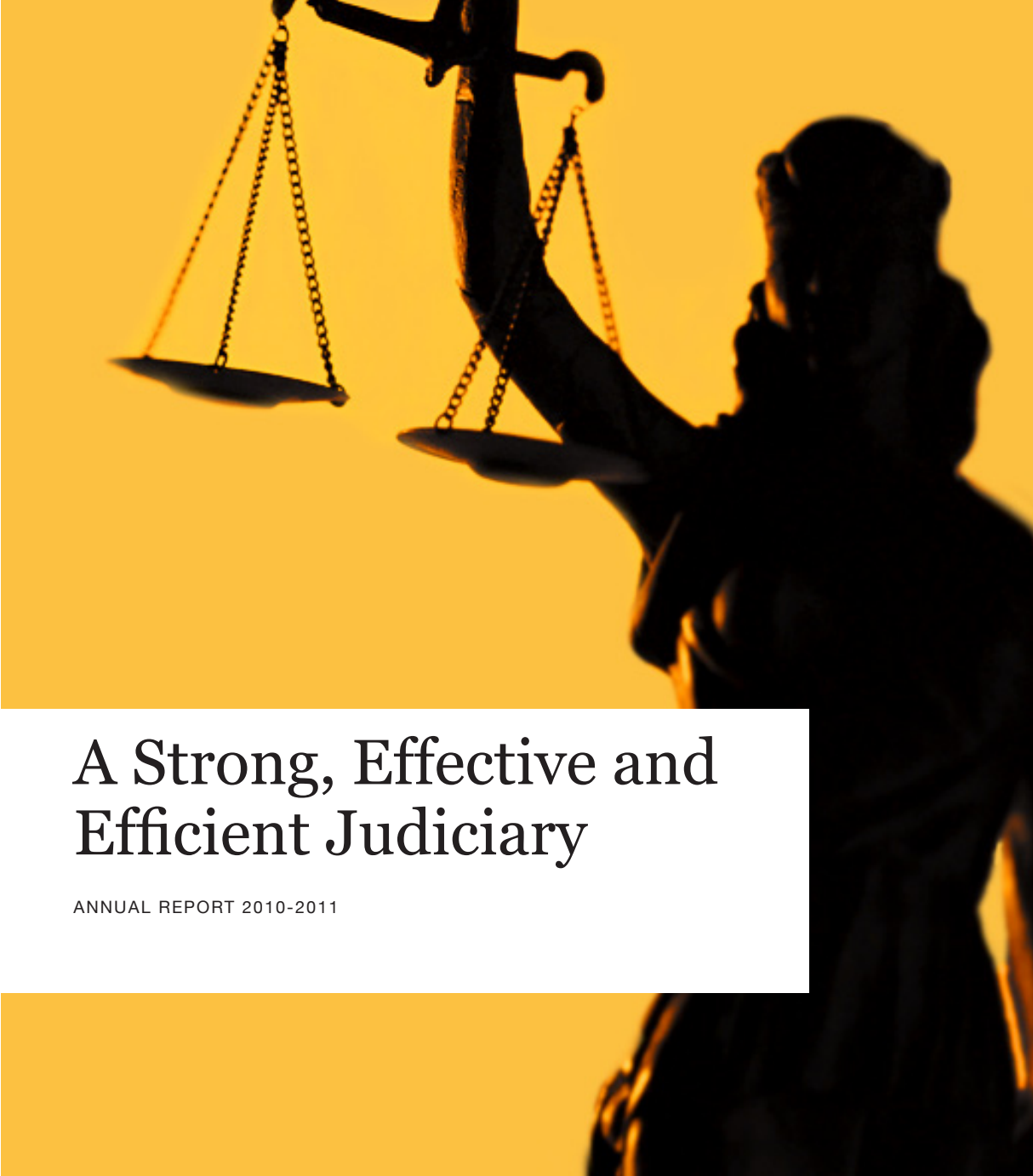




Canadian Judicial Council
Conseil canadien de la magistrature



A Strong, Effective and Efficient Judiciary

ANNUAL REPORT 2010-2011

Table of contents

Chairperson’s message	1
Year in review	2
Access to Justice	3
Judicial Independence	4
Commissions of Inquiry	5
Judicial Education	6
Communicating with Canadians	7
Consulting Others	8
Judges and Technology	9
Judicial Conduct	10
Complaints	11
Complaint 1	12
Complaint 2	13
Complaint 3	14
Complaint 4	15
Complaint 5	16
Complaint 6	17
Statistics on Complaints.	18
Financial statement	19

CHAIRPERSON'S MESSAGE



I am pleased to welcome you to the **Canadian Judicial Council's 2010-11 Annual Report website**. This micro-site is intended to present the year in review in a creative and informative way, while reducing our reliance on paper and capitalizing on the effective use of technology. By exploring this site you will learn about Council's efforts to ensure that Canadians continue to benefit from a strong, effective and efficient judiciary. Notable among Council's accomplishments in 2010-11 was the work undertaken to strengthen and enhance some of the key procedures by which complaints against federally appointed judges are reviewed. Council has also been an active participant in the work of the Action Committee on Access to Justice in Civil and Family Matters. This, together with our ongoing work in the areas of judicial independence, judicial education and public information, is aimed at ensuring that we fully earn the confidence of the Canadian public. I hope you find the information on this site useful, and that it will allow you to become better acquainted with the work of Council.

The Right Honourable Beverley McLachlin Chairperson



Year in review

The Canadian Judicial Council works to enhance the quality of judicial service and provide Canadians with a judiciary they can trust. Here is an overview of the Council's specific achievements in 2010-11.

ACCESS TO JUSTICE

The National Action Committee on Access to Justice in Civil and Family Matters

The ongoing leadership of the Chief Justice of Canada to raise issues relating to improving access to justice for all Canadians has done much to focus the attention and the energies of many who work within the justice system. The National Action Committee on Access to Justice in Civil and Family Matters has emerged as a national voice for system wide improvements. The Action Committee is focused on fostering engagement, pursuing a strategic approach to reforms and coordinating the efforts of all participants concerned with civil justice.

JUDICIAL INDEPENDENCE

Canada's system of government is centred on three separate, yet interdependent, branches: legislative, executive and judicial. Each branch enjoys a necessary degree of independence and autonomy from the other. This independence has, at times, been the source of some dynamic interaction and natural tension. The Canadian Bar Association took the step this year to remind Canadians that judges make decisions according to the law - not to support a given government's political agenda.

The concept that judges make decisions free of political pressure of any sort is fundamental to our system of democracy. While our system serves Canadians well - it is appropriate to emphasize, from time to time, the need to respect the role of each Branch as a way to build public confidence in our institutions.

COMMISSIONS OF INQUIRY

Judges Appointed to Commissions of Inquiry

For some Canadians, the most we hear from judges is when they deliver publicized reports stemming from their work on a Public Inquiry. The high profile that often comes with a government's decision to pursue an inquiry means that the appointment of a judge and how he or she manages that inquiry are closely watched.

There are many reasons why government may choose to appoint a judge to head a public inquiry, not the least of which is the independence that comes with the position of judge. This independence contributes directly to ensuring that the process and its outcomes are impartial and fair. Judges who agree to sit as Commissioners do so in order to contribute to a process in which the public can have confidence.

The Protocol on the Appointment of Judges to Commissions of Inquiry, adopted by Council in August 2010, is intended to facilitate the important and necessary dialogue between the judiciary and government about their respective roles and responsibilities in relation to public inquiries. Council worked with key partners, including government, in finalizing the Protocol which will hopefully contribute to the discussion that must be undertaken to ensure that public inquiries continue to perform effectively.

JUDICIAL EDUCATION

Providing Judges with Opportunities for Ongoing Learning

Canadians rightly expect that those who serve as judges have the legal skills, competence and compassion for the difficult task of deciding court matters. To help ensure that Canada's judges are among the best trained, best-suited in the world, Council works to provide all federally appointed judges with ongoing opportunities for professional development. In cooperation with educational partners such as the National Judicial Institute, the Council actively supports the development and delivery of education programs in all areas of the law and in issues such as social context, communications skills, and the challenges of self-represented litigants. Efforts were made this year to ensure that all federal judges are aware of Council's policies in regard to judicial education. Ensuring that judges continue to benefit from a high quality, effective, ongoing judicial education and professional development is a key commitment of Council.

COMMUNICATING WITH CANADIANS

Increasingly, Canadians expect that Council will be transparent in its efforts and will pro actively communicate about its work. This includes issuing updates, from time to time, on high profile conduct matters as well as ensuring that the judiciary's point of view on key issues of national importance is well understood. To this end, Council has been making better use of its website to provide the public with timely and accurate, clear and transparent information about Council's work. Council has also worked to nurture positive relationships with journalists and media professionals who are instrumental in informing Council of Canadians' views and helping Council ensure its messages reach their intended audience.

CONSULTING OTHERS

Raising levels of awareness and understanding of judicial issues in Canada is one of Council's long-term objectives. 2010 provided Council with a timely opportunity to consult with other organizations with whom Council sometimes works to obtain their views on a number of related issues. A good starting point for such an undertaking was to gain an understanding of how others perceive the work of Council. Questions which we wish to discuss included: are other organizations involved in justice matters aware of our activities and mandate? What are their overall impressions of our work? Is there support for our strategic objectives? Do our information efforts meet expectations? These are all questions worth asking – the answers to which will inform future strategic communications planning. Council wishes to thank all of those individuals from the various organizations who contributed their time to this exercise and sharing with us their views on how our organization can further improve.

Key results from Interviews

1. Many respondents told Council that the judiciary continues to be held in high regard;
2. Council should continue to work hard to deliver on its commitment to transparency;
3. Council should continue to speak out on issues of judicial independence;
4. Council should actively engage in public education on the roles and responsibilities of judges and the justice system.

Key issues facing the Judiciary

In addition to issues of judicial independence, access to justice, and the need for public education, our stakeholders suggested that Council focus on:

1. the heavy workloads of judges;
2. delays;
3. the need for the judiciary to be more reflective of Canada's multicultural fabric;
4. the judicial appointment process;
5. the difficulty in balancing publication bans with the open court concept;
6. issues with the quality and accuracy of media coverage.

JUDGES AND TECHNOLOGY

Judges routinely face the challenge of balancing their duty to facilitate the effective administration of justice with the ever-increasing number, complexity and length of cases over which they are called to preside. The growing reliance on technology to help ease that challenge is increasingly becoming a reality. Council's Judges Technology Advisory Committee (JTAC) has as its mandate to monitor and advise judges on technical issues and tools that may have an impact on access to justice. JTAC's recent article "Is Skype Safe for Judges?" tries to help judges understand whether Skype and other internet-based telephone services may be used safely, both for personal calls and for carrying out judicial business. It recommends that judges make good use of the tool, but only if they are aware of the inherent security issues and take certain precautions

JUDICIAL CONDUCT

Changes to our Complaints By-laws and Procedures

Changes to the process by which Council reviews complaints against federally appointed judges was an important activity undertaken this year. While always striving to protect the public interest, these changes were made in an effort to add efficiency to the process while still ensuring fairness for the judge. By posting the changes on Canada Gazette, Council sought the views of Canadians and engaged them in this activity. Consultations also took place with judges and interested lawyers across Canada. These changes to our Complaints Procedures, By-laws and policies aim to make our already robust complaint process one in which Canadians can continue to have confidence.

Summary of key changes:

- Complaints are sometimes referred to a panel of 3 or 5 judges for further consideration. In those cases, the Panel now has the authority, on behalf of the Council, to constitute a Public Inquiry Committee.
- The process before a public Inquiry Committee has been modified in regard to the opportunity of the Judge to make an oral statement before Council.
- Following the report of the Public Inquiry Committee, the judge can make written submissions to Council.

Complaints received in 2010-11

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

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

When Council receives complaints about Court decisions, we make every effort to communicate clearly with the complainants about the difference between judicial conduct and judicial decision-making. We try to write to the complainants in plain language, and give as much information as possible about their concerns. We also make sure we clearly explain our mandate and procedures. Where a judge has failed to uphold the high standards of conduct that Canadians expect, Council takes appropriate measures. All these steps are important to maintain public confidence in the process. Here are a few examples of recent complaints to the Council. Each case was reviewed by a member of the Judicial Conduct Committee of the Council except in Complaint 6, where the member of the Judicial Conduct Committee sent the case to a Panel of five judges for review.

COMPLAINT 1

On occasion, individuals will write to complain that a judge did not have the knowledge needed to deal with the case before the Court or that the judge did not prepare himself or herself for the case. This is what one complainant said about a judge. The complainant hired a lawyer to prepare her complaint. The allegation was that the judge did not read important documents prior to appearing in Court. Also, the complainant said that the judge showed a certain level of ignorance and evasiveness about the application and that he was “in a state of confusion.” The complainant believed that this showed incompetence or a lack of diligence on the part of the judge. The complainant was also upset because the judge did not allow her to record the proceeding.

The judge was asked to give comments and to provide the transcript of the case. All the available material was reviewed. The allegation that the judge was not prepared was based only on speculation. In fact, the material showed that the judge was sufficiently prepared for this type of case.

Parties in court cases are often deeply involved in the issues. They sometimes do a lot of research about every point and are well prepared to argue their position. In turn, they sometimes expect the judge to know every aspect of the case. When a judge limits the time for making submissions or rules that certain evidence cannot be admitted, parties can feel that they did not get a chance to fully explain their position. However, judges must be very active in controlling proceedings to ensure that the court’s time is well spent. In this case, the judge acted in accordance with that principle.

With regard to the judge not allowing the complainant to record the proceedings, the judge explained that the matter was being recorded already and that the complainants could request the transcript if they so chose. The normal practice, in most courts, is that private recording of the proceedings is not allowed.

While the complainant in this case hired a lawyer to make her complaint, it must be noted that all complaints are reviewed carefully and thoroughly, no matter how they are presented. In fact, the Council even accepts anonymous complaints and reviews all allegations against judges in accordance with the Complaints Procedures.

COMPLAINT 2

One of the goals of the complaints process is to make sure judges learn from any mistakes and are able to change any behaviour that is not in keeping with the high expectations we have for all judges. When a complaint is made, a judge will sometimes note that there was a problem with their conduct and they must do better in future.

This was the case when a complainant said that the judge used inappropriate language and humour in case conferences about custody and care of children. The complainant said that the judge treated him and his children with very little respect. Also, during one case conference, the judge kept the complainant on the phone without any valid reason, despite knowing that the complainant was taking the call outdoors in very cold winter weather. More importantly, the complainant was troubled by the judge's attempts at humour when questioning the children.

A full review of the material and transcript was made. The judge said that he now saw that he had acted improperly. He said that while the purpose of the telephone conference call was to ensure a full discussion on very important issues, he should have tried to better accommodate the complainant.

The judge also acknowledged that he should not have used humour. He said that his intent was to try and make things easier for the children, his comments in fact offended some people in the courtroom and made things more difficult for the children.

The judge offered a full apology to the complainant and his children. He decided not to hear future matters in that specific case. The judge also agreed to take advantage of a training course that allows judges to improve their communication skills in the courtroom.

Council noted that this was a serious matter but that the judge's conduct in this one isolated case would not prevent him from performing his duties in the future. Given the judge's commitment to learn from this incident and his full apology to the complainant and his children, the file was closed.

COMPLAINT 3

Some complaints are very serious in nature, but are not supported with any evidence or demonstration of fact. These types of complaints can be difficult for Council to review. An example of such a complaint was submitted to Council this year which included serious allegations of bias and conflict of interest on the part of a judge.

In a divorce case, the complainant said that several judges, lawyers, police and other officials, demonstrated bias in favour of her ex-husband. She said her husband was involved in known criminal activity and had influence over all these individuals.

The complainant said that one judge was “politically motivated” and that he manipulated the facts as part of a “criminal conspiracy” that involved her ex-husband’s associates.

Although the allegations are very serious, Council found that they were based entirely on suppositions and vague theories of conspiracy. Since there was not a single piece of evidence to support the allegations of a “criminal conspiracy” involving many judges and public officials, that part of the complaint was rejected.

This same complaint included an allegation that one judge, several years prior to appointment, was a lawyer in the same firm that now represented her ex-husband in business dealings. On this point, Council noted that any allegation of a conflict of interest must be raised before the court. In the absence of any bad faith, this is not judicial misconduct. The complaint was therefore rejected.

COMPLAINT 4

Many complaints received by the Council prove to be about the decisions made by the judge, and not about any issue of inappropriate conduct as such. When someone believes a judge's decision is wrong in law, the remedy is to bring the issue before the court, usually in an appeal.

In a case involving a property dispute, an affidavit presented by the lawyer was rejected by the judge. The lawyer complained to the Council that the judge humiliated her in court by rejecting an affidavit and saying that the lawyer's Notice of Appeal was "not good." The complainant also suggested that the judge showed bias against her in favour of the opposing male lawyer and that the judge was "intimidating, rude and harsh" toward her.

The judge was asked to comment and to provide the recording of the proceedings. The judge noted that the complainant was not well prepared to present her motion and that her court documents were not well drafted. The judge also said that the complainant became agitated as she struggled to properly present her case. The judge did say that the appeal document was "not good" but also encouraged the lawyer to focus her arguments on relevant facts. Council found that the judge acted within her discretion in ensuring that the matters before the court proceed efficiently. The judge disagreed that she was rude or harsh. The recording of the proceedings supported the judge's position. In fact, the transcript showed that the judge was firm but patient at all times and encouraged the complainant to focus on the relevant issues.

The complaint that the judge showed gender bias in favouring male counsel was found to be completely without merit. The complainant had in the past made similar complaints against other judges. Not one of these complaints was valid. The allegations were dismissed.

COMPLAINT 5

From time to time, Council receives complaints about the amount of time it takes a judge to make a decision or give reasons for their decision.

In this case, the judge took nine months to give his judgement. The complaint was that the delay was unreasonable and that it undermined confidence and trust in the judicial process. According to the complaint, the delay could be an indication that the judge had difficulty remembering the facts of the case.

In his response to this complaint, the judge explained that this was a very difficult case with a high volume of documents submitted as evidence. One particular issue of the case required some ongoing analysis.

The judge noted that it is important to release decisions early whenever possible, but that some cases need more time to ensure that the decision is as correct and fair as possible. The judge's Chief Justice also commented this case, saying that this was one of the hardest working judges in the Court and that this particular case with an exception to his usual punctual decisions.

In reviewing the case, Council noted that Ethical Principles for Judges say that judgments should ideally be delivered within six months, but that some matters are more complex and may require more time to resolve.

After looking at all the aspects of the case, this was found to be such an exceptional complex matter. The fact that this long delay was unusual for this judge, and that there was a large volume of evidence, supported the judge's view. A full explanation was provided to the complainant and the file was closed.

COMPLAINT 6

Some complaints are complex and not easily resolved. In some cases, the member of the Judicial Conduct Committee who reviews the file will send it to a Panel of three or five judges. This allows for a more complete review.

A complainant wrote to say that a judge used his status as a judge to influence officials to act against the complainant. The complaint involved a personal matter between the judge, the complainant and the complainant's ex-wife. The judge had become engaged to the complainant's ex-wife. On two occasions, the judge accompanied his fiancée when she went to the police to complain about her ex-husband. She said her ex-husband was threatening her and she asked that criminal charges be filed against him. During the police interviews, the judge made some inappropriate jokes.

The complainant also said that the judge tried to influence court proceedings about child custody between the complainant and his ex-wife.

Five judges reviewed the matter. Because of the seriousness of the allegations, a lawyer was asked to interview several people, including the complainant, his ex-wife, the police officers, the judge and several others.

The Panel found that there was no evidence that the judge attempted to influence court proceedings. However, the Panel was concerned that the judge was present when his fiancée went to complain to the police. An outside person could think that the judge was there to seek a certain outcome. Humorous comments can be misinterpreted. The Panel was of the view that any comments made during such a meeting, whether spoken seriously or in humour, can be easily misinterpreted. In that regard, the Panel said that judges should avoid such situations.

However, the Panel noted that the judge wanted to provide emotional support to his fiancée, and that he never intended to influence in any way the police officers.

This complaint took much time to complete. This was because of the need to get all the relevant information from many different individuals. While Council tries to complete all matters within six months, there are usually 5 or 6 cases every year that can take more time. In all instances, every effort is made to complete the review of complaints as soon as possible.

STATISTICS ON COMPLAINTS

The number of complaint files opened a few weeks short of the end of the fiscal year 2010-2011 is in line with the last couple of years. As of mid-March 2011:

156 the number of complaints received

140 the number of complaint files closed

45 the number of complaint files under review at various stages of the process

STATEMENT OF EXPENDITURES

FISCAL YEAR 2010-2011

Salaries and Benefits	\$ 1,151,285
Transportation and Communications	\$ 115,785
Information	\$ 3,152
Professional and Special Services	\$ 289,402
Rentals	\$ 34,854
Purchased Repair and Upkeep	\$ 19,782
Utilities, Materials and Supplies	\$ 26,048
Construction and Acquisition of Machinery and Equipment	\$ 33,186
Total	\$ 1,673,494
