judges must reside within the vicinity of the court. The complaints alleged that the judges engaged in misconduct by failing to comply with this residence requirement.

Outside Counsel was retained to obtain more information about the facts. Comments were obtained from the judges concerned.

The facts in each case were different. In all cases, the judges had some attachment in the vicinity of the court where they served, but also had attachment to other locales. For example, one judge owned a condominium where he spent time when he worked at the Court, but also owned a family home where he spent time with a spouse when he was not working at the Court. Both properties were jointly owned by both spouses.

After reviewing all the issues, Council noted that its duty in regard to the issues was strictly to determine if any of the judges had engaged in judicial misconduct. The technical interpretation of any legislative provision regarding the residence of judges is a matter that properly is the domain of the courts to adjudicate as may be necessary.

For purposes of judicial conduct, however, some general principles were identified by Council.

First, a requirement that a judge reside in the vicinity of the Court must be intended to ensure that they are in a position at all times to meaningfully and collegially participate in the work and activities of the Court. Attachment to the area where the Court is located fosters such participation. However, there is nothing to suggest a residence for Court purposes must be a judge's principal home or that a judge cannot have more than one residence. Also, a judge's family or social relations may not reside in the jurisdiction where the judge is assigned and there is no strictly defined minimum amount of time the judge must spend in the jurisdiction.

Second, the degree of this attachment is a matter of interpretation. Reasonable individuals may disagree on the exact meaning of a residence requirement. Council found that misconduct would take place if judges wilfully disregarded their legislative obligation. This could also occur as a result of bad faith, neglect or wilful blindness.

In cases of a residence requirement, a finding of misconduct may result if a judge fails to spend appreciable time in the area; neglects to participate in the work and activities of the Court and is not available to colleagues when needed; or if their unavailability interferes with the discharge of their judicial duties or the administration of the Court. Since there was no such instance in respect of any of the complaints in this matter, all were therefore dismissed.

While it might be useful to better define the legislative requirements about the residence of judges, this is not something which falls within the mandate of the Council.

## COMPLAINT 3

Three complainants wrote to Council to raise their concerns about the conduct of a judge in a judicial review hearing in which the appellant was seeking to overturn a decision denying him the ability to produce and possess marijuana, claiming that decision contravened his right to freedom of religion. The complaints, which were put forth by the appellant and by two spectators in the courtroom, alleged that by questioning members of the gallery as to their reasons for being present, the judge did not uphold the open court principle. They also alleged that the judge displayed some questionable behaviour by turning off the lights, opening the window blinds and suggesting calisthenics, making long and rambling statements, interrupting the lawyers and attempting to settle the matter in chambers.

In carefully reviewing these complaints, the Vice-Chairperson of the Judicial Conduct Committee sought comments from the judge. On the allegation that the judge inappropriately asked those attending to explain reasons for their presence, and questioned at least one complainant about what disability he may have had which would provide him a federal exemption to consume marijuana, the judge indicated that he had been advised by court security officials that some violent disturbances were a possibility. This was in part, due to the presence of active protestors nearby. The judge was advised that an appropriate measure to assure courtroom security was to ask observers to identify themselves. While certain participants volunteered detailed information about their purpose for attending and their personal views, the judge acknowledges that he did not attempt to limit anyone's comments. By not doing so, some individuals may have felt some pressure to disclose more information than was requested.

The open court principle is a key aspect of our justice system. The courts belong to the people and justice must be seen in order for it to be respected. While a judge has the responsibility to ensure the safety of all those present in his or her courtroom, he must balance that responsibility with welcoming all those who have a stake or an interest in our courts.

With regard the allegations that the judge engaged in odd behaviour, the judge's comments did not entirely support the complainants' claims. While probably preferable that the judge himself not leave the bench to turn off the lights and to open the blinds, the judge notes that he did so in an attempt to be helpful. Indeed, a judge has a duty to maintain the dignity of the proceedings before him and in retrospect, perhaps should not have left the bench to walk about the courtroom even if for a specific purpose.

Finally, the judge's duty to ensure he has a full and complete understanding of the issues before him may warrant that he ask questions or interrupt lawyers in order to seek clarity. Giving the parties an

opportunity to settle matters in chambers with the hope of securing the early resolution of matter is not unusual and does not constitute an occasion of misconduct.

Taking into consideration all of the issues and the judge's detailed comments, the matter was closed and the three complainants were provided with a full explanation of how their complaints were treated.

## COMPLAINT 4

Several complainants wrote to Council to express their concerns over a judge's ruling in a sexual assault case. The accused was convicted of the offence, but the judge ruled that the law, which prohibits using excessive intoxication as a defence, was unconstitutional. This prompted some individuals to express their displeasure with the judge suggesting his ruling was a violation of women's rights and calling on Canadians to send a message to Parliament that the judge's decision was wrong.

Part of a judge's role is to interpret the law, and this can include finding that a law is unconstitutional. Interpreting a law in such a way is within the power of the judiciary. Parliament has a responsibility to make, amend and pass laws in Canada, and the judiciary interprets those laws.

At the core is the principle of judicial independence, where judges hold the ability to hear and decide cases freely and without fear. In reviewing these complaints, it was clear that the complainants were not concerned so much with the judge's conduct, as the judge's decision. The complainants were advised that it is not within the mandate of Council to examine a judge's decision and if they wished to question the judge's decision, the proper recourse would be to raise the matter before the courts.

## COMPLAINT 5

In rendering their decisions, judges are often called upon to assess the credibility of those who appear before them. The Council routinely receives complaints from individuals who are upset that their evidence may have been considered to be less credible than that of another party.

Such was the case in a complaint in which a complainant was upset that his past criminal record was disclosed during a trial. The complainant believed this was inappropriate and “contaminated” the judge against him. The complainant also alleged that the Judge had invited the media into the courtroom thereby ensuring that the matter of his criminal past would be published. The complainant also alleged that the judge described him as a “fraudster,” “scammer” and “long time criminal” which, in his view, was unfair.

Being told that one’s testimony is rejected can of course be upsetting. No one wants to be told they are not credible. However, this is often the key duty of a judge in a given case. Also, a decision to allow an individual’s previous criminal record into evidence is part of judicial discretion and decision-making. Judges have the duty to draw conclusions and make findings based on the evidence that was presented before them. If someone disagrees with a judge’s decision, the proper avenue is to appeal to a higher court.

With regard to the allegation that it was the judge who called the media to ensure that the complainant’s record would be published, that was found to be an entirely baseless and unfounded allegation based on conjecture. The complaint was dismissed.

## COMPLAINT 6

From time to time, Council will receive complaints alleging bias. For example, someone believes a conflict of interest exists because a judge worked in the past with a lawyer who appears before the judge in Court. In one case, two individuals took legal action against their neighbour concerning the issuance of a residential building permit. They complained to the Council that the judge should have not have heard the case because he used to work at a law firm where the neighbour's husband also works.

In responding to the Council about this allegation, the judge noted that he had practiced law for over 20 years in that law firm, but that his work there had ended more than 15 years before. He explained that he did not know the neighbour's husband very well. While they may have attended law school during the same years, they never studied or socialized together.

In considering whether or not certain circumstances can create a conflict of interest, judges are guided by the notion that a potential conflict can arise when the personal interests of a judge interfere with a judge's duty to adjudicate impartially. In cases where judges believe they are unable to judge impartially, it is accepted that they should disqualify themselves from hearing that particular case. However, this is not an issue of judicial conduct in and of itself. Matters of conflict of interest are usually addressed by the courts and only where the judge acts in bad faith, or wilfully neglects to disclose relevant and important information, can there be potential judicial misconduct.

In this matter, the judge's association was so remote, that it could not be a conflict of interest. More importantly, there was no suggestion of bad faith or neglect. Further, no issue of conflict was raised by the complainants prior to, or during, the hearing.

The complainants also took offence to certain remarks by the judge, which included a quote from Benjamin Franklin: "Don't throw stones at your neighbours, if your own windows are made of glass." They alleged that this comment further proved that the judge was biased against them.

In responding to this allegation, the judge offered that the complainants had launched several legal actions in this matter, which they lost. Procedural fairness dictates that it is usually for the party who commences the action and is unsuccessful to assume costs. The judge's comments were not an illustration of bias, as alleged, but rather an analogy used to help the judge explain his decision on the issue of costs.

After examining the above factors, the complainants were informed that their complaint did not warrant further consideration.

## COMPLAINT 7

Family court proceedings, particularly ones involving issues of custody and access, can be stressful and emotional for all parties involved. The majority of complaints received by Council continue to be related to high conflict family matters in which one party is dissatisfied with the decisions of the judge.

Such was the case with a complaint filed by a mother who was distressed that the judge refused to endorse a decision regarding the care of her daughter. The complainant wrote to Council to say that issues of her daughter's residence and access to family members had been previously dealt with and agreed to by the parties, including Family Children's Services, so it should have been a simple matter for the judge to approve. The complainant alleged that the judge refused to endorse the consent because he said he did not wish "to appear in the National Post". By adjourning the matter without rendering a decision, the complainant alleged that the judge contributed to unnecessary delays and caused great personal hardship to her family.

Judges have a duty to carefully assess all matters that come before them and to exercise their judicial discretion to the best of their ability. In this instance, a review of the transcript showed that the judge explained that his assessment of the evidence before him along with extenuating circumstances present in the home, he was not prepared to endorse the proposed agreement despite the consent of the parties. The judge expressed his concern for the safety of the daughter and claimed that he was not willing to take a risk that could lead to a tragedy he would subsequently read about in the National Post. While it may have been upsetting to the complainant that the agreement she had negotiated would not be endorsed by the judge, this decision was clearly within the judge's authority and did not constitute misconduct.

It was also noted that the proceeding in question was a case conference. The role of a judge during a case conference is different than at trial in that he may use the more informal setting to propose options for settlement of the dispute. The judge informed the parties frankly of his views and advised the parties that they could request a further case settlement before a different judge if they wished.

While the complainant also expressed some concern about the judge's comments during the conference, including remarks which the complainant interpreted as trivializing the child's vegetarian diet and piano playing, a review of the transcript indicated that the judge wanted to ensure that these options were being provided by the current custodial arrangement. In fact, it was clear from the judge's comments and his decisions, that the safety and welfare of the child was paramount in his considerations and that he took pains to explain that to the parties.

After reviewing all the elements of this complaint, the transcript of the proceedings and comments from the judge himself, the Chairperson of the Judicial Conduct Committee closed the file and informed the complainant that no further action would be taken.



## FINANCIAL STATEMENT

### FISCAL YEAR 2011-2012

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Salaries and Benefits	\$ 1,295,389
Transportation and Communications	\$ 105,174
Information	\$ 3,122
Professional and Special Services	\$ 162,730
Rentals	\$ 18,488
Purchased Repair and Upkeep	\$ 49,849
Utilities, Materials and Supplies	\$ 10,966
Construction and Acquisition of Machinery and Equipment	\$ 76,749
<b>TOTAL</b>	<b>\$ 1,722,470</b>

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## CONTACT US

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