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CANADIAN JUDICIAL COUNCIL

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PREFACE

In 2001-02, the Canadian Judicial Council celebrated its 30th anniversary.

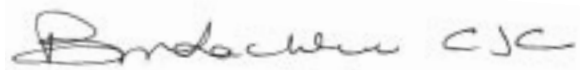
This annual report provides brief highlights of the Council's major undertakings since its creation in 1971 and provides some detail on its major current initiative — a comprehensive review of its mandate, structure and operations under the leadership of the Special Committee on Future Directions. This Committee brought major reports and recommendations to the September 2001 and March 2002 meetings of the Council and received the Council's endorsement to finalize and consolidate its recommendations for approval later in 2002. In parallel, the Working Group on Complaints Procedures was reviewing the Council's complaints by-laws.

The Council had planned to celebrate its 30th anniversary with a number of events in conjunction with its annual meeting, held in Ottawa September 12-14, 2001. In the wake of the September 11 terrorist attacks, many of the events were cancelled. Of course, many Council members had difficulty travelling to Ottawa during that time period, but those who were present attended a commemorative ceremony on Parliament Hill honouring the memory of the victims of the tragedy.

I wrote to my counterpart, the Honourable William H. Rehnquist, Chief Justice of the United States, to express my profound condolences. I added:

The events of September 11th underline the importance of the rule of law in our society and the world. It is in the nature of human society that people will differ, sometimes passionately. Such differences can lead us down two roads. The first is the road of violence. The second is the legal road, the path of peaceful resolution of disputes and differences and wrongs against society through the law.

Canadians and Americans, by and large, have chosen the second road. Our task, as judges, is to do all we can to ensure that our citizens continue to choose this road. It is to that end that we strive to enhance the independence of the courts, and work to ensure that our justice system remains among the best in the world. This work is important, indeed vital, to the continued peace and stability of our society.



The Right Honourable Beverley McLachlin
Chairperson
Canadian Judicial Council

Spring 2003

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THE CANADIAN JUDICIAL COUNCIL



Members of the Canadian Judicial Council at the September 14, 2001, Annual Meeting in Ottawa.

Overview

This report marks the 30th anniversary of the Canadian Judicial Council, covering its activities for the period April 1, 2001 to March 31, 2002.

It is the 15th annual report published by the Council. From 1971 until 1988, it was the Chairperson's practice to prepare a letter or report to all judges covered by the *Judges Act* on the Council's annual meetings, with some detail on the annual seminar and summaries of the disposition of individual complaints against judges.

In his preface to the Council's first annual report to the public, covering the period April 1, 1987 to March 31, 1988, Chief Justice Brian Dickson wrote that the Council has no legal obligation to issue an annual report, but cited "an increased expectation of openness in the operations of all public institutions."

The 39-member Council includes the chief justices and associate chief justices, chief judge and associate chief judge, and in the case of the three northern territories, the senior judges, of all courts whose members are appointed by the federal government. Members serving during 2001-02 are listed in Appendix B.

Judges Act, Part II — Excerpts

Council established

59. (1) There is hereby established a Council, to be known as the Canadian Judicial Council . . .

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 and county courts and in the Tax Court of Canada.

The Council was established by act of Parliament in 1971. Its statutory mandate, set out in the *Judges Act* (Appendix D), has provided a broad mantle for activity over the past 30 years in four areas:

- **The continuing education of judges**

Chapter 2 sets out the role of the Council's Judicial Education Committee, the terms of the *Judges Act* under which many educational activities for judges are authorized, and lists some of the specific meetings, seminars, conferences, workshops and courses attended by judges in 2001-02.

- **The handling of complaints against federally appointed judges**

The *Judges Act* assigns to the Council a responsibility to hold judges to a high standard of personal conduct, on and off the bench. Chapter 3 discusses the background, procedures and 2001-02 work of the Council in dealing with complaints about the conduct of federally appointed judges.

- **Developing consensus among Council members on issues involving the administration of justice**

Much of the Council's work takes place in standing and special committees and working groups, where Council members address issues of concern in the administration of justice and exchange information on best practices. The membership of Council committees as of March 31, 2002, is found in Appendix C. Examples of major undertakings over the Council's 30 years are cited in Chapter 4.

- **Making recommendations on judicial salaries and benefits**

Since the creation in 1983 of the first statutory commission on judges' salaries and benefits, the Council has made joint submissions with the association of superior court judges, originally known as the Canadian Judges Conference and more recently as the Canadian Superior Courts Judges Association. Important changes in judicial compensation took effect in 2001-02, as explained in Chapter 5.

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 2001-02 are set out in Appendix F.

While required by statute to meet once a year, the Council's practice for some years has been to meet twice — once in Ottawa during the spring, and outside Ottawa in the fall. In 2001, both the spring and fall meetings were held in Ottawa, the latter with the intention of marking the Council's 30th anniversary. In the wake of the September 11 terrorist attacks in the United States, special events were cancelled and the meeting was cut short to permit members of Council to attend a service of mourning on Parliament Hill.

One of the events cancelled was a public lecture to be given by Richard W. Pound, partner in the Montreal firm of Stikeman Elliott, and a prominent figure for many years in the Olympic movement. Mr. Pound kindly agreed to deliver a shortened version of his lecture to open the Council's annual seminar at its March 2002 meeting. The full text appears as Appendix A to this report.

Council Members' Seminar

Olympian Parallels

In his address, entitled "The Accountability of Appointment: Some Olympian Parallels," reproduced as Appendix A, Mr. Pound spoke from two perspectives: His unique insights into the Council's history as a result of research for his book *Chief Justice W. R. Jockett — By the Law of the Land*, and his association with the Olympics as a long-time, senior member of the International Olympic Committee (IOC).

Prefacing his remarks about parallels between judges and IOC members, Mr. Pound sketched a brief history of the early attempts to bring together the leaders of Canada's courts. He said that until a first national conference of judges in May 1964, chief justices worked for the most part as sole practitioners of the judicial function. Only when the federal government agreed to defray administrative costs and participants' travel and living expenses did annual meetings of chief justices get off the ground. The funding arrangements were secured in large part due to the "influence and knowledge of the federal labyrinth" held by Chief Justice Jockett, head of the Exchequer Court of Canada (now the Federal Court of Canada).

Seminar Participants

Richard W. Pound, Q.C., Partner, Stikeman Elliott, Montreal

Madam Justice Frances Kiteley, Ontario Superior Court of Justice

Madam Justice Adelle Fruman, Alberta Court of Appeal

Dr. Martin Felsky, President, Commonwealth Legal Inc.

Professor Michael Geist, Faculty of Law, University of Ottawa

The annual meetings grew in scope and importance until 1971, when the search for a solution to the “delicate” issue of “disciplining judges” led to the idea of a body with statutory authority to deal with complaints about judicial conduct. The Canadian Judicial Council was established by amendments to the *Judges Act* effective December 9, 1971.

Turning to the subject of appointment, Mr. Pound said an underlying principle in the appointment of both judges and IOC members is that they will be independent from outside influence.

The judge must be vested with the independence to decide matters coming before him or her without interference from any branch of the government. The IOC member must be free to decide matters in the best interests of the Olympic Movement without governmental influence, or the intervention of local interests.

In both cases, independence is coupled with complex removal mechanisms which ensure they can act without fear of removal for failure to have pleased those in political power.

However, the IOC had no such mechanism when it was learned in 1998 that several IOC members had received material benefits in relation to selection of Salt Lake City as the site of the 2002 Winter Olympics. Mr. Pound was designated chairman of a commission to investigate, and it ultimately recommended that 11 members be expelled.

The IOC subsequently adopted a code of ethics and conflict of interest rules, established an independent ethics commission and a nominations commission to screen prospective IOC members, reduced the retirement age of new members to 70 from 80, and provided limits of their terms of appointment.

Mr. Pound said there are many parallels between the IOC and the judiciary, as well as responses to the issues they face.

We must both be free to take our decisions, independently, in the best interests of proper execution of our mandates and responsibilities, but these decisions cannot be taken in complete isolation from the communities affected by them. IOC members cannot be totally isolated from sport as it is practised in the world, nor its ideals; the judiciary cannot be unaware of the effects of its decisions and the standards of the communities in which they operate.

Computer Security

The March seminar also addressed the security of court computer systems, with the benefit of results from a survey of computer technology in federal and provincial courts carried out by the Judges Technology Advisory Committee (JTAC). Devoting the seminar to computer security was one of the JTAC’s recommendations on the subject, as reported in Chapter 4.

The seminar featured discussions led by Madam Justice Frances Kiteley, chairperson of JTAC’s Subcommittee on Computer Security, and Madam Justice Adelle Fruman, a member of the subcommittee, and presentations by Michael Geist, Professor of Law at the University of Ottawa, and JTAC advisor Martin Felsky, President of Commonwealth Legal Inc.

Madam Justice Kiteley, a member of the Ontario Superior Court of Justice, said JTAC has identified the need for all chief justices to have a comprehensive appreciation of the issues arising from their judges’ use of computers, and the security of data which judges create. JTAC looked forward to creating a “blueprint” of best practices or minimum standards

to help ensure that security concerns are addressed and that judges of all courts pursue the same approach to security issues.

Madam Justice Fruman, a member of the Court of Appeal of Alberta, said JTAC's survey indicated that there is widespread external computer monitoring of the judiciary. She said computer surveillance of the judiciary raises complex legal issues touching on constitutional law, privacy rights, judicial independence and even contract, tort and criminal law. Judges should expect to have control over their confidential work product, including candid notes about witnesses. They need to be able to research unusual ideas, and to refine their analysis in numerous draft judgments. Nor is there any point in exempting judges from monitoring while at the same time conducting surveillance on judicial staff who share judges' confidential information.

Professor Geist demonstrated to Council members what could happen in "a day in the life" of a computer that is subject to surveillance. He said a monitoring system could record the user's log-in, individual key strokes, the texts of e-mail messages and attachments and the Internet Web sites visited — including sites reached accidentally. Through a typographical error or a misleading site name, the user might land quite innocently on a Web site containing inappropriate material, but the surveillance report would not distinguish between intentional and unintentional activity. Such risks highlight the need to develop "reasonable surveillance" practices and laws, a subject discussed in a paper prepared by Professor Geist for the Council, as described in Chapter 4.

Dr. Felsky warned the judges that they cannot necessarily rely on other people for the security of their data — they have to rely on themselves as well. Security is no stronger than the weakest link in the chain, and depends on people, not technology. He focussed on security issues in judges' use of laptop or notebook computers. Theft of a judge's laptop, for example, represents a potentially serious compromise of judicial data security. A stolen laptop can be used to gain remote access to networks, using a dial-up connection through its modem. Dr. Felsky urged

judges to use their portable computers as if they were wallets, keeping them in sight, locked whenever possible, with strong and strictly confidential passwords. If possible, sensitive data should be put into encrypted folders, and information should be backed up regularly. Outdated information and hidden or deleted data should be wiped clean.

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JUDICIAL EDUCATION

Overview of Responsibilities

From its birth the Council helped the judiciary keep abreast of the dynamic changes in Canadian society. The *Judges Act* gives the Council authority to “establish seminars for the continuing education of judges” and it originally conducted annual seminars for this purpose. The Council later helped lay the groundwork for the establishment of the National Judicial Institute (NJI), an independent organization for judicial skills training, continuing professional education and professional enrichment funded by the federal and provincial governments.

Over the years, the Council has played a policy role in education, for example, in adopting a goal of 10 days per year for continuing judicial education of judges, developing a study leave program for judges, and approving the concept of “comprehensive, in-depth credible education programs on social context issues including gender equality, racial equity and aboriginal justice.”

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 subsection 41(1) of the *Judges Act*.

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 subsection 41(2) of the *Judges Act*, individual chief justices can authorize the reimbursement of expenses incurred by judges of their courts in attending certain meetings, conferences and seminars.

Judges Act, Part II — Excerpts*Powers of Council*

60. (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; . . .

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*¹ 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 participating judges. The Office of the Commissioner for Federal Judicial Affairs administers the resulting claims.

National Judicial Institute Programs

Ultimately, the responsibility to further their education falls on individual judges. While the demands of the Bench exert constant pressure on judges’ time and energies, the Council supports their commitment to continuous learning in co-operation with the National Judicial Institute (NJI).

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.”

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 2001-02, the Council endorsed an education plan for newly appointed judges, which was developed by a steering committee of representatives from the NJI, the Canadian Association of Provincial Court Judges (CAPCJ) and the Canadian Institute for the Administration of Justice (CIAJ). The plan envisages a four-year process incorporating mentoring programs and individual education plans, priority access to

educational seminars and attendance at a 10-day CIAJ-NJI seminar.

The Council also approved a three-year program of computer education for judges to be carried out jointly by the NJI and the Office of the Commissioner for Federal Judicial Affairs. The program is to include individual and group face-to-face training as well as on-line courses and distance education, and incorporate training in computer security issues.

The Council authorized the following NJI seminars under subsection 41(1) of the *Judges Act* for judges attendance in 2001-02. Attendance of federally appointed judges varied depending on the format and topic of the seminar, as seen below.

NJI EVENT	LOCATION	DATES	ATTENDANCE
Appellate Courts Seminar	Montreal	April 22-25, 2001	23
Aboriginal Law Seminar	Saskatoon	May 9-11, 2001	58
Civil Law Seminar	Vancouver	May 23-25, 2001	56
Early Orientation for New Judges	Ottawa	May 28 - June 1, 2001	12
	Ottawa	November 26-30, 2001	27
Genetics, Ethics and the Law: A Joint Working Conversation	Montreal	June 3-5, 2001	28
	Victoria	February 3-5, 2002	29
Social Context Education — Phase II Faculty and Program Development	Victoria	June 6-7, 2001	21
	St. Andrews	September 25-27, 2001	17
	Quebec City	December 5-6, 2001	12
Retirement Planning			
Western Judges	Calgary	June 13-15, 2001	30
Quebec Judges	Montreal	September 19-21, 2001	12
Eastern Judges	Halifax	October 17-19, 2001	21
B.C. Judges	Vancouver	November 6-8, 2001	20
Ontario Judges	Toronto	March 13-15, 2002	16
Hearing and Deciding Charter Issues: Charter Intensive Summer Workshop	Montebello	July 30 - Aug. 3, 2001	26
Criminal Jury Trials Seminar	Winnipeg	October 3-5, 2001	74
Seminar for Chief Justices, Chief Judges and Associates	Aylmer	October 21-26, 2001	19
Atlantic Courts Education Seminar	Charlottetown	November 7-9, 2001	82
Emerging Challenges: Applications of International Law in Canadian Courts	Montreal	November 9-12, 2001	62
Managing Successful Settlement Conferences			
Level I	Calgary	November 12-14, 2001	18
Level II	Toronto	December 5-7, 2001	16
Settlement Conferencing Seminar	Montreal	January 14-17, 2002	26
Family Law Seminar	Halifax	February 12-15, 2002	41
Criminal Law Seminar	Vancouver	March 20-22, 2002	93

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

During the year, more than 300 federally appointed judges from courts across Canada participated in 1,700 hours of group and private training sessions and distance learning sessions on computer applications.

Canadian Institute for the Administration of Justice Programs

Continuing with past practice, the Canadian Institute for the Administration of Justice (CIAJ), operating out of the Université de Montréal, conducted two annual seminars for federally appointed judges, for which the Council authorized reimbursement of judges' expenses:

- Judgment Writing Seminar, Montreal, July 3-7, 2001, with 55 judges plus judicial organizers and faculty authorized to attend;
- Newly Appointed Judges Seminar, Château Mont-Tremblant, Quebec, March 2-8, 2002.

The Council also authorized reimbursement of expenses for judges participating in three CIAJ conferences held during the year:

- A Round Table Dialogue between Courts and Tribunals, Ottawa, June 15, 2001, (10 judges authorized);
- Citizenship and Participation in the Administration of Justice, Halifax, October 10-13, 2001, (95 judges authorized);
- Conference on Terrorism, Law and Democracy, Montreal, March 25-26, 2002, (20 judges authorized).

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 those listed here.

EVENT	LOCATION	DATES	AUTHORIZED ATTENDANCE
Act of Settlement 1701 Conference	Vancouver	May 9-11, 2001	56
Annual Conference of the Association of Family and Conciliation Courts	Chicago	May 9-12, 2001	30
Cambridge Lectures organized by the Canadian Institute for Advanced Legal Studies	Cambridge, England	July 8-18, 2001	56
National Criminal Law Program of the Federation of Law Societies of Canada	Charlottetown	July 9-13, 2001	65
INSOL Judicial Colloquium and International Conference	London, England	July 16-20, 2001	6
Seventh National Court Technology Conference "CTC7," sponsored by the National Centre for State Courts	Baltimore	Aug 14-16, 2001	26
Annual Conference of the Canadian Bar Association	Saskatoon	Aug 14-16, 2001	27
Third World Congress on Family Law and Rights of Children and Youth	Bath, England	Sept 20-22, 2001	18
Canadian Forum on Civil Justice Conference Negotiating the Future	Calgary	Nov 14-16, 2001	30
Meeting of family law judges organized by the Canadian Judicial Council to discuss procedures, recent developments and services associated with family law	Ottawa	Nov 29-30, 2001	22
New York Appellate Judges Seminars	New York	April, July 2001	4

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 program, a number of judges undertake research, study and, in some cases teaching, at Canadian universities. 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 representatives of the CCLD, one representing common law and one civil law jurisdictions. Members of the committee in 2001-02 are found in Appendix C. 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.

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.

Since the introduction of study leave in 1989, 90 judges have pursued studies at universities from Dalhousie in the east to Victoria in the west. They have carried out research on many aspects of civil and criminal law in Canada and elsewhere, studied the impact of the *Charter of Rights and Freedoms* and other aspects of the constitution, examined courtroom procedures and the developing areas of alternative dispute resolution and computer technology in the courts, taught courses and coached students in moot trials and advocacy. Several judges have used the time to research and write books for publication in their areas of expertise.

Thirteen judges participated in the study leave program between September 1, 2001, to March 31, 2002, as follows:

At the College of Law, University of Saskatchewan, Madam Justice Wendy G. Baker of the Supreme Court of British Columbia was a co-instructor for a third-year trial advocacy course on the various stages of a civil trial as well as aspects of criminal trials. She presided over moot courts, prepared a paper for the Trial Lawyers Association on "Barristers' Negligence," lectured to a class on mediation and studied a variety of legal issues.

Mr. Justice Leo D. Barry of the Supreme Court of Newfoundland spent his study leave at Osgoode Hall Law School teaching, auditing courses, attending legal conferences, participating in planning a National Judicial Institute seminar on statutory interpretation and researching issues in philosophy and legal theory. His research project, associated with postgraduate studies in philosophy, focussed on language and its impact upon the law.

At the Faculty of Law, University of Ottawa, Judge Ron D. Bell of the Tax Court of Canada worked with students and gave detailed study to tax-related subjects, including the statutory interpretation of significant cases over the past decade and complicated GST taxation schemes.

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."

As judge in residence at the Faculty of Law, University of Ottawa, Mr. Justice James B. Chadwick of the Ontario Superior Court of Justice developed a settlement conference program for third-year students. He also conducted actual cases, involving students with the consent of counsel and the parties. Students reviewed briefs in advance, observed the settlement conferences and reviewed what had transpired with the judge and in many cases with both legal counsel. Mr. Justice Chadwick also led students on courthouse tours, explaining courtroom procedures, and made presentations to classes and to judicial conferences on mandatory mediation and case management.

At the Université Laval, faculté de droit, Mr. Justice Ross Goodwin of the Quebec Superior Court of Justice followed masters-level courses on children's rights and studied the evolution of related legislation around the world. He reviewed conclusions of the Special Joint Commons-Senate Committee on Child Custody and Access and coached students in courtroom pleading techniques in preparation for moot courts.

Mr. Justice A. Derek Guthrie of the Superior Court of Quebec prepared a coursebook and syllabus for a seminar course entitled "Techniques, Psychology and Ethics of a Civil Trial" and taught the course to third- and fourth-year students in the January-March term at the Law Faculty of McGill University. He also completed a research project entitled "The Truth in Civil Litigation: Biological and Psychological Aspects of Human Perception, Memory, Communication and Deception."

Major case authorities, themes and academic writing on the *Charter of Rights and Freedoms* were the main focus of study leave at the Osgoode Hall Law School for Mr. Justice Peter Howden of the Ontario Superior Court of Justice. He also met students to discuss professional and substantive issues, assisted with moot courts and researched and wrote a paper on issues arising from the Morin and Sophonow Commissions and from known wrongful convictions.

At Osgoode Hall Law School, Mr. Justice Peter Jarvis of the Ontario Superior Court of Justice carried out

research and interviews for a biography he is preparing on the late Judge Colin Bennett. He also met students to discuss the legal profession and career opportunities, presided over career panels with visiting lawyers, and participated in several classes.

Madam Justice Ellen Macdonald, also of the Ontario Superior Court of Justice, attended lectures and participated in the trial advocacy training program for third-year students at the University of Toronto Faculty of Law. She prepared a guide for deputy small claims court judges and made presentations to inaugural education seminars for deputy judges in four Ontario centres.

In December 2001, both Mr. Justice Jarvis and Madam Justice Macdonald visited Hungary, the Czech Republic and Slovakia to meet judges and senior court administrators to compare approaches and methods in continuing judicial education, and reported their findings to the Department of Justice.

Revision and comprehensive reform of the 4th edition of the 900-page Code de procédure pénale annotée du Québec (Annotated Quebec Code of Penal Procedure), which culminated in the 5th edition, constituted the major project for Mr. Justice Gilles Létourneau of the Federal Court of Canada at the University of Ottawa Faculty of Civil Law. He also presided over several preparatory moot court competitions, gave several lectures, participated in a number of legal and university conferences and was part of a committee of the National Judicial Institute planning a course for judges on the complimentary role of the Common Law and Civil Law traditions in the application and interpretation of federal legislation.

Mr. Justice Donald I. MacLeod of the Court of Queen's Bench of Alberta spent his study leave at the University of Calgary Faculty of Law. He completed a comparative study of current procedural approaches to long trials in Canada, the United Kingdom and the United States. He also audited courses in environmental law and international trade law and participated in faculty programs on competitive negotiations, moot programs and intensive trial advocacy.

Madam Justice Ellen Picard of the Court of Appeal of Alberta spent the September-December term at the University of Alberta Faculty of Law and the January-March term at the University of Victoria Faculty of Law. She taught classes from a judge's perspective in contracts, torts, family law, mediation and arbitration and sentencing, assisted in moot preparations, participated in faculty seminars and kept an open door for discussions with students. She also organized two conferences on Enviro-Genetics Issues and the Law in co-operation with the National Judicial Institute and the Einstein Institute for Health, Science and Law.

During study leave at the University of Toronto Faculty of Law, Mr. Justice Michel Proulx of the Quebec Court of Appeal gave lectures, participated in moot courts and attended a wide range of courses in the law. He was also an active participant in a number of conferences held in Ontario and Quebec.

3

COMPLAINTS

Overview of Responsibilities

Under Canada's constitution, only Parliament can remove a judge who has breached the standard of good behaviour. The process to assess alleged breaches of conduct by federally appointed judges is assigned to the Canadian Judicial Council under the *Judges Act*.

The Council has taken care to subject its complaints procedures to repeated review and refinement. Within the past decade, the Council has invited examination by leading academics, devoted three annual seminars to the subject, and carried out two extensive reviews of complaints by-laws. Most recently, the Canadian Superior Courts Judges Association provided its views and was invited to comment on draft by-law revisions.

A constant theme in these reviews has been the need to respect both judicial accountability and judicial independence, and to keep in mind that the real purpose of complaints procedures is to change undesirable conduct.

The context of judicial conduct review was explained in this way by the Right Honourable Antonio Lamer, former Chief Justice of Canada and Council Chairperson, to the Council's March 1994 seminar:

The role and responsibility of a judge in our society is awesome and it is particularly acute at the level of a trial judge. The Parliament, legislatures, municipal councils and even appellate courts make important decisions, but these are made collectively. It is the trial judge alone who has the unique responsibility to face the parents of a child and rule that one will have custody and not the other. It is the trial judge who faces an accused and states that he or she will walk out of the courtroom at liberty or will spend the next ten years in prison. . . .

The principle of judicial independence requires that individual judges be left alone and trusted to act properly. . . . Unfortunately, however, but inevitably, since judges are human beings, judges will sometimes fall short of what is expected or required of them. . . . Whatever the reasons for a judge's conduct, there is no question that public scrutiny of that conduct is an increasing measure of confidence in the impartiality and effectiveness of the judiciary. I believe that the public often will understand and forgive a judge who acts inappropriately or even stupidly. What is important is that the institution of the judiciary is not seen as supporting, condoning or attempting to hide such conduct from public view. It is also important for the public to appreciate that we judges ourselves, and particularly chief justices, are taking steps to prevent such conduct from occurring or re-occurring.

The Council seeks to make the complaints process demonstrably open and equitable, to examine each complaint seriously and conscientiously, and to ensure consideration of the fundamental issues involved, not just the form in which it was made or the technicalities surrounding it. There is no requirement that a complainant be represented by a lawyer or that a complaint be made in a specific way or on a specific form. The Council requires only that a complaint be in writing and that it name a specific judge.

When a complaint or allegation is made that a judge in some way has breached the requirement of good behaviour, the Council is required to 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 on the judges' capacity to perform their duties, and without jeopardizing their tenure on the bench, so long as they have acted "within the law and their conscience."

The Council's assessment of a complaint can result only, in the most serious cases, in a recommendation to the Minister of Justice, following a formal inquiry, that a judge be removed from office. The Minister, in turn, can only make a further recommendation to Parliament. It is then for Parliament, consisting of both the House of Commons and the Senate, to decide whether a judge should be removed from office.

Under subsection 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.

The Council has no basis for investigating generalized complaints about the courts or the judiciary as a whole, or about judges whom complainants have not named or do not want to name. It cannot change judicial decisions, compensate individuals, grant appeals or address demands for new trials. Nor can it investigate complaints about other judicial officers such as masters, provincial court judges, court employees, lawyers or others, about whom many complain — erroneously — to the Council.

The complaints process inevitably risks exposing judges to unjust accusations and unwarranted public questioning of their character. This is particularly so when a complaint that was made public by the complainant is later found to be baseless, and the finding is not given the same public prominence as the original accusation. Judges are not in a position to refute such accusations publicly, or act independently to

Judges Act Part II — Excerpts

Powers of Council

60. (2) In furtherance of its objects, the Council may . . .

(c) make the inquiries and the investigation of complaints or allegations described in section 63;

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

63. (2) The Council may investigate any complaint or allegation made in respect of a judge of a superior court or the Tax Court of Canada.

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.

protect themselves from what they see as damage to their reputations.

All this underscores the importance of providing a process that respects judicial independence but is also fair and credible. Those who feel aggrieved by a judge's conduct must be assured of an opportunity to have their concerns reviewed. A judge whose conduct is in question must be assured that the matter will be resolved as promptly and fairly as possible.

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 inquiries. As a protection for both the complainant and the judge, the Council will not make the fact of a complaint or its disposition public on its own initiative.

The brochure entitled *The Conduct of Judges and the Role of the Canadian Judicial Council*, setting out the complaints procedures in some detail, has been distributed widely to the public and judges and may be found on the Council's Web site at www.cjc-ccm.gc.ca.

The Complaints Process

The Chairperson or one of three Vice-Chairpersons of the Judicial Conduct Committee of the Council deals initially with complaints, drawing authority and responsibility from Council by-laws made pursuant to the *Judges Act*. The by-laws are reproduced at Appendix E.

The Chairperson or a Vice-Chairperson³ reviews each complaint and decides on its disposition. The judge and the judge's chief justice may be asked for their comments, but with or without such comments, the Chairperson may close a file with an appropriate reply to the complainant. By far the largest proportion of complaints are dealt with in this way.

In some circumstances, the Chairperson may choose to refer a complaint to a Panel of up to five judges. Panels are usually composed of three members of the Council but may include a judge who is not a member of the Council. Panels are established to deal with

particularly sensitive issues, matters that may benefit from review by more than a single Council member, or instances where an expression of disapproval of the conduct of the judge in question may appear to be warranted.

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

Grounds for a recommendation for removal are set out in subsection 65(2) of the *Judges Act*. The Council's investigation would have to determine that the judge has become incapacitated or disabled from the due execution of the office of judge by reason of:

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of that office, or
- (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office.

Complaints in 2001-02

Over the past 10 years, the number of new complaints annually has fluctuated within a range of about 125 to 200 and averaged 167.

In 2001-02, 180 complaint files were opened, compared with 150 the previous year. The Council closed 174 files, compared with 155 in 2000-01.

When a file is closed without seeking comment or conducting further investigation, usually it is because the complainant is seeking directly or indirectly to have the judge's decision altered or reversed.

Complainants often ask for a new trial or hearing,

³ Throughout the remainder of this chapter "Chairperson" can include "Vice-Chairperson."

for compensation as a result of an allegedly incorrect or “unlawful” decision, or for a judge to be removed from hearing a case. The Council has no power to deal with these requests. Such complaints frequently fall into more than one of these categories.

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. In 2001-02, comments were received from the judge and chief justice in 102 or 59 percent of the files closed.

During the year a working group continued a review of complaints by-laws and procedures, in parallel with the work of the Special Committee on Future Directions, and in anticipation of recommending changes at the September 2002 annual meeting of the Council.

Complaints involving conduct on the bench were addressed in 163 files, conduct off the bench in eight and conduct on and off the bench in three.

Of all files closed during the year, 68 percent were closed within three months of receipt, 94 percent within six months, and six files took longer than six months due either to their complexity or the fact that they were put in abeyance because the judge involved was still seized with the subject matter of the complaint.

Complaints to the Council continue to represent a small fraction of the tens of thousands of decisions made each year by federally appointed judges across Canada. Moreover, complaint levels have remained relatively constant over a period when increasing numbers of self-represented litigants have appeared before judges, individuals have become more conscious of their rights generally, and the opportunity to register complaints with the Council has become better known.

Table 1
Complaint Files Opened since Creation of the Council

Fiscal year	Number of files opened ⁴
1971-72	3
72-73	10
73-74	4
74-75	7
75-76	12
1976-77	22
77-78	28
78-79	29
79-80	19
80-81	22
1981-82	16
82-83	25
83-84	42
84-85	47
85-86	52
1986-87	44
87-88	47
88-89	71
89-90	83
90-91	85
1991-92	115
92-93	127
93-94	164
94-95	174
95-96	200
1996-97	186
97-98	202
98-99	145
99-00	169
00-01	150
2001-02	180

⁴ Figures for 1976-77 to 1986-87 adjust figures published in the 1996-97 annual report to eliminate files for which names of judges were unknown.

Table 2
Complaint Files

	New files opened	Carried over from previous year	Total caseload	Closed	Carried into the new year
1992-93	127	14	141	110	31
1993-94	164	31	195	156	39
1994-95	174	39	213	186	27
1995-96	200	27	227	180	47
1996-97	186	47	233	187	46
1997-98	202	46	248	195	53
1998-99	145	53	198	162	36
1999-2000	169	36	205	171	34
2000-01	150	34	184	155	29
2001-02	180	29	209	174	35

Custody, divorce and other disputes related to family law accounted for 48 percent of files closed in 2001-02, compared with 43 percent a year earlier, and as high as 55 percent in 1999-2000. In 2001-02, three quarters of complaint files closed dealing with family law issues came from men. Criminal law cases were the source of 10 percent of files closed in 2001-02, tort matters 9 percent and contract issues 8 percent.

In recent years individuals not represented by counsel have made up between 35 and 50 percent of all complainants. In 2001-02, the ratio dropped to 30 percent.

During the year, two files were referred to Panels. In one case, the Panel concluded that the judge had made an inappropriate comment, and accordingly it expressed its disapproval in a letter to the judge. In the second case, a Panel recommended and the Council agreed that an Inquiry Committee be established. The file was closed as discontinued when the judge resigned before the Committee could begin its investigation.

Files Closed by Chairperson or Vice-Chairperson

The vast majority of complaint files are closed by the Chairperson. Profiles of files closed in 2001-02 follow.

Table 3
Complaint Files Closed in 2001-02

	Closed by Chairperson or Vice-Chairperson	Closed by Panel	Dealt with by full Council
After response from the judge	100	1	1
Without requesting response from the judge	72	–	–
Total	172*	1	1**

* Including three files closed as withdrawn or discontinued

** Closed as discontinued

Alleged gender bias

In 18 files, there were allegations of gender bias, all by male complainants. Examples follow.

- The complainant, an unrepresented father in family law proceedings, alleged that the judge unfairly dismissed his motion to vary a previous order for custody and access, and exhibited

anger toward him. He “felt most likely” that he had been discriminated against because of his race, colour, gender and the fact that he was representing himself.

The complainant was informed that a careful review of the matter had not substantiated his suggestion that the conduct of the judge or the dismissal of his motion were evidence of discrimination. Rather, the judge dismissed his motion because he found that it constituted an attempt to re-litigate the matter which had previously been determined by judicial interim order. The judge advised that neither the fact nor the result of the intervening motion for leave to appeal the same order — which the complainant was again attempting to re-litigate before the judge — had been disclosed in his motion record. The complainant was further advised that the judge apologized if the complainant perceived that he had been annoyed.

- The complainant alleged that the judge’s comments against men in the course of a television show served to undermine the public’s perception of judicial impartiality. He alleged that the judge “volunteered that fathers are not involved with their children and that they have not been ‘good fathers’ prior to the divorce.” The complainant indicated that he “did not know” how the judge would decide on a particular case dealing with custody issues, but asserted that he would not want the judge to sit on a case involving his children or himself.

The complainant was advised that a review of the videotaped interview revealed that the judge did not use the words as alleged. He was advised that the actual comments had not implicated all fathers and an informed person, viewing the matter realistically and practically and having thought the matter through, would not apprehend a lack of impartiality regarding the judge’s future ability to decide custody issues brought on by divorce or separation. The complainant was advised that judges may properly speak out in order to enhance the public under-

standing of the role of judges. The complainant was reminded that the judge began her comments on a judge’s role in custody cases by saying that “the children need both parents.” The complainant was informed that it was the prerogative of the party asserting bias in a particular case to request recusal of the judge.

- An unrepresented complainant in a family law matter alleged that the judge was biased against men and that she had failed to control the opposing counsel’s “character attacks” against him. The complainant alleged that he felt “humiliated, harassed and gagged” in the courtroom. He asked for an investigation.

The complainant was advised that a review of the tape recording of the hearing showed that the judge had given the complainant every opportunity to make his case, had explained the process and had listened patiently to his testimony and arguments. Tapes revealed that the judge had been polite and respectful of all the parties throughout the proceedings and had patiently explained the procedures. He was also advised that the judge appeared to have controlled the proceedings effectively, despite the apparent antagonism between the complainant and the defendant’s lawyer.

- A complainant in family law proceedings alleged the judge was biased against him on the basis of adverse rulings, demonstrated a “feminist bias” and was biased against men. He disagreed with a number of rulings concerning support and arrears and the judge’s refusal to order discoveries.

The complainant was advised that he had provided no basis for his allegation of bias on the part of the judge, other than the judge’s adverse decisions. Transcripts of the proceedings revealed that the judge treated both parties in an even-handed manner.

- A complainant in divorce proceedings alleged that the judge had made errors of fact and law in his judgment. The complainant said he had

been penalized by his insurance company because of the judge's finding that he had damaged his wife's car. He requested a review of the matter. He alleged that the judge was biased and had committed an act of "intentional discrimination" by excluding money received by his wife in calculating the division of matrimonial assets.

The complainant was informed of the mandate of the Council and of his right to appeal. He was advised that his allegations of bias and discrimination implicated the judge's conclusions in his judgment and as such could only be examined by way of appeal. There was no basis for intervention by the Council pursuant to its mandate under the *Judges Act*.

- A complainant who had been present but not involved in family law proceedings alleged that the judge's reasons for judgment demonstrated a bias against men on the basis of his findings regarding support and net family property. He said the judge held a "secret closed door meeting" with counsel for the parties outside the courtroom. He objected that counsel for the husband would not tell him what went on at the meeting. He also alleged that the judge deliberately or knowingly created a situation in which he could meet alone with counsel for the wife by getting on the elevator with the wife and her lawyer. He speculated that the judge must have had a secret meeting with counsel for the wife.

The complainant was advised that it is not improper in a civil case for the trial judge to meet with counsel for the parties in chambers either before or during a trial. A judge may use the opportunity for any number of reasons, including determining whether the parties have agreed upon any facts and whether any issues have been resolved before or during the course of trial. If the judge met with counsel it was not improper and there was no reason why he as a non-party should be told what the judge and counsel discussed. If it was true that the judge ended up on the same elevator as the wife and

her lawyer, the complainant's conclusion that they held a "secret meeting" was pure speculation.

Alleged conflict of interest

In 18 files, complainants alleged that the presiding judge was in a conflict of interest. Examples follow.

- The complainant, a party in a family law proceeding, alleged that the judge had a conflict of interest because she had had a professional relationship with the intended expert witness, had been a partner to a lawyer with whom the complainant had dealt "briefly" and because of the nature of the work of the judge's spouse.

The complainant was advised that the decision of the judge to adjourn could have been reviewed only by way of appeal and that the alleged conflict of interest had been properly dealt with. As soon as the judge was informed of the name of the expert who had written the report that the complainant's lawyer was seeking to file, the judge had given the opportunity to the parties to consider whether they wished her to recuse herself in view of the fact that she had had a previous professional relationship with the proposed expert. The complainant was advised that any perceived or actual potential conflict of interest had thereby been properly dealt with and that her allegation was unfounded.

- The daughter of the defendant named in a quasi-contract case alleged the judge was in a conflict of interest because he had practised at the same law firm as counsel for the plaintiff. The complainant alleged that the judge should have ensured that someone was present in court to represent her mother and should have ensured that appropriate witnesses were called.

The complainant was advised that the judge had been appointed to the bench 15 years before the trial, and was not in a conflict of interest. She was advised that it was the responsibility of her mother's lawyer, not the judge, to ensure that someone representing her mother was

present during the trial. It was also the lawyer's responsibility to ensure that appropriate witnesses were called.

- A complainant in proceedings dealing with support and division of family property alleged that the judge was not impartial because she was a friend of the cousin of his ex-wife. He produced a photograph taken between the date of the trial and the date when judgment was rendered showing the judge together at a party with his ex-wife's cousin. He said that he had been told that certain people at the party had discussed his case and that they had referred to the judge as the judge who had presided over his trial.

The judge denied she knew of the relationship between her friend and the complainant's ex-wife or that she had discussed the case with anyone at the party or at all outside the courtroom before rendering a decision. The complainant was advised that he had provided no evidence to show the judge had been involved at the party in any discussions about the case or that the judge knew of the relationship between the cousin and ex-wife before she rendered a decision. The complainant's counsel had not raised bias as a ground of appeal. The reasons for judgment were detailed and judicious and fully canvassed the evidence and the applicable law. The judge's decision had been upheld on appeal.

- A complainant in a family law proceeding alleged that the judge was in a conflict of interest because the judge's spouse "was a close friend of the plaintiff and had talked to her frequently during the course of the hearing." Furthermore, the plaintiff's brother, a witness at trial, was a friend of the judge. The complainant demanded that the judgment be "repealed."

Comments were requested from the judge and the complainant was informed of the Council's mandate. The complainant was advised that the evidence showed that the judge's wife did not know the plaintiff at the time of the hearing,

having met her some seven months after the judgment was rendered. Nor was there substantiation for the claim that the judge and the plaintiff's brother were friends. There was consequently no basis for intervention by the Council pursuant to its mandate under the *Judges Act*.

- A medical doctor in application for an injunction in judicial review of disciplinary proceedings taken against him disagreed with aspects of the judge's reasons for decision. He also stated that the judge must know the main complainant in the disciplinary proceedings who had filed a complaint of harassment against him, because he had "determined" that they "were both parents of children that attended the same school" which, in his view, raised a reasonable apprehension of bias.

The judge denied she knew or was acquainted with the complainant in disciplinary proceedings or had even heard of the individual. The complainant had provided no evidence to support his allegation. The judge's reasons for judgment dismissing the application for an injunction were detailed and judicious. The complainant was advised that there was no evidence of bias and therefore no basis for further action by the Council. The complainant wrote again to complain about the Council's disposition of his complaint. He was advised that he has provided no basis for re-opening the file.

Alleged racial bias

In six files, complainants alleged racial bias on the part of the judge. Two examples follow.

- A complainant alleged that the judge had treated him differently on the basis of race because he had declared him to be the father of a child "without a blood test and without notice" and had ordered him to pay child support, which he could not afford. He alleged that he had been forced onto social assistance as a result and demanded an investigation.

The Council's response to the complainant noted that he had appealed the order, although he had been ultimately unsuccessful. The judge pointed out that the court hearing, which had been brought on by application of the province, had been adjourned on two occasions in order to give the complainant an opportunity to have a blood test done and to consult counsel, which he did not do. The judge advised that it was only on the third hearing before the court that a Declaration of Paternity was made, on the evidence, as well as an order for child support. The complainant was reminded that despite further enforcement proceedings, he still had not paid any child support. He was advised that there was no evidence to show that he had been treated differently on account of his race.

- The complainant was the mother of two children for whom the Children's Aid Society had brought an application for Crown wardship, without access. The complainant alleged that the judge granted Crown wardship because she is Métis. She also alleged the judge "had no right to say what he said being Métis I have problems."

Copies of the judge's reasons for decision and a copy of the transcript of the trial did not support the complainant's allegations. The judge had made an order to recognize the complainant's cultural concerns.

Alleged delay in rendering judgment

In five files, there was an allegation about delay in rendering judgment. Examples follow.

- A party in a divorce action alleged that he had been prejudiced by the judge's delay in rendering his "final" judgment. He had already appealed the judge's first judgment and was still waiting for the final judgment. He complained that the judge had rejected his demand that the judge recuse himself.

Comments were requested from the judge. The complainant was informed of the Council's

mandate and of his right to appeal. He was advised that the six months normally provided by law and recommended by the Council as a guideline for a judgment to be rendered had not passed, taking into account the fact that in its first judgment the court had reserved decision on corollary relief, permitting the parties to verify certain information relating, among other things, to the defendant's locked-in pension.

- The applicant in a divorce case complained that the judge had taken too long to deliver judgment and grant her divorce. The length of time was causing her problems because she had intended to remarry. She felt "very frustrated with the justice system that is supposed to be in place to help me and not hinder me." She felt she had been "attacked" because she "self-represented" and because she had "hired a paralegal to do her paperwork."

The complainant was advised that the delivery of a judgment granting a divorce within four months of appearance in court did not constitute undue delay, was well within the established guideline of six months and did not raise the issue of conduct. Although her divorce was uncontested, it was complicated by the fact that she had chosen to proceed with the assistance of a paralegal, whom the judge found, on the evidence, to have represented the complainant contrary to the applicable family law court rules. She was also reminded that during the court hearing she had replied "no" to the judge's question as to whether there was any urgency about the granting of her divorce.

Complaints against Council members

Eight files dealt with complaints against members of the Canadian Judicial Council. In these cases, because a perception of bias might arise if Council colleagues deal with such complaints, the Council's by-laws require that an outside lawyer review the proposed disposition before they are closed. In all such instances, the complainants were informed that the outside lawyer agreed with the Committee

Chairperson's proposed disposition of the file. Examples follow.

- A party to various ongoing court actions, appeals, and judicial reviews complained about comments made or cited by four different judges — one of whom was a Council member — in their decisions regarding him as a lay litigant. He alleged that their comments reflected biases toward lay litigants and constituted “personal attacks” against him and all lay litigants. He alleged the comments were “demeaning, humiliating and offensive” to him and were vindictively used to deny him remedies in certain instances. The complainant also complained that the press had repeated these comments and that two of the judges had made comments to the press about lay litigants.

The complainant was advised that the judges' comments were not found to be “gratuitous” nor to constitute “personal attacks” against him or against lay litigants in general. In each case, the comments were linked to the judge's findings on the procedures he initiated and his performance in presenting the merits of his case or the issue of costs. The complainant was advised that court proceedings are public matters and that the outcome of cases is often of interest to the media which report on issues they believe to be of interest to the public. Any litigant should be prepared for the possibility of publicity regarding a court case.

- More than five years after judgment was rendered in a boundary dispute, the defendant alleged that the judge had erred in fact and in law and had damaged his reputation in his judgment. He said the judge wanted to “settle a political score” because he and the judge had previously been election candidates at the same time. He demanded that the Council “correct or annul” the judgment.

The complainant was informed of the Council's mandate and that his recourse would have been to exercise his right of appeal in 1996. He was

advised that his allegation that the judge had rendered an unfavourable decision to “settle a political score” could not be taken seriously. The fact that he and the judge had both been candidates at the same time, more than 20 years previously, did not suffice to convert his dissatisfaction with the judgment into a question of judicial conduct.

- A First Nations leader complained that the use of the words “conquered peoples” in a speech by a chief justice created “an apprehension of bias” in relation to treaty and Aboriginal rights issues, as the perception that Aboriginal peoples in Canada had been “conquered” was inaccurate. He requested that the Council take immediate action to remove the judge from the bench.

The chief justice noted that it was never the intention to suggest that Canada's indigenous peoples had been conquered and that, read in full, the remarks made that clear. The phrase “conquered peoples” was used in describing British colonial policy generally and was not intended to suggest that Canada's indigenous peoples had in fact been conquered. The chief justice regretted any misunderstanding that may have arisen. The complainant was advised that there was absolutely no basis for the allegation that the remarks had created an “apprehension of bias.”

Other complaints

Examples of other complaints addressed in 2001-02.

- A complainant, a provincial attorney general, stated that, “mindful of his duties and responsibilities,” he was writing in his official capacity to bring a matter to the attention of the Council. He said a judge's vehicle had been stopped by the police due to snow on the rear windshield, contrary to the *Highway Traffic Act*. The judge had been asked to take a breathalyzer test, but was not charged, the results of the test being under the required amount to lay charges.

In the Council's reply to the complainant, it was noted that the judge confirmed he had not been charged with any offence, given that the results of the breathalyzer had not supported a charge. The judge confirmed that he had been subject to an administrative procedure under the *Highway Traffic Act* rendering anyone with a level of alcohol in excess of a specified amount liable to prohibition from driving for 24 hours. The judge very much regretted the incident and took full responsibility for it, indicating that he appreciated that the police acted fairly and professionally.

- A bail hearing of a native accused of second degree murder was the subject of a complaint from members of the victim's family. They objected to the judge's use of the word "thugs" to describe a group of persons, including the deceased, who arrived at the accused's home on the night in question. They believed the judge had made a value judgment that was not based on the evidence. They also objected that the judge had blamed several girls, who were present at the accused's home, for the murder, with "not one derogatory word about the accused in this case."

The judge stated that he used the word "thugs" deliberately, against a background of violence in the community which is often directed against natives and other visible minorities. He used the word to distinguish between those who had been peacefully at the party and those who arrived later. In view of evidence from the accused's mother that she was moving her family out of town in fear of actions by what she took to be the friends of the accused, he concluded that the word "thugs" aptly described the arriving group. The complainants were advised that although the judge's use of the word might be ill-advised, in the context of the evidence before him it did not constitute misconduct requiring further action by the Council.

Files Dealt with by Panels

Panels were created by amendment to the Council by-laws in September 1992. Previously, any complaint not closed by the Committee Chairperson was referred to the full 10 or 11 member Judicial Conduct Committee (which was then also the Executive Committee). In 1992, it was decided that it would be preferable to limit the number of Council members who would deal with a complaint at the early stages of the process. Accordingly, amended by-laws allowed for files to be referred to Panels consisting of up to five members of the Judicial Conduct Committee. In subsequent years additional by-law amendments allowed for Panel members to be chosen from among all Council members, and from among puisne judges.

In the nine and a half years between the establishment of Panels in 1992 and March 31, 2002, Panels dealt with 48 files or about 3 percent of all complaint files, including the one referred to below. During that period, two Panels recommended the establishment of Inquiry Committees, and the Council agreed. An Inquiry Committee was recommended in a third case but the judge resigned before the recommendation could be considered by the Council. In two cases, Panels were considering the files when the judges submitted their resignations. In 31 of the 48 files, the Panels expressed disapproval or concern about the judge's conduct in letters sent to the judges.

- In 2001-02, one file was closed by a Panel. The complainants and respondents in a property case complained that the judge had made "religious specific remarks" which offended them. The complainants advised that the judgment had been reversed on appeal and that the Court of Appeal had "taken pains to point out the judge's comments had no relevance to the issues before him and there was no reason for them." The complainants further suggested that the judge had "submitted a written judgment at variance with his oral decision when he learned it was under review by the Appeal Court."

A three-member Panel concluded that the allegation with regard to the suggested “doctoring” of the written reasons for judgment had not been sustained and reminded the complainant that allegations of error in reasons for judgment could be reviewed only by way of appeal. The Panel had accepted the judge’s explanation with regard to his expression “to incline one’s hat” that it conveyed, and was intended to convey, recognition of unspoken agreement. As for the comment “I understand that, long ago, your clients spent 40 years in the desert, they don’t act quickly,” the Panel was of the opinion that this comment was inappropriate and should not have been made. The Panel sent a letter to the judge expressing its disapproval regarding this comment.

Complaints Considered by Full Council

In accordance with its by-laws, only the full Council may decide that an Inquiry Committee should be established to undertake a formal investigation under subsection 63(2) of the *Judges Act*. And under the Act only the full Council can recommend removal of a judge from office. A recommendation for removal follows either a formal investigation or an inquiry directed by the Minister of Justice or a provincial attorney general pursuant to ss. 63 (1) of the Act. Formal investigations or inquiries are rare. They are carried out by an Inquiry Committee made up of members of the Council and, in recent years, including a minority of members of the Bar appointed at the discretion of the Minister of Justice.

From its establishment in December 1971 to March 31, 2002, the Council referred six complaint files for formal investigation by Inquiry Committees, including the one referred to below. Also during that period the Minister of Justice of Canada or a provincial attorney general (and in one case both) directed formal inquiries in five cases. In the early years of the Council, such investigations and inquiries were held in private, and no information was made publicly available about them. In only one instance, in 1996, has the Council recommended to the Minister of

Justice that a judge be removed from the bench. Only the Governor General, acting on the advice of the Senate and the House of Commons, can remove a federally appointed judge from office.

In 2001-02, one file was dealt with by the full Council.

- A chief justice brought to the Council’s attention that concerns had been raised by members of the Bar as to the judge’s capacity to exercise his functions. Following comments from the judge, the Chairperson asked outside counsel to undertake further inquiries. The report of further inquiries was subsequently referred for consideration to a three-member Panel consisting of two Council members and one puisne judge. The Panel asked outside counsel to pursue the inquiries further. Following consideration of additional information, the Panel recommended to the Council that there be an investigation by an Inquiry Committee under subsection 63(2) of the *Judges Act*. The Council agreed. However, before the Inquiry Committee began its work, the judge resigned from office.

Judicial Review

A complaint file, originally closed by the Committee Chairperson in 1994-95, was re-opened and re-closed by him in 1998-99. The complaint arose from the exclusion from the court of male persons who would not remove head coverings during the trial of a black accused. The complainant alleged that Mr. Justice A.C. Whealy of the (former) Ontario Court of Justice (General Division) had discriminated against these persons on the basis of their religion because the head coverings in question were religious. After the file was re-closed by the Chairperson with an expression of disapproval, one of the persons excluded from the courtroom brought an application for judicial review to the Federal Court of Canada. The application was dismissed by the Federal Court Trial Division in November 2001. The Court held that the standard of review applicable to the decision of the

Chairperson to close a complaint file is patent unreasonableness. The Court held that in this case the Chairperson's decision was reasonable; that is, the Chairperson's decision not only met the applicable standard but also met the lesser standard of reasonableness *simpliciter*. The applicant appealed the decision to the Federal Court of Appeal. The Council, shortly before the end of the fiscal year covered by this report, was granted leave to intervene in the appeal.

4

ISSUES

The Council's responsibility to address issues involving the administration of justice has led it to important tasks and decisions over 30 years. The Council has, for example:

- Commissioned two comprehensive studies on the judiciary, *Masters in their Own House*, by Chief Justice Jules Deschênes published in October 1981 and *A Place Apart — Judicial Independence and Accountability in Canada*, by Professor Martin L. Friedland, published in August 1995;
- At the request of the Department of Justice, advised on law reform and proposed legislative changes that had an impact on the work of the courts and advised the Minister of Justice on the judicial appointments process;
- Adopted a policy on appointment of judges to commissions of inquiry designed to ensure that appointments do not significantly impair the work of courts or the future judicial work of judges;
- Took a series of initiatives to provide guidance to judges on the ethical issues they face, publishing *A Book for Judges* in the early 1980s, *Commentaries on Judicial Conduct* in 1991, and *Ethical Principles for Judges* in 1998;
- Set targetted time standards as goals for the pace of litigation in trial courts and the processing, hearing and disposition of appeals;
- Approved policies for dealing with workplace complaints and for the equal allocation of work to judges, for assisting news media, and for promoting public understanding of the courts and the role of the judiciary;

- Created a Council Web site and approved standards for judgments in electronic form and a neutral citation standard for case law.

In 2001-02, the Council's major ongoing initiatives were the review of its mandate, organization and operations being carried out by the Special Committee on Future Directions and a parallel review of complaints procedures by a working group. The Council was active in addressing court communications, computer security issues and the development of standard jury instructions.

Future Directions

The Council's Special Committee on Future Directions advanced its work in 2001-02. It considered a number of options for the reporting relationship and accountability of the Commissioner for Federal Judicial Affairs. The Committee concluded, and the Council agreed, that the Commissioner should continue to report to the Minister of Justice, but that the position should be upgraded and a concerted effort should be made to raise the government's awareness of the needs of the federal judiciary and its important role in Canada's system of government.

The Council agreed with further recommendations of the Committee that its statutory mandate was adequate and that it would not be necessary or advisable to seek changes in the *Judges Act* for this purpose. It was decided to report briefly to all federally appointed judges on each of the Council's twice-yearly meetings.

At the Committee's request, James R. Mitchell, a former senior advisor in many areas of government policy and organization, examined the mandate, membership, roles and accountabilities of the Council and its committees, and the staff support provided to them.

In his report, Mr. Mitchell found the Council's organization to be appropriate in most respects, but commented on the Council's "extremely modest staff" of four people. He recommended the Council consider more flexible arrangements for its meetings, which are traditionally squeezed into two three-day periods each year.

The Future Directions Committee reported to the Council in March 2002 that attempts to increase full-time staff to seven from four had been recommended in a report prepared for the Council Chairperson by Consulting and Audit Canada. Council resources were also addressed by Chief Justice McLachlin in a letter to David Gourdeau, the new Commissioner for Federal Judicial Affairs, on his appointment in December 2001. Writing in her capacities both as Council Chairperson and Chief Justice of Canada, she expressed concern about the "very limited and seriously strained resources of the Council office" and expressed disappointment that the Treasury Board had not supported the efforts of the Commissioner's office on behalf of the Council. She asked Mr. Gourdeau to consider the Council's plight as a priority matter.

Television in the Courts

After extensive study within committees, the Council modified its stand on televising court proceedings. At its March meeting the Council concluded a formal review of a position — first stated in 1983 — that TV in the courts "is not in the best interests of the administration of justice." The position had been amended in 1994 to make clear that it was a recommendation which did not apply to the Supreme Court of Canada. The further modification in March 2002 exempted all appellate courts.

The change reflected the Council's concern about the impact of television on trial proceedings, as distinct from courts of appeal. Many Council members remained concerned about television's effect on witnesses, jurors and trial court proceedings generally.

Technology and the Courts

As noted in Chapter 1, the Council endorsed recommendations of the Judges Technology Advisory Committee (JTAC) to put computer security high on the agendas of chief justices and chief judges across Canada, introduce training programs and create a blueprint of recommended security procedures for all courts.

In the winter of 2000-01, the JTAC Subcommittee on Computer Security carried out a detailed survey of federal and provincial courts and staff members responsible for court technology. The survey asked about awareness of computer security issues and the priority accorded to them, how security policy is developed within courts, security training, protection of portable equipment, and segregation of judicial and non-judicial computer users.

The results of the survey led JTAC to make a series of recommendations that the Council's Executive Committee approved in November 2001. One of the recommendations asked the Council to devote its March 2002 seminar to computer security issues.

The JTAC report was circulated to all chief judges and chief justices and to deputy attorneys general with a request for their co-operation in implementing the recommendations. The recommendations included a request that the National Judicial Institute and the Office of the Commissioner for Federal Judicial Affairs co-ordinate the delivery of training about computer security issues for federal and provincial judges and information technology staff. Chief justices and chief judges were asked to establish security of court information systems as a priority, look to early development of security policy in converting to electronic environments, secure resources for security measures and appoint a technology staff member accountable for security operations.

The proposed blueprint would be intended for all courts and all judges, in view of the sharing of networks in many jurisdictions. It would include a protocol for the use of notebook computers in court-related travel.

JTAC was also asked to work with legal and other publishers to establish procedures to avoid release of judgments that contain deleted portions or changes, and to adopt a protocol to withdraw judgments that contain previous deletions or have been released accidentally.

Computer News for Judges

The Judges Technology Advisory Committee published one issue of its newsletter *Computer News for Judges* in 2001-02. This issue, as well as those back to 1993-94, are accessible on the Council Web site at www.cjc-ccm.gc.ca.

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Using Adobe Acrobat

Andrew W. L. Sims, Q.C., technology consultant to the Alberta Court of Appeal, reviewed considerations that went into the court's decision to select the computer program Adobe Acrobat 4.05 as the tool for its electronic appeal documents. The article also discussed the respective merits of PDF, XML and HTML file formats, concluding that they will likely complement each other in future Web implementation.

New Brunswick Information System

Anne McKay of the New Brunswick Department of Justice, described the new technology and procedures introduced by the Justice Information System — New Brunswick (JISNB).

CTC7 — A Meeting for Canadians

JTAC advisor Daniel Poulin reported on the Court Technology Conference of the National Center for State Courts which brings together judges, court administrators, policy makers and others interested in court technology.

Self-represented Litigants

The needs of individuals who appear in courts without legal representation are a serious and growing challenge for the judicial system.

Committees of the Canadian Judicial Council have returned to the subject repeatedly in discussions of the best practices pursued in jurisdictions across the country and renewed discussions in 2001-02. The Council devoted part of its March 1999 seminar to the issue, and at its March 2002 meeting reviewed information provided by 17 courts on the assistance they provide to self-represented litigants. Courts reported that their registry staff were spending many hours distributing information, explaining administrative processes and directing individuals to community resources. Many courts and government agencies are producing self-help packages on rights and obligations. Court Web sites are rapidly expanding the information available on rules, procedures and forms.

Media and the Courts Workshop

In 2001-02 the Council joined hands with the Canadian Institute for the Administration of Justice (CIAJ) in developing and piloting a one-day workshop on the media's role in the justice system. The two organizations hoped to attract other national organizations to work with them to transform the pilot project into a national program.

The pilot, held in Charlottetown November 30, 2001, was attended by 106 reporters, editors, producers, students, judges, lawyers and court officials. Panel sessions analysed coverage of a controversial sentencing of a P.E.I. man for manslaughter and discussed the issues of defamation law, contempt of court and publication bans.

Objectives of the initiative are to encourage accurate and incisive coverage of the legal system and individual cases, inform journalists of their legal rights and responsibilities and the restrictions on coverage of court cases, and open lines of communication between journalists and those involved in the justice system by drawing on local expertise to discuss media-law issues. The workshops are also meant to improve public understanding of the courts and the law. By bringing together journalists and participants in the system, they seek to improve relationships and

address respective issues of concern. The proposal originated in recognition that public knowledge of the role and operation of the courts is limited, and that few courses on the subject exist at any level of the school system in Canada. It is proposed that as part of each workshop comprehensive reference materials on media law and covering the courts will be made available.

Jury Instructions

The Council's National Committee on Jury Instructions advanced its work during the year toward national plain-language specimen jury instructions. At year-end, it was finalizing Preliminary, Mid-trial and Final Instructions and drafting substantive charges in other areas, working from draft instructions prepared by an Ontario Committee chaired by Mr. Justice David Watt of the Superior Court of Justice.

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.

5

JUDICIAL SALARIES AND BENEFITS

Parliament approved changes to the *Judges Act* in 2001-02 increasing salaries for federally appointed judges and equivalent adjustments for chief justices, associate chief justices and judges of the Supreme Court of Canada.

The increase in basic salary of 11.2 percent raised the remuneration 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.

Most provisions of Bill C-12 received Royal Assent on June 14, 2001, including:

- Entitling a judge to take early retirement with a pro-rated pension after 10 years on the bench;
- Reducing the pension contribution rate to 1 percent of salary from 7 percent when a judge becomes eligible to retire;
- Reinstating a judge's entitlement to contribute to Registered Retirement Savings Plans at the time the judge becomes eligible to retire.

Improvements to survivor benefits were included in sections of the legislation that received Royal Assent on August 1, 2001.

The changes flowed from recommendations of the 1999 Judicial Compensation and Benefits Commission chaired by Richard Drouin, O.C., Q.C., which reported on May 31, 2000.

In their joint submission to the Commission in December 1999, the Canadian Superior Courts Judges Association and the Canadian Judicial Council had proposed a change in the provisions of the *Judges Act* that provide for supernumerary judges. Since 1973, judges having reached the age of 65 with at least 15 years on the bench — and otherwise eligible for

retirement and an annuity equal to 2/3 of salary — have been eligible to elect “supernumerary status.” As supernumerary judges they work on a part-time basis for full salary.

The Association and Council asked, and the Commission recommended, that election of supernumerary status be permitted when the judge's combined age and years of service add up to 80 whether or not the judge has reached the age of 65.

In its response to the Commission's report, 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 was considering referring to the next Commission.

The Council subsequently carried out a comprehensive survey of supernumerary status in superior trial and appellate courts, assessing existing and anticipated complements, current and historical workloads, costs and benefits. Results of the survey were being analysed at the end of 2001-02.

Appendix A

ADDRESS BY RICHARD W. POUND, Q.C.

The Accountability of Appointment: Some Olympian Parallels

Thank you for the opportunity to be here this morning and, in particular to the Chief Justice of Canada, acting in her capacity as Chair of the Canadian Judicial Council, for her very kind invitation to deliver these remarks. Depending upon my performance, she may end up being thankful for the immunity arising from appointment. In any event, I certainly hope, Chief Justice, that your selection of me will not lead to the dreaded Joint Address in Parliament.

May I begin by congratulating those of you who have been responsible for the ongoing development of the Canadian Judicial Council during the course of the more than thirty years since it was formally established. The Council is an important institution within the Canadian system of the administration of justice and one that continues the process of increasing the confidence of the public in the value and role of the judiciary.

At a gathering such as this, I certainly do not want to be perceived as guilty of “bait and switch” selling, but I had occasion, not too long ago, when doing the research for a biography of a distinguished member of the judiciary, to have access to some of the early records of the Council. The judge whose biography I was writing had been instrumental in the creation of the Council and had been a significant contributor in the precursor organization of the Annual Conferences of Chief Justices.

Since none of you here today were in your present capacities when the Council was established, I thought I might share with you some historical perspective on what led to the formation of the Council. When Martin Friedland produced his excellent work, *A Place Apart: Judicial Independence*

and *Accountability in Canada*, he made only passing reference to the foundations of the Council, so perhaps it may be appropriate at this meeting to give them a somewhat more thorough survey.

Tracing things back to their very beginnings, there was, of course, no such organization as the Council, nor any conceptual framework that would allow it to exist. Judges were appointed, took office within the particular system and, thereafter, did their jobs, for the most part as sole practitioners of the judicial function, with some degree of *ad hoc* collegiality.

In the late 1950s, John Edwards, then Director of the Centre of Criminology at the University of Toronto, began to study different sentencing patterns in the criminal courts across the country and to observe the considerable sentencing disparities that existed in respect of similar offences. This research led him, amongst other initiatives, to organize the first National Conference of Judges on Sentencing at Hart House in May 1964.

Edwards conceived the idea of bringing together the Chief Justices from all Canadian courts involved in criminal sentencing, to discuss issues that arise at all levels of the judicial system. While this sounds like an eminently sensible idea, like all new ideas, it generated an initial response that fell considerably short of overwhelming. However, Edwards got some key encouragement from leading judicial figures of the day. First and foremost was that from John R. Cartwright, then a puisne judge of the Supreme Court of Canada, later to become Chief Justice of Canada. Edwards had identified Cartwright as someone whose judgments in criminal matters made him stand out in relation to his other colleagues on the court. He had invited Cartwright to become a founding member of the Advisory Council of the Centre of Criminology.

When Edwards got financing from the University of Toronto to host the first National Conference of Judges on Sentencing, he asked Cartwright to act as Chairman. Cartwright accepted the invitation and was determined to attend, despite strong opposition from many of his colleagues, who thought (notwithstanding the fact that some of them had served on Royal Commissions) that judges of the Supreme Court of Canada should not become involved in any extra-judicial functions.

It came as little surprise to Edwards that some of the Chief Justices approached to come to the conference were somewhat hostile towards an upstart academic venturing into their preserve and, apparently, daring to try to “educate” them. In the Ontario courts, however, he had a generally sympathetic reaction and early encouragement from, among others, James McRuer, Chief Justice of the High Court of Ontario and Dana Porter, Chief Justice of Ontario. Connections were established for him with members of the Ontario Court of Appeal by Fred MacKay and, through MacKay, he met and convinced Arthur Kelly, George McGillivray and Greg Evans. Kelly convinced him of the importance of generating support in Quebec, since if Ontario and Quebec were behind the initiative, the rest of the country could be expected to follow suit.

Kelly arranged for Edwards to meet George S. Challies, Associate Chief Justice of the Quebec Superior Court, who convened a meeting of Montreal judges, and Edwards was able to convince them of the importance of the idea. He returned to Toronto to report on his success to Kelly and Porter, who said that was fine, but he now had to go to Quebec City to meet Chief Justice Frédéric Dorion, the Chief Justice of the Quebec Superior Court, and that this might well be a more difficult assignment. Kelly set up the meeting and off Edwards went to meet Dorion. They met in his chambers and Dorion later arranged for the Quebec Court of Appeal to adjourn a bit early so that some of its members could listen to what Edwards had to say. Assembled in the court library, they all sat down and Dorion, undoubtedly having a bit of fun at Edward’s expense, said that the court conducted its

proceedings in French and assumed Edwards was comfortable in so doing. Edwards picked up this ball on the first bounce and said that his native tongue was Welsh, but that he, too, had had to learn English. The meeting proceeded in English. In due course, Dorion wrote to say that he would support the idea of the proposed conference.

The first conference of two to be held that year was in Toronto, from May 27-29, 1964, to discuss matters of sentencing in criminal law. Cartwright was the Chairman. This conference brought together the Chief Justices of Alberta, Manitoba, Ontario, Quebec and Saskatchewan, some other invited judges, representatives of the federal Department of Justice, the Penitentiary Services, the Parole Commission (the predecessor of the National Parole Board) and some provincial Attorneys General. At the end of the conference, a resolution was passed, recommending that a mechanism be set up for the purpose of calling judicial conferences periodically on subjects dealing with the administration of justice. It was proposed that a committee of judges consisting of the Chief Justice of Canada and the Chief Justices of the provinces, or their substitutes, be formed for the purpose of organizing the conferences and to prepare the agendas. Edwards agreed to organize the first such meeting, to be held on November 17-18, 1964.

When the Chief Justices, this time not just the Chief Justices of the provinces, but also of the superior trial courts, came together that November in the Senate Room at the University of Toronto, it was the first time since Confederation that they had ever sat with each other. I believe that a photograph of this historic occasion has since been presented to the Council for its archive. The only Chief Justice missing was Robert Taschereau, the Chief Justice of Canada. The opening dinner was held at the Park Plaza Hotel and the only non-Chief Justices present were Edwards and Elmer Driedger, the federal Deputy Minister of Justice. One of the objectives the Chief Justices wanted to accomplish on that occasion was to make an informal choice of the first Chairman. Such weighty deliberations were not the stuff of which mere mortals should partake, so the judges asked Edwards and Driedger to

wait in the corridor until the puff of white smoke emerged.

The choice proved to be enlightened: Chief Justice Edward M. (Ted) Culliton of Saskatchewan. It seems to have been at the suggestion of George Alexander (“Bill”) Gale that the judges looked outside of Ontario for the Chairman and it was certainly clear that Gale had suggested Culliton. Culliton continued to chair the successor meetings and would later play an important, even determining, role on the Canadian Judicial Council until his retirement. Gale was the prime mover in getting the conferences established and without his active involvement, the whole idea might well have been stillborn. The combination of Gale and Culliton, with the assistance of Lucien Tremblay (the Chief Justice of Quebec) and Challies in Quebec, was the initial nucleus which drove the process.

The funds to defray the travel and living expenses of the participants had come from the federal government, upon the approval of Guy Favreau, then Minister of Justice. The funds had come, however, with the admonition that the federal government should not be regarded in future as the source of similar funding. During the conference, when Driedger was pressed for indications of what would be required to maintain the financial support, he said that there might well be three conditions: that the meetings be private, with confidential discussions and no press releases; that no recommendations be formulated; and that discussion deal, in particular, with matters pertaining to criminal law and criminal procedure. These further admonitions led to adoption of a resolution to the effect that it was desirable to have an annual meeting of Chief Justices to discuss confidentially common problems dealing with the administration of criminal law.

Chief Justices Gale and Tremblay were appointed to meet with Favreau, after consulting with the Chief Justice of Canada, to express the wishes of the group that the conferences continue. If they were successful, the next conference would be called for mid-November, 1965, at the University of Toronto and Edwards again undertook to organize the conference,

should the funds be obtained. Favreau was prepared, once again, to pay the travel and living expenses, although not the organizational expenses of the conference. He rejected the suggestion that the meetings be confined to Toronto, Ottawa and Montreal and felt they should be in all the provincial capitals as well as in Ottawa.

Favreau also agreed that the subject matter could be expanded from the very limited range indicated by Driedger at the 1964 Conference and that the conferences would be of little value unless the Chief Justices were able to have unlimited discussion in fields that were now expanded to other areas of federal law and even provincial fields of legislation, such as civil law and civil procedure.

The 1965 Conference was regarded as even more beneficial than the original. Partly from interest on the part of the Chief Justices and partly to be sure that the financial support of the federal government would be maintained, it was formally decided that the conference should not be restricted merely to matters of sentencing and criminal law. This would also, it was hoped, encourage the provincial governments to support the conferences. The Chief Justices of the provincial superior courts wanted to make sure that they were not dominated by the federal government and thought this could be achieved, in part, were the provincial governments to be willing to absorb some of the costs of organizing the conferences.

One matter, on which Driedger had been adamant in relation to federal funding of the conferences, would prove to have a significant impact on the conferences and the eventual formation of the Canadian Judicial Council. Driedger had said, following the first conference, that there would be no additional federal funding for the conferences unless the President of the Exchequer Court of Canada were invited to participate. Accordingly, Wilbur Jackett attended the second conference in November 1965, even though non-criminal matters had not yet been added to the agenda of the conference and the Exchequer Court, as such, had no criminal jurisdiction, other than indirectly, through its participation in military courts martial appeals.

At this stage, and for several years thereafter, he was the only Chief Justice of a “federal” court who attended the conferences. Jackett’s influence and knowledge of the federal labyrinth (stemming from a two-decade career in the federal Department of Justice, where he had become Deputy Minister) were such that he was part of a small group appointed by the 1965 Conference, consisting of Gale, Challies and himself, to find and engage the first Director of the conferences, in the person of John H. Francis.

Early difficulties occurred in Quebec that made problematic the continuance of the conference as a national institution. Claude Wagner was then Minister of Justice of Quebec and had experienced some differences of opinion with the other Ministers of Justice at a meeting in Ottawa. Whether for this or for some other reason, he was slow in responding to the requests for Quebec support of the conferences made by Tremblay and Challies, following the 1965 Conference. Both Tremblay and Challies were concerned that they could not participate in the conferences if their province were the only one that made no contribution.

There was an intervening provincial election in Quebec during 1966 and Wagner was replaced as Minister of Justice by Jean-Jacques Bertrand. Although Bertrand expressed initial interest in the matter, Quebec eventually refused to participate in the subscription, on the ostensible basis that the provincially appointed chief justices of the Court of Sessions and Municipal Courts were not invited. Tremblay, Dorion and Challies decided, with regret, that it would, in such circumstances, be inappropriate for them to participate in the 1966 Conference in Victoria.

This was a serious blow to the national character of the conferences. The issue was how to get the Quebec Chief Justices back into the fold, in the face of Quebec’s refusal to participate in the costs of the conferences. It was here that Jackett was able to play a crucial role. In early 1967, he met with Tremblay and Challies and asked them whether their difficulty would be obviated were the Government of Canada to pay all the expenses of the conferences, both

travel and organizational. The Quebec judges agreed that it would. The key for Jackett was not so much finding the money, but finding the right reason for the federal government to act. If the conferences could be positioned as a legitimate part of the work of judges, then, constitutionally, it could then be argued that it would be appropriate for the federal government to fund them.

At the beginning of April, Jackett approached Donald Maxwell, the Deputy Minister appointed at the behest of the new Minister of Justice, Pierre Elliott Trudeau, and convinced him that the federal government should pay the administrative expenses of the conference as well as the travelling expenses of the Chief Justices. To start the official wheels in motion, Jackett agreed with Maxwell that he would write to Maxwell making the suggestion that Maxwell seek the necessary authority, so that the offer could be made at the next meeting of the conference, to be held in Charlottetown that October. He even provided Maxwell with the constitutional “map” that he and Driedger had worked out at the end of the previous year which would make it possible for the federal government to do so:

I suggest that, upon consideration, you might come to the conclusion that an annual allowance to the Chief Justices jointly, ... for the payment of the administrative expenses of their holding an annual conference, would fall within the provisions of section 100 of the British North America Act, 1867, which provides, *inter alia*, that the “allowances” of the Judges of the Superior Courts shall be provided by the Parliament of Canada.

Before sending his letter to Maxwell, Jackett showed a draft to Gale, who, although a bit concerned about the federal government paying all the costs, concurred with the idea and commented that his letter was well worded. “I do not know,” Gale said, “who else could write with any greater flare or authority.” Gale’s worry about the federal role, which reflected his predilection as the Chief Justice of one of the Ontario courts, was that it would be desirable to have the provincial governments know that they were participating in the

exercise. “As the President of a Dominion court,” he wrote to Jackett, he said Jackett, “might not appreciate that attitude, but he thought it was one of substance.” In the final analysis, however, the possibility of having all the Chief Justices participate in the conference outweighed the possible advantage of having the provinces share in the exercise.

Maxwell replied in June, stating:

This will confirm that on May 25 last I obtained approval in principle from the Treasury Board to include items in next year’s estimates to cover the costs of travelling and living expenses ... and other administrative costs ... for the purpose of the annual meetings of the Chief Justices. In light of this authority I feel that I can propose that the Government of Canada undertake to pay the costs of these conferences as part of the Department’s ordinary administration.

Jackett sent copies of Maxwell’s letter to Gale, Tremblay and Challies. Gale observed that he did not pretend to be expert in interpreting governmental language (Dare I say, Mandarin?), but took it that with annual administration of the conferences assured, the big problem was solved. Jackett confirmed the understanding and, more importantly, advised Gale that, provided Tremblay and Challies knew such an offer would be made at the Charlottetown Conference, they would feel free to attend the conference on that occasion. It proved to be an elegant solution to a potentially divisive situation with respect to Quebec and one which lay within Jackett’s particular legal and departmental experience.

The conferences continued to grow in importance. They were attended by the Deputy Minister of Justice, at the invitation of the Chief Justices. There was some hesitation about including the Minister of Justice, since Gale and Jackett both agreed that discussion would be considerably freer if solely the Deputy Minister were present. As a matter of appearances, they thought it should not look as if the Minister was there “in charge” of the judges, nor even symbolically as part of the conferences. The Deputy Minister

would be a useful observer and was in a position to assess the universality of problems and to communicate suggestions regarding legislation and other matters to the Minister. It was not, in any event, likely that Ministers would attend. Jackett’s insight on the matter, which he expressed in a letter to Gale, was:

From my experience with ministers, and particularly Ministers of Justice, I should not be too apprehensive about one finding time to sit in during the course of our ordinary discussions except, possibly, for one half-day meeting. Ministers invariably aspire to do a great deal more than they can possibly find time to do.

There proved to be no danger, as he intimated, of sustained ministerial presence at any of the conferences.

The matter of disciplining judges has always been a delicate issue. On the one hand, the independence of the judiciary is a fundamental element of the rule of law in our society. Judges must be free and independent so that they can decide any matter before them with complete confidence that no action can be taken by the Executive Branch of government which might cause them to decide one way or the other. On the other, human nature is what it is and there will be, from time to time, individuals who may take improper advantage of their position of relative immunity, or who may otherwise fail to live up to the high standards of conduct essential for judges. There must be ways of dealing with them in order to preserve public respect for and confidence in the administration of justice. How should complaints against judges be handled?

Generally, complaints had been directed to the Chief Justices or to the Minister of Justice, whose portfolio included the appointment of judges. The Chief Justices experienced the same frustrations as the Minister and were unable to cope with the combination of complaints and their own inability, as a matter of law, to impose sanctions in appropriate circumstances. The combination of these frustrations would lead to a recommendation that there be some more formal structure to enable such matters to be handled within

the judiciary. From the search for a solution emerged the idea that a body with statutory authority be established and equipped to deal with such matters.

This led to the idea of the Canadian Judicial Council, originally denominated as the Canadian Judicial Commission. Early discussion had contemplated the enactment of a new statute establishing the Council, but Jackett was of the view that it would be better, since the subject matter related to the duties of judges, not to have a separate statute, but simply to prepare amendments to the *Judges Act* and to the *Financial Administration Act*. This would involve the least constitutional exposure, while still providing the necessary legal authority for the Council.

When the resolve to press for establishment of the Canadian Judicial Council was in place, the conference asked Jackett to draft the necessary amendments to the *Judges Act* to provide for the creation of the Council and to empower it to deal with disciplinary matters, as well as more general topics relating to improvements in the quality of the administration of justice. Jackett did so and, after working closely with the Department of Justice on both the concept and the statutory mechanics, the proposed amendment was approved by the new Minister of Justice, John Turner, and legislation was introduced in the 1971 Parliamentary legislative schedule. The Canadian Judicial Council was established effective December 9, 1971. Jackett also drafted the by-laws for the Council that were approved at the first meeting of the Council in Ottawa on December 10, 1971.

The final preparatory work had been done at the 1971 Conference of Chief Justices in Regina and the new Chief Justice of Canada, Gérald Fauteux, knowing that the groundwork for creation of the Council had been arranged, did make an appearance at the conference to indicate that the Chief Justice of Canada would, of course, participate in a statutorily mandated body, one of the functions of which was to examine into complaints against judges. Once the Council was established by statute, the Chief Justices of Canada were able to shed their earlier reluctance to become involved in these extra-curricular activities and, beginning with Fauteux, were active on the

Council. During the early days of the Council, both Fauteux and Bora Laskin presided over its activities, although the *de facto* leadership continued to be provided by Culliton, who became Vice-Chairman of the Council and remained as chairman of its Executive Committee. The Conferences of Chief Justices continued to be held as well, to discuss the matters originally contemplated regarding the administration of justice, usually the day before the Council meetings, and were carefully differentiated, by those involved, from the activities of the statutory body, the Canadian Judicial Council, although the Chief Justice of Canada agreed to chair both meetings.

The mere fact that a Council composed of judges could investigate complaints had a salutary effect on judges throughout the country. There is nothing more embarrassing than to be censured by one's peers for conduct that falls short of standards which they recognize as appropriate for judges. The Council exhibited a very high degree of discretion in the investigation of complaints directed to it. It had to be particularly careful that mere carpings, which might be unfounded upon investigation, did not operate to destroy the reputations of the judges against whom they were made.

Under the Council's early by-laws, the Executive Committee was responsible for investigating and determining whether there was cause for a formal action. Culliton was generally the point man who took responsibility for the initial work, on behalf of the Executive Committee, to determine whether or not a complaint revealed conduct that required formal investigation by the Council.

In each case, the judge whose conduct was complained of was invited to provide an explanation. Most of the complaints revealed nothing of substance, but in those cases in which action was called for, the Committee might indicate that the conduct of the judge was to be corrected by a certain date, such as in the case of judges who had been unreasonably long in rendering judgments, or the matter would be brought before the Council as a whole. In virtually every case, the judge managed to bring all his judgments up to date within the delay specified and no further action was required. In a few serious cases,

some of which pertained to judges whose abilities to act may have been affected by alcohol abuse, the judges involved resigned before the complaints were escalated to formal study by the Council.

The mechanism was successful in all respects and relieved the Minister of Justice and, in particular, the Chief Justices of the courts from potentially awkward dilemmas involving members of their own courts. It also avoided repetition of the less-than-brilliantly handled investigation of the earlier complaints involving Judge Leo Landreville, in which Ivan Cleveland Rand, then retired, due to age, as a judge of the Supreme Court of Canada had acted as sole investigator.

The judges often talked about preparing a document which would provide guidance as to the standards of conduct of judges. The law is a self-governing profession, so the idea amongst judges that they should establish such standards was not foreign to them. They could not, however, agree on what form the formal expression of the standards of conduct should take. Jackett and some others thought there should be a code of ethics for judges, which could be included in a handbook for judges. Jackett then prepared, in late 1972 and early 1973, a series of drafts of a document entitled "Canons of Judicial Ethics for Canada," but there was insufficient consensus amongst the judges to adopt it. The Research Committee of the Council noted that Jackett's draft was "a document remarkable not only for the intrinsic worth of its subject matter but also for the clarity and conciseness of its expression." The judges were not opposed to the idea of the code, but were concerned that it might not take into account all the possibilities which could arise and that this might do more harm than good. Instead, efforts turned to commissioning a work by Jack Wilson (*A Book for Judges*, 1980) and it is only within the past couple of years, almost 20 years after Jackett's effort, that the Council has moved to adoption of a document, but, even so, has shied away from denominating it as a code of ethics.

The work of the Council will always be a work in progress, but I hope those of you involved will take pride and satisfaction in a job that has been particularly well done thus far.

Appointment

Appointment is an interesting concept, whether to the bench or, for example, to the International Olympic Committee. (You, being discerning and subtle of mind, will recognize that I am now trying to bring the discussion round to the suggestive title given for this presentation.)

In each case, one of the fundamental underlying principles is that of complete independence from outside influence upon the decisions to be made by the individual. The judge must be vested with the independence to decide matters coming before him or her without interference from any branch of the government. The IOC member must be free to decide matters in the best interests of the Olympic Movement without governmental influence, or the intervention of local interests.

This independence, in both cases, is made possible through the nature of the appointment, coupled with the inability to remove the individual without a serious and complicated process and, even then, only for grievous cause. The complexity of the removal mechanisms goes most of the way to ensuring that a judge or IOC member can act within the scope of the applicable responsibilities without fear of removal for failure to have pleased those in political power.

Accountability

Accountability can be a more troublesome concept, especially since it means different things to different people and can be hijacked by different interest groups for purposes related to their particular agendas. In the *Concise Oxford Dictionary*, "accountable" is defined as "required or expected to justify actions or decisions."

Despite some areas of possible overlap with responsibility, accountability has come to mean the idea that the public at large, often represented by the media, who may or may not have a demonstrable mandate for the purpose, considers it has the right to expect that its expectations, as diffuse and often contradictory as they may be, and as loosely defined as they may be, should be observed by persons in a position to decide certain matters.

Olympian Parallels

I am a member of the International Olympic Committee, an organization that, although quite different in many respects from the judiciary, nevertheless has characteristics similar in many respects to the judiciary. Its members are appointed by the IOC itself, in a process of cooptation. Members are not representatives of their country or constituency on the IOC, but, rather, representatives of the IOC in their countries or organizations. They are appointed, in the normal case, for a period that is determined only by attainment of a specified retirement age or cessation of their functions in the organizations from which they were appointed. Their conduct is governed by the constating document of the IOC, the *Olympic Charter*. The mandate of the IOC is to govern the Olympic Movement, which includes, *inter alia*, determining the sites of the Olympic Games and the sports that will participate in the program of the Games.

In late 1998, public attention was drawn to inappropriate behaviour on the part of several IOC members (as well as by members of the bidding committee) in relation to the selection of Salt Lake City as the site of the 2002 Olympic Winter Games. These members had received, and in some instances had sought, material benefits from the bidding committee during the selection process. In some cases, the amounts involved had been significant, such as the college education of a child, or the payment of medical and other personal expenses.

These payments or benefits could have had no explicable connection with their functions as IOC members, but had clearly been extended as a result of their status as persons who would participate in the decision to award the site of the Games. This disclosure led to a crisis that came very close to destroying the IOC and it became clear that the IOC would have to respond quickly and firmly to avoid a collapse of the IOC and, possibly, the Olympic Movement itself.

This was not as easy as it appeared to the public at large. In the first place, the IOC had no mechanism to deal with such a crisis. It had never occurred to the founders of the IOC and those drafting the *Olympic Charter* that members might act in such an unethical

manner. In the second place, the IOC is an organization of volunteers, widely dispersed over some eighty countries, that normally meets only once per year. Our response was to establish an *ad hoc* Commission to investigate the matters and to report to the IOC Executive Board with recommendations.

Perhaps as a result of failure to avoid eye contact, I was designated as chairman of that Commission. I will not bore you with the details of the investigation, but we concluded, after providing each member with an opportunity to respond to the facts as we understood them, that eleven members had acted in a manner that brought such disrepute on the organization that they should be expelled. One had died in the interim and four resigned before the matter was brought to the full Session for decision. We found general authority to act to expel the members under the *Olympic Charter* and the underlying Swiss law and each of the offending members was expelled. A number of other members received "warnings" that identified conduct that was inappropriate, but fell short (in a couple of cases, barely short) of warranting the extreme, and only formal sanction available, of expulsion.

A large component of the crisis experience for the IOC was its demonstration of the practical aspects of accountability. Most of the IOC members were comfortable with the concept of responsibility and were willing to accept the blame or credit for their decisions on sports or the selection of host cities, some of which have been more popular than others. What they had not understood was the evolving nature of accountability and the demands for transparency. They had always thought that whatever accountability there might have been was to the IOC itself and only to the IOC.

They had not realized the extent to which the public at large, including the media, had assumed a degree of "ownership" of the Olympic Movement as a whole. The Olympic Games, as the largest international peaceful gathering on the face of the planet, a festival of youth and the highest expression of an ethically-based sports movement, have come to occupy an importance in the public mind that the IOC had not appreciated.

The IOC was expected to be, like Caesar's wife, not only honourable, but above suspicion. If it was to govern an ethically-based sports movement, its conduct and the conduct of its members, must be above suspicion. This was its new accountability.

In addition to the sanctions against members, the IOC adopted other measures, certain of which are similar to measures taken within the judiciary.

We adopted a Code of Ethics and conflict of interest rules that are designed to reflect the best practices within international organizations.

We established an independent Ethics Commission, a majority of the members of which are prominent personages from outside the Olympic Movement and provided it with both the means and the personnel to allow it to investigate any complaints of inappropriate conduct.

We established a Nominations Commission to screen prospective members so that we can try to avoid, from the outset, cooptation of members whose character may be such that we should not have them within the organization and now require a secret ballot on the admission of each new member.

And we extended full membership to a representative group of active Olympic athletes, elected for the purpose from amongst their peers on the occasion of the Olympic Games.

These are all helpful reforms and, arguably, at least in hindsight, reforms that we should have had in place even before the crisis. The good side of the crisis is that it provided us with an opportunity, unsought as it may have been, to put the reforms in place much sooner than we might have been able under normal circumstances.

I gather that that question of term limits has become a matter of discussion amongst members of the judiciary. It is an issue that has troubled the IOC as well. As part of the 1999 reform process, we reduced the retirement age of new members from 80 to 70. We provided term limits, even within the overall age spectrum, to enable us to deal with members no

longer able to contribute in a meaningful way to the work of the IOC. Thus, for example, while I can, in theory, remain until the maximum retirement age, I must, if I wish to continue as a member, be re-elected, by secret ballot, after a term of eight years.

We also provided a maximum term for the president. An IOC president is elected for an initial term of eight years. Prior to the reforms, the president could, and often did, run thereafter for an unlimited number of successive four-year terms. We have now set a limit of one additional four-year term. On balance, I think the limitation concept for the IOC president was a good decision and presents a model that may commend itself to the judiciary. Although the theory, at least, is one of *primus inter pares*, it is not hard for the position of president or chief justice to evolve into a different perception and one that may risk becoming unhealthy.

To borrow from another model with which I am familiar as Chancellor of McGill University, the position of the president of the IOC or the chief justice of a court may well be considered in the same light as the dean of a faculty. There is a collegial duty recognized amongst faculty members that, from time to time they may be called on to assume the additional administrative duties of a dean and to run the business of the faculty. There is a definitive term limit involved and, while there may be some limited possibility of reappointment, it seems to be generally accepted that a dean is entitled (and indeed encouraged) at the end of a decanal term to rejoin the faculty as a regular professor and to assume a normal teaching and research load. There is no loss of face, nor any suggestion of a failure to have adequately discharged the duties of office.

Also, to be candid, not all choices are as enlightened as others and, if a mistake has been made, the term limit provides an elegant mechanism for limiting any perceived (or actual) damage from a bad appointment. The argument that an occasional jewel may be lost is easily, if somewhat insensitively, countered by noting that the cemeteries are full of people once considered indispensable.

The parallels between the IOC and the judiciary are many, as are the responses to the issues that have arisen and are bound to arise in the future. We must both be free to take our decisions, independently, in the best interests of proper execution of our mandates and responsibilities, but these decisions cannot be taken in complete isolation from the communities affected by them. IOC members cannot be totally isolated from sport as it is practiced in the world, nor its ideals; the judiciary cannot be unaware of the effects of its decisions and the standards of the communities in which they operate.

On the other hand, in taking decisions, we are, deliberately, separated from the legislative and executive functions and should venture into the policy areas with the greatest of diffidence, lest there be confusion as our respective purposes and a diminution of the respect accorded to the independent roles that we fulfil. We interpret the rules or the law. We do not create them.

We can, by our actions or your decisions, certainly influence them, but only within a limited, albeit important, range of action. We can recognize, in many circumstances, that those who should make proper rules often “punt” in order to avoid unpopular decisions and we must decide, in those circumstances, whether we will let the ball go over our heads, or catch it and run with it, often into the spirited opposition of the same team that punted the ball in the first place because it had not had the courage to fulfil its own mandate. But we should only act after the most deliberate consideration as to the consequences for our own roles and institutions.

Let me close with a quotation from Theodore Roosevelt that, in my respectful view, epitomises the role that each of us plays in the great scheme of our respective responsibilities:

It is not the critic who counts, not the man who points out how the strong man stumbled or where the doer of deeds could have done better.

The credit belongs to the man who is actually in the arena; whose face is marred by sweat and dust and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

It has been an honour for me to have been here with you today.

Appendix B

MEMBERS OF THE CANADIAN JUDICIAL COUNCIL, 2001-02

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

The Honourable Richard J. Scott
Chief Justice of Manitoba
First Vice-Chairperson

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

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

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 J.S. Armand DesRoches
Chief Justice of the Trial Division of the Supreme
Court of Prince Edward Island
(from September 2001)

The Honourable René W. Dionne
Senior Associate Chief Justice of the Superior Court
of Quebec
(to October 2001)

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 Lance S.G. Finch
Chief Justice of British Columbia
(from June 2001)

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

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 and Labrador

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

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

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

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
(to August 2001)

The Honourable Allan McEachern
Chief Justice of British Columbia
(to May 2001)

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

The Honourable Dennis O'Connor
Associate Chief Justice of Ontario
(from October 2001)

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
(to September 2001)

The Honourable Robert Pidgeon
Senior Associate Chief Justice of the Superior Court of Quebec
(from November 2001)

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

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

The Honourable Clyde K. Wells
Chief Justice of Newfoundland and Labrador

Appendix C

COMMITTEE MEMBERS

Executive Committee

Chief Justice Beverley McLachlin (*Chairperson*)
 Chief Justice Edward D. Bayda
 Chief Justice Donald I. Brenner
 Chief Justice Joseph Z. Daigle
 Associate Chief Justice André Deslongchamps
 Chief Justice Constance R. Glube
 Chief Justice Patrick J. LeSage
 Chief Justice Pierre A. Michaud
 Chief Justice John D. Richard
 Mr. Justice J.E. (Ted) 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
 Associate Chief Justice Donald G.H. Bowman
 Chief Justice Donald I. Brenner
 Associate Chief Justice Robert F. Ferguson
 Chief Justice R. Roy McMurtry
 Chief Justice Gerald Mercier
 Chief Justice Gerard E. Mitchell
 Chief Justice John D. Richard
 Chief Justice Barry L. Strayer
 Associate Chief Justice Allen B. Sulatycky

Finance Committee

Chief Justice David D. Smith (*Chairperson*)
 Chief Justice Lance S.G. Finch
 Chief Justice Constance R. Glube
 Associate Chief Justice Gerald Mercier
 Mr. Justice J.E. (Ted) Richard

Judicial Conduct Committee

Chief Justice Richard J. Scott (*Chairperson*)
 Chief Justice Joseph Z. Daigle (*Vice-Chairperson*)
 Chief Justice Constance R. Glube (*Vice-Chairperson*)
 Chief Justice Pierre A. Michaud (*Vice-Chairperson*)
 Chief Justice Edward D. Bayda
 Chief Justice Donald I. Brenner
 Associate Chief Justice André Deslongchamps
 Chief Justice Patrick J. LeSage
 Chief Justice Beverley McLachlin
 Mr. Justice J.E. (Ted) Richard
 Chief Justice David D. Smith

Judicial Education Committee

Chief Justice Constance R. Glube (*Chairperson*)
 Madam Justice Beverley Browne
 Chief Justice J.S. Armand DesRoches
 Associate Chief Justice Patrick D. Dohm
 Chief Justice W. Frank Gerein
 Chief Justice Joseph P. Kennedy
 Chief Justice Lyse Lemieux
 Associate Chief Justice Allan F. Lutfy
 Chief Justice Richard J. Scott
 Chief Justice David D. Smith
 Associate Chief Justice Heather J. Smith

Notes:

1. These lists show Committee membership as at March 31, 2002.
2. Committee membership is generally 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.

Judicial Independence Committee

Associate Chief Justice J. Michael MacDonald
(*Chairperson*)
Chief Justice Joseph Z. Daigle
Chief Justice Lance S.G. Finch
Chief Judge Alban Garon
Chief Justice J. Derek Green
Chief Justice Patrick J. LeSage
Mr. Justice J.E. (Ted) Richard
Chief Justice Allan H.J. Wachowich

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 Barry L. Strayer
Associate Chief Justice Allen B. Sulatycky

Appeal Courts Committee

Chief Justice Catherine A. Fraser (*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Donald I. Brenner
Chief Justice Joseph Z. Daigle
Chief Justice Lance S.G. Finch
Chief Justice Constance R. Glube
Chief Justice R. Roy McMurtry
Chief Justice Pierre A. Michaud
Chief Justice Gerard E. Mitchell
Associate Chief Justice Dennis O'Connor
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 Allan H.J. Wachowich (*Chairperson*)
Associate Chief Judge Donald G.H. Bowman
Madam Justice Beverley Browne
Associate Chief Justice André Deslongchamps
Chief Justice J.S. Armand DesRoches
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
Chief Justice Patrick J. LeSage
Associate Chief Justice Allan F. Lutfy
Associate Chief Justice J. Michael MacDonald
Associate Chief Justice Gerald Mercier
Associate Chief Justice Jeffrey J. Oliphant
Senior Associate Chief Justice Robert Pidgeon
Mr. Justice J.E. (Ted) Richard
Chief Justice David D. Smith
Associate Chief Justice Heather J. Smith
Associate Chief Justice Allen B. Sulatycky

Nominating Committee

Chief Justice Allan H.J. Wachowich (*Chairperson*)
Chief Justice Constance R. Glube
Chief Justice Patrick J. LeSage

Ad Hoc or Special Committees**Judges Technology Advisory Committee**

Madam Justice Margaret Cameron (Newfoundland)
(*Chairperson*)
Madam Justice Marion Allan (British Columbia)
Mr. Justice Michel Bastarache (Supreme Court of
Canada)
Madam Justice Nicole Duval Hesler (Quebec)
Mr. Justice E.J. (Ted) Flinn (Nova Scotia)
Madam Justice Adelle Fruman (Alberta)
Madam Justice Ellen Gunn (Saskatchewan)
Madam Justice Fran Kiteley (Ontario)

Associate Chief Justice Jeffrey J. Oliphant (Manitoba)
Mr. Justice Dennis Pelletier (Federal Court of Canada)
Mr. Justice Thomas Riordon (New Brunswick)
Madam Justice Linda Webber (Prince Edward Island)

Advisors:

Dr. Martin Felsky
Ms. Jennifer Jordan
Professor Daniel Poulin

Study Leave Committee

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

Special Committee on Public Information

Associate Chief Justice Jeffrey J. Oliphant
(*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Lance S.G. Finch
Chief Justice Joseph P. Kennedy
Chief Justice R. Roy McMurtry
Chief Justice Pierre A. Michaud
Chief Justice David D. Smith

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 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

Appendix D

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) and (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.

Work of Council

(2) Subject to this Act, the work of the Council shall be carried on in such manner as the Council may direct.

By-laws

(3) The Council may make by-laws

(a) respecting the calling of meetings of the Council;

(b) respecting the conduct of business at meetings of the Council, including the fixing of quorums for such meetings, the establishment of committees of the Council and the delegation of duties to any such committees; and

(c) respecting the conduct of inquiries and investigations described in section 63.

R.S., c. J-1, s. 30; R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, s. 15.

Employment of counsel and assistants

62. The Council may engage the services of such persons as it deems necessary for carrying out its objects and duties, and also the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 63.

R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, ss. 15, 16; 1980-81-82-83, c. 157, s. 16.

Inquiries concerning Judges**Inquiries**

63. (1) The Council shall, at the request of the Minister or the attorney general of a province, commence an inquiry as to whether a judge of a superior court or of the Tax Court of Canada should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

Investigations

(2) The Council may investigate any complaint or allegation made in respect of a judge of a superior court or of the Tax Court of Canada.

Inquiry Committee

(3) The Council may, for the purpose of conducting an inquiry or investigation under this section, designate one or more of its members who, together with such members, if any, of the bar of a province, having at least ten years standing, as may be designated by the Minister, shall constitute an Inquiry Committee.

Powers of Council or Inquiry Committee

(4) The Council or an Inquiry Committee in making an inquiry or investigation under this section shall be deemed to be a superior court and shall have

(a) power to summon before it any person or witness and to require him to give evidence on oath, orally or in writing or on solemn affirmation if the person or witness is entitled to affirm in civil matters, and to produce such documents and evidence as it deems requisite to the full investigation of the matter into which it is inquiring; and

(b) the same power to enforce the attendance of any person or witness and to compel the person or witness to give evidence as is vested in any superior court of the province in which the inquiry or investigation is being conducted.

Prohibition of information relating to inquiry, etc.

(5) The Council may prohibit the publication of any information or documents placed before it in connection with, or arising out of, an inquiry or investigation under this section when it is of the opinion that the publication is not in the public interest.

Inquiries may be public or private

(6) An inquiry or investigation under this section may be held in public or in private, unless the Minister requires that it be held in public.

R.S., 1985, c. J-1, s. 63; 1992, c. 51, s. 27.

Notice of hearing

64. A judge in respect of whom an inquiry or investigation under section 63 is to be made shall be given reasonable notice of the subject-matter of the inquiry or investigation and of the time and place of any

hearing thereof and shall be afforded an opportunity, in person or by counsel, of being heard at the hearing, of cross-examining witnesses and of adducing evidence on his own behalf.

R.S., c. J-1, s. 31; R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, s. 15.

Report and Recommendations

Report of Council

65. (1) After an inquiry or investigation under section 63 has been completed, the Council shall report its conclusions and submit the record of the inquiry or investigation to the Minister.

Recommendation to Minister

(2) Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of that office, or
- (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office,

the Council, in its report to the Minister under subsection (1), may recommend that the judge be removed from office.

R.S., 1985, c. J-1, s. 65; R.S., 1985, c. 27 (2nd Supp.), s. 5.

Effect of Inquiry

66. (1) [Repealed, R.S., 1985, c. 27 (2nd Supp.), s. 6]

Leave of absence with salary

(2) The Governor in Council may grant leave of absence to any judge found, pursuant to subsection 65(2), to be incapacitated or disabled, for such period as the Governor in Council, in view of all the circumstances of the case, may consider just or appropriate, and if leave of absence is granted the salary of the

judge shall continue to be paid during the period of leave of absence so granted.

Annuity to judge who resigns

(3) The Governor in Council may grant to any judge found to be incapacitated or disabled, if the judge resigns, the annuity that the Governor in Council might have granted the judge if the judge had resigned at the time when the finding was made by the Governor in Council.

R.S., 1985, c. J-1, s. 66; R.S., 1985, c. 27 (2nd Supp.), s. 6.

67. [Repealed, R.S., 1985, c. 16 (3rd Supp.), s. 5]

68. [Repealed, R.S., 1985, c. 16 (3rd Supp.), s. 6]

Inquiries concerning Other Persons

Further inquiries

69. (1) The Council shall, at the request of the Minister, commence an inquiry to establish whether a person appointed pursuant to an enactment of Parliament to hold office during good behaviour other than

- (a) a judge of a superior court or of the Tax Court of Canada, or
- (b) a person to whom section 48 of the Parliament of *Canada Act* applies,

should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

Applicable provisions

(2) Subsections 63(3) to (6), sections 64 and 65 and subsection 66(2) apply, with such modifications as the circumstances require, to inquiries under this section.

Removal from office

(3) The Governor in Council may, on the recommendation of the Minister, after receipt of a report described in subsection 65(1) in relation to an inquiry under this section in connection with a person who may be removed from office by the Governor in Council other than on an address of the Senate or House of Commons or on a joint address of the

Senate and House of Commons, by order, remove the person from office.

R.S., 1985, c. J-1, s. 69; 1992, c. 1, s. 144(F), c. 51, s. 28; 1993, c. 34, s. 89.

Report to Parliament

Orders and reports to be laid before Parliament

70. Any order of the Governor in Council made pursuant to subsection 69(3) and all reports and evidence relating thereto shall be laid before Parliament within fifteen days after that order is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that either House of Parliament is sitting.

1974-75-76, c. 48, s. 18; 1976-77, c. 25, s. 15.

Removal by Parliament or Governor in Council

Powers, rights or duties not affected

71. Nothing in, or done or omitted to be done under the authority of, any of sections 63 to 70 affects any power, right or duty of the House of Commons, the Senate or the Governor in Council in relation to the removal from office of a judge or any other person in relation to whom an inquiry may be conducted under any of those sections.

1974-75-76, c. 48, s. 18; 1976-77, c. 25, s. 15.

Appendix E

CANADIAN JUDICIAL COUNCIL BY-LAWS (effective April 1, 1998)

Interpretation

Interpretation	1. The definitions in this section apply in these by-laws.	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.
Act « Loi »	“Act” means the <i>Judges Act</i> .	Term of Vice-Chairperson	(2) The Vice-Chairpersons shall hold office at the pleasure of the Chairperson.
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.	Duties of Vice-Chairpersons	4. The First Vice-Chairperson or, in the absence of the First Vice-Chairperson, the Second Vice-Chairperson, shall act in the absence or incapacity of the Chairperson.
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.	Office of Council	5. The office of the Council shall be in the National Capital Region.
Second Vice-Chairperson « second vice-président »	“Second Vice-Chairperson” means the Vice-Chairperson who is not the First Vice-Chairperson.	Appointment of Executive Director	6. The Chairperson shall appoint an Executive Director who is not a member of the Council.
		Duties of Executive Director	7. (1) The Executive Director shall have charge of the office of the Council, be responsible for all matters generally ascribed to the position and perform all duties required by the Chairperson, by the Council or by any of its committees.

Office of Council

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

Annual meeting	<p>8. (1) There shall be an annual meeting of the Council. Unless the Executive Committee directs otherwise, the meeting shall be held in September.</p>	Presiding officer of Council	<p>12. The presiding officer at all meetings of the Council shall be</p> <p>(a) the Chairperson;</p> <p>(b) in the absence of the Chairperson, the First Vice-Chairperson;</p> <p>(c) in the absence of the Chairperson and the First Vice-Chairperson, the Second Vice-Chairperson; or</p> <p>(d) in the absence of the Chairperson and the Vice-Chairpersons, the senior member of the Council present at the meeting.</p>
Mid-year meeting	<p>(2) Unless the Executive Committee directs otherwise, there shall be a mid-year meeting of the Council in the National Capital Region in March.</p>		
Date and place	<p>(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.</p>	Quorum	<p>13. A majority of the members of the Council constitutes a quorum.</p>
Notice of meeting	<p>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.</p>	Voting	<p>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.</p>
Special meetings	<p>10. (1) Special meetings of the Council may also be called by the Chairperson, by the Executive Committee or at the written request of not fewer than 10 members of the Council.</p>	Attendance of non-members at Council meetings	<p>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.</p>
Date and place	<p>(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.</p>	Amendments	<p>Amendment of By-laws</p> <p>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.</p>
Notice of special meeting	<p>(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.</p>	Notice	<p>(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.</p>
Adjournment	<p>11. A meeting of the Council may be adjourned to any date and place that the Council may decide.</p>	Waiving of notice period	<p>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.</p>

Committees

Executive Committee

Composition	<p>18. (1) There shall be an Executive Committee of the Council consisting, in addition to the Chairperson, of nine members of the Council who shall be elected by the Council from among its members.</p>	Replacement	<p>member of the Committee until the next annual meeting of the Council.</p> <p>(2) In the case described in subsection (1), the Council shall elect one of its members as a replacement at its next annual meeting.</p>
Additional member	<p>(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.</p>	Duration of term	<p>(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.</p>
Chairperson	<p>19. (1) The Chairperson shall preside over all meetings of the Executive Committee.</p>	Powers and duties of the Executive Committee	<p>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:</p> <p>(a) the making of by-laws;</p> <p>(b) the appointment of members of the Executive Committee and standing committees other than as provided in these by-laws; and</p> <p>(c) the powers of the Council referred to in Part 2.</p>
Vice-Chairperson	<p>(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.</p>	Quorum	<p>23. A majority of the members of the Executive Committee constitutes a quorum.</p>
Members	<p>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.</p>	Functioning of the Committee	<p>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.</p>
Eligibility	<p>(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.</p>	Special meetings	<p>(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.</p>
Vacancy	<p>21. (1) When a member of the Executive Committee ceases to be a member of the Council before the expiry of his or her term, the Executive Committee may appoint another member of the Council as a replacement</p>	Resolution	<p>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</p>

	Executive Committee duly called and held.	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.
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.	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.
	<i>Standing Committees</i>		
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.	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.
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.	Necessary modifications	32. Section 23, subsection 24(1) and section 25 apply, with any modifications that are necessary, to any Committee of the Council.
			<i>Mandate of Standing Committees</i>
Membership of Judicial Conduct Committee	28. (1) The members of the Executive Committee shall constitute the Judicial Conduct Committee.	Mandate	33. Each standing Committee shall define its mandate and be responsible for the achievement of its objectives.
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.	Duties of Nominating Committee	34. (1) The Nominating Committee shall nominate candidates for membership of the Executive Committee and of all standing committees.
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.	Representation	(2) The Nominating Committee shall consider and, if possible, nominate candidates who will furnish regional and jurisdictional representation.
		Report of Nominating Committee	35. A written report of the nominations proposed by the Nominating Committee shall be sent to the members of the Council at least 30 days before each annual meeting of the Council.

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

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

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

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

Ad Hoc Committees

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

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

Participation at Seminars and Meetings

Seminars and meetings **40.** For the purpose of subsection 41(1) of the Act
 (a) the Council may authorize judges to attend seminars and conferences for their continuing education; and
 (b) the Chairperson may authorize judges to attend meetings, including seminars, conferences or Council committee meetings, relating to the administration of justice.

Part 2 Complaints

Review of Complaints

Duties of the Chairperson of the Judicial Conduct 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.

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

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

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

Withdrawal **46.** After a complaint file has been opened, upon receipt of a letter from the complainant asking for the withdrawal of his or her complaint, the Chairperson of the Committee may: (a) close the file; or (b) proceed with consideration of the file in question, on the basis that the public interest and the due administration of justice require it.

Review by Chairperson of the Judicial Conduct Committee

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

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

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

Closing of the file by Chairperson **50.** (1) Subject to section 51, the Chairperson of the Committee, having reviewed the complaint and any report of inquiries, may close the file and shall advise the complainant with an appropriate reply in writing (a) the matter is trivial, vexatious or without substance; or (b) the conduct of the judge is inappropriate or improper but the matter is not serious enough to warrant removal.

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

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

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

Review by Panel

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

Composition of Panel	<p>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.</p>	<p>specifies the grounds set out in subsection 65(2) of the Act that may be applicable.</p>
Puisne judges	<p>(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.</p>	Expression of disapproval
Majority of Panel	<p>(3) The Chairperson of the Committee shall select the majority of Panel members from the Council whenever possible.</p>	<p>(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.</p>
Chairperson of Panel	<p>(4) The Chairperson of the Committee shall designate a member of the Panel as Chairperson of the Panel.</p>	Non-participation
Review by Panel	<p>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</p> <p>(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</p> <p>(i) the matter is trivial, vexatious or without substance, or</p> <p>(ii) the conduct of the judge is inappropriate or improper but the matter is not serious enough to warrant removal; or</p> <p>(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</p>	<p>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.</p> <p>Review of the Panel's Report by the Council to Determine if an Investigation under Subsection 63(2) of the Act is Required</p> <p>57. (1) The Council shall consider the Panel's report to determine if an investigation under subsection 63(2) of the Act is warranted.</p> <p>(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.</p> <p>(3) The Chairperson of the Committee shall designate a member of the Inquiry Committee as Chairperson of the Inquiry Committee.</p> <p>(4) The members so designated shall not participate in any deliberations of the Council in relation to the matter in question.</p>
		Review by Council
		Designation of subsequent Inquiry Committee
		Chairperson of the Inquiry Committee
		Non-participation

Written submissions

58. The judge who is the subject of the complaint shall be entitled to make written submissions to the Council as to why there should or should not be an investigation under subsection 63(2) of the Act.

Review by Council

59. After considering the Panel's report and any submissions of the judge concerned, the Council shall decide

(a) that no investigation under subsection 63(2) of the Act is warranted because the matter is not serious enough to warrant removal, in which case, the Council shall advise the complainant and the judge with an appropriate reply in writing, including an expression of disapproval of the judge's conduct when the circumstances so require; or

(b) that an investigation shall be held under subsection 63(2) of the Act because the matter may be serious enough to warrant removal, and advise the judge concerned accordingly.

Inquiries

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

Members of Inquiry Committee

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

Appointment of independent counsel

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

Duties of independent counsel

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

Additional complaints against judge

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

Public investigation

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

Inquiry Procedures

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

Report of Inquiry Committee

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

Copies of report

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

(a) provide a copy of the report to the judge concerned, the independent counsel and any other persons who were given standing in the proceedings by the Inquiry Committee; and

(b) when the hearing has been conducted in public under section 63, make the report public.

Review of the Inquiry Committee Report by Council

Judge's submission to or appearance before Council

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

Appearance of Independent counsel

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

Public hearing

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

Referral back to Inquiry Committee

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

Council's report to the Minister

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

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

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

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

Chairperson of the Inquiry Committee

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

Request from Minister about other persons

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

Chairperson of the Inquiry Committee

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

Rules for inquiry directed by Minister or an Attorney General

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

Appendix F

HUMAN AND FINANCIAL RESOURCES, 2001-02

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

2001-02 Expenditures of the Canadian Judicial Council

Salaries and Benefits	\$309,943
Transportation and Communications	36,463
Information	5,258
Professional and Special Services	208,617
Rentals	14,987
Purchased Repair and Upkeep	1,025
Utilities, Materials and Supplies	39,821
TOTAL	\$616,114