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Meeting the challenge

We have been talking about access to justice for some time now. It is, indeed, the foundation of our legal system. Access to justice is a term that describes the growing concern about the ability of our justice system to serve the public. The cost of litigation is prohibitive for many, and this has led to a decrease in civil filings and civil trials, an increase in the length of trials, and an increase in the number of self-represented litigants. Overall, it has led the public to express concerns about our justice system.

There is still much to do, but I am pleased to report that we have moved beyond discussion and are taking steps towards solving the problem. Our ultimate goal is to maintain the public's confidence in the justice system and make the courts more accessible to those who want to use it. The Canadian Judicial Council, with its mandate of promoting efficiency, uniformity, and accountability, and to improve the quality of judicial service in Canadian superior courts, is always working towards quality and equality in the courts.

The Council has recently joined other stakeholders in the justice system to establish an Action Committee on Access to Justice in Civil & Family Matters. Together we hope to identify priorities, work on joint initiatives, and provide leadership at a national level to improve access to justice in civil and family matters. The Action Committee will be made up of 12 -15 representatives of key organizations and sectors, including Council members, judges from provincial and superior courts, Deputy Ministers of Justice, the legal profession, and the public.

The Canadian Judicial Council has an important role to play in providing leadership, offering services, and coordinating the many efforts of Canadian courts and judges. I am confident that this Action Committee on Access to Justice will provide a forum for collaborative action to improve access to justice for all Canadians and to preserve confidence in the justice system.



The Right Honourable Beverley McLachlin — Chairperson

The Council's role in the justice system

The problem of access to justice was identified as a serious concern several years ago. Since then, the issue has been the focus of all sectors of the justice community, from legal advocates to the judiciary in all levels of courts. Now that the problem has been defined and the barriers identified, it is incumbent upon all members of the justice system to work together to find solutions.

Towards this end, the courts have taken initiatives to improve the quality of justice in their own jurisdictions; they have also been working collaboratively to establish efficiencies among courts across the country. The Canadian Judicial Council is providing leadership and support to the judiciary in this vital undertaking. Its *raison d'être* is to promote efficiency and uniformity of the courts and quality of judicial decision-making in the superior courts of Canada. But, while these goals are important, we must also ensure that our justice system is as accessible as possible.



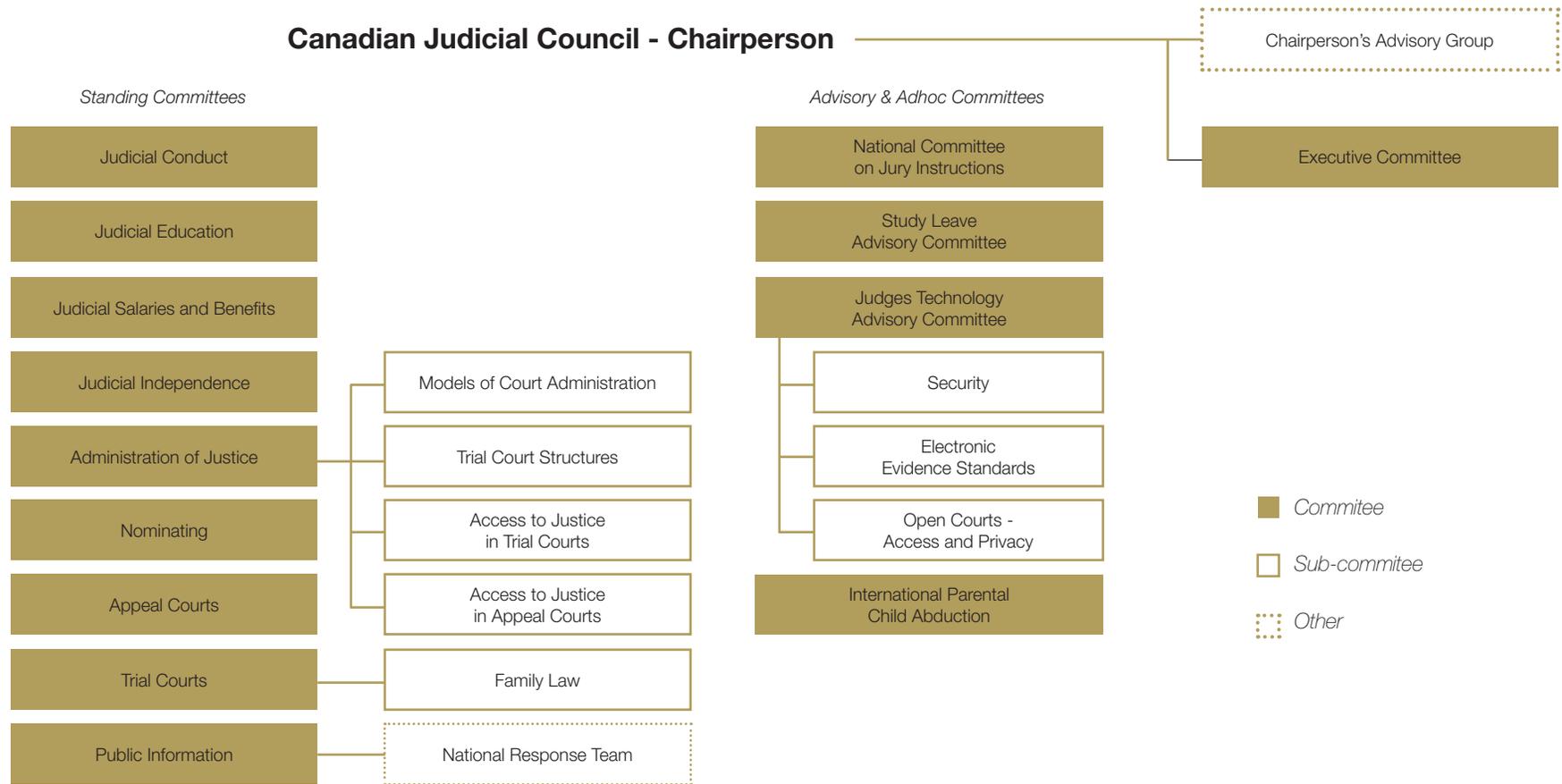
How the Council realizes its mandate

The *Judges Act* establishes the Canadian Judicial Council's mandate to promote efficiency and uniformity in the courts and to improve the quality of judicial service. The Chief Justice of the Supreme Court of Canada, the Right Honourable Beverley McLachlin, chairs the Canadian Judicial Council. The Council is composed of 39 chief justices and associate chief justices who oversee more than 1,080 federally appointed judges in Canada.

The Council can only achieve its vision through the work of its staff and committees that review policies, make recommendations, and set guidelines to help judges and our justice system to be efficient, accessible, and accountable. When necessary, committees call on the expertise of others in the legal community. Their reports are delivered to the Council at its two annual general meetings and key documents are often distributed to the general justice community and to the public.

Some committees are permanent, standing committees; others are formed from time to time to deal with specific issues or projects. The Executive Committee is composed of 12 members, and takes authority on behalf of the Council. It includes the chairs of most standing committees. It plays an important role in setting the Council's priorities.

The structure of the Council and its committees is set out in this chart:



Taking action to improve efficiency

Efficient courts are the foundation of justice – they ensure that those who seek judicial adjudication of their legal issues can do so quickly and equitably. The Council supports the work of the courts and the judiciary to achieve this goal. Encouraging the review of court systems, practices, and technology are all part of the Council's role in removing obstacles to court access.

The focus of the Administration of Justice Committee is to facilitate access to justice in courts across the country. It does this by consulting on changes to court structure and providing information and tools that judges can use to respond to new issues. This year, the Committee formed two sub-committees to review concerns in trial and appeal courts: the Sub-committee on Access to Justice – Trial Courts and the Sub-committee on Access to Justice – Appeal Courts. Acknowledging that access to justice is a serious matter facing many Canadians, particularly middle class citizens, the sub-committees are working to identify practical cost-reduction measures that do not require substantive legislative or regulatory change to implement.

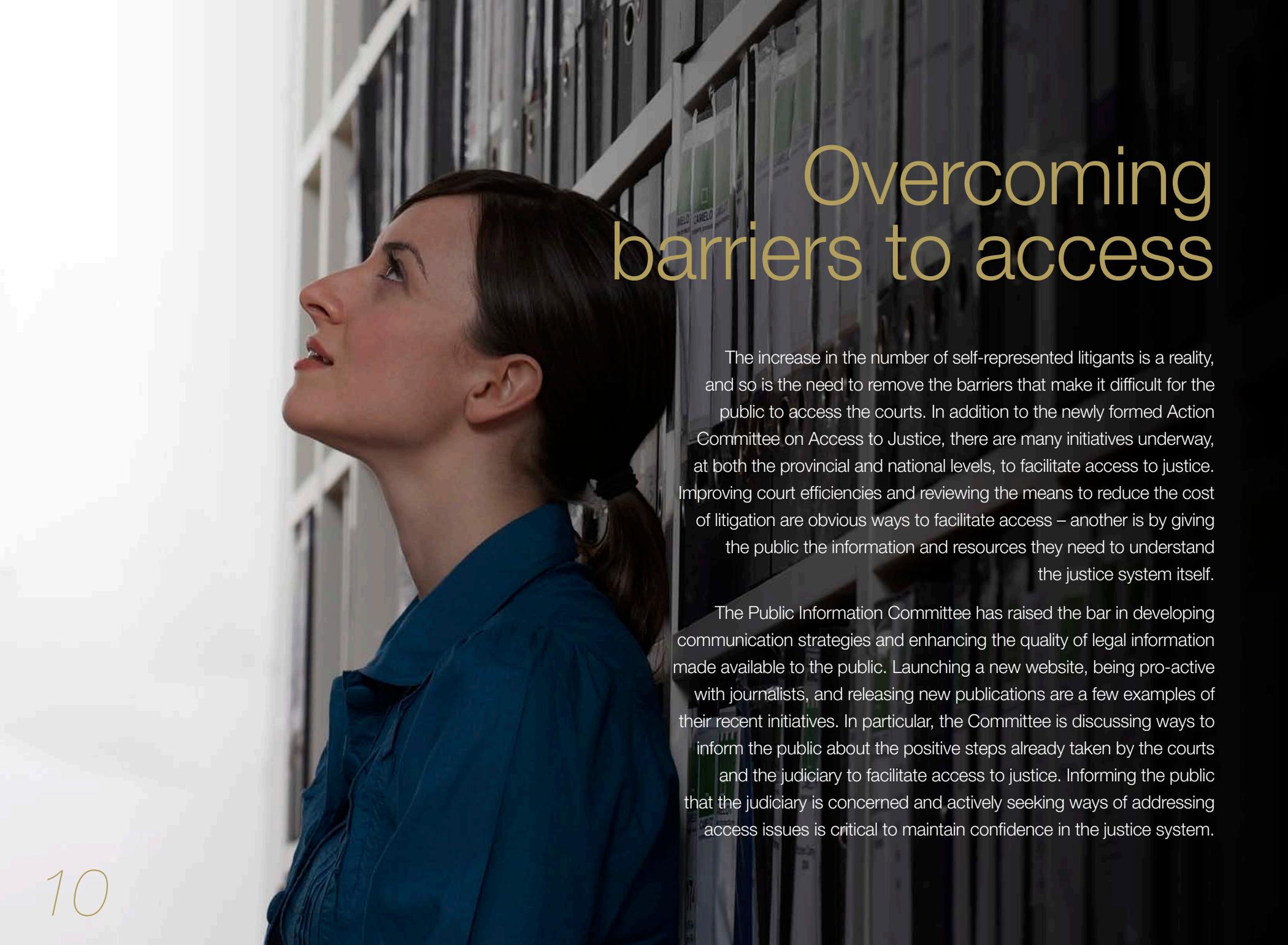
Establishing protocols and judicial networks are effective ways to streamline difficult and urgent matters. One such matter is international child abduction cases, which have been under review for several years. A Special Committee on International Parental Child Abduction has been working to establish efficient and uniform practices in Canadian courts. The Committee has set up a Canadian Network of Contact Judges who will act as liaisons to facilitate international incoming and outgoing requests for Hague Convention cases.

The use of technology to improve efficiency is an important topic for every organization in Canada, including the courts. The Judicial Technology Advisory Committee (JTAC) is monitoring developments in the use of technology in the courts, such as e-filing, electronic evidence standards, and security issues. In addition, the Committee drafted a *National Model Practice Direction for the Use of Technology in Civil Litigation* and Council approved the document as guidelines for the judiciary.

Other technology initiatives are underway. The Canadian Centre for Court Technology (CCCT) is a national, non-profit, bilingual umbrella organization that provides a forum for groups interested in the efficient use of technology in the justice system. Five judges sit on this board, as well as two Deputy Ministers of Justice, and seven others from the legal and justice community.

The Council has also been involved in discussions about the judiciary playing a greater role in the administration of the courts. The objective of adopting such a model would be to improve the quality of and delivery of justice services, enhance public trust in the judicial system, and preserve judicial independence. As a first step, the Council released a proposal, *Alternative Models of Court Administration*, in 2006. Since then, the Council has brought in other stakeholders in the judicial system to continue the dialogue, believing that the existing model cannot be modified or improved without the commitment of all participants. A summary document, *Administering Justice for the Public*, was recently released. Meeting the challenge, many jurisdictions have begun reviewing practices within their own courts.

To adopt such measures would be a fundamental change in the way justice is administered in Canada. The executive branch of government and the judiciary must be fully engaged in discussions to explore the issue, and many different views have been advanced at this point in time. The Council will continue to facilitate discussions on this important topic.



Overcoming barriers to access

The increase in the number of self-represented litigants is a reality, and so is the need to remove the barriers that make it difficult for the public to access the courts. In addition to the newly formed Action Committee on Access to Justice, there are many initiatives underway, at both the provincial and national levels, to facilitate access to justice. Improving court efficiencies and reviewing the means to reduce the cost of litigation are obvious ways to facilitate access – another is by giving the public the information and resources they need to understand the justice system itself.

The Public Information Committee has raised the bar in developing communication strategies and enhancing the quality of legal information made available to the public. Launching a new website, being pro-active with journalists, and releasing new publications are a few examples of their recent initiatives. In particular, the Committee is discussing ways to inform the public about the positive steps already taken by the courts and the judiciary to facilitate access to justice. Informing the public that the judiciary is concerned and actively seeking ways of addressing access issues is critical to maintain confidence in the justice system.

The Council's new website was launched last fall. In addition to news about the Council and its activities, it outlines the conduct that we expect of our judges and offers published protocols on various issues. More significantly, a resource section gives a clear and simple explanation of Canada's court system, the role of lawyers and judges, a description of typical court proceedings, and the alternatives to litigation. For self-represented litigants, there is information about the litigation process and how to get legal assistance.

Journalists play a critical role in informing the public about courtroom proceedings. Last year, the Council released *The Canadian Justice System and the Media*, a publication intended to encourage discussion on the role of judges and reporters in helping the public to understand the justice system. The document identifies the strengths and weaknesses of courtroom reporting and highlights best practices for media coverage, starting with the judiciary using clear and simple language.

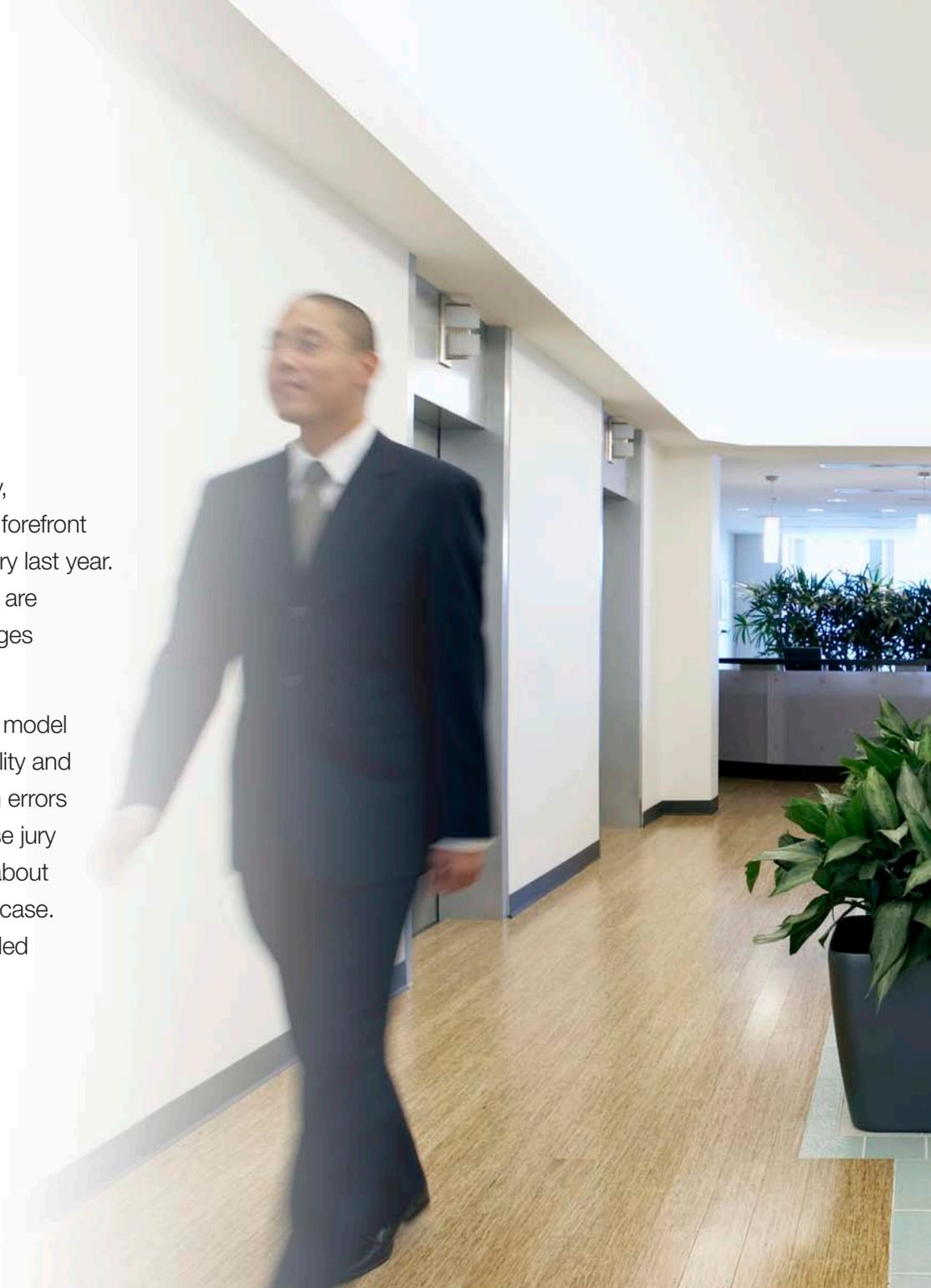
In addition to developing educational resources for the public, the Council has been developing tools for the judiciary. *A Communication Guide for Judges* was published and distributed to all federally appointed judges. Its objective is to enhance communication skills, from delivery of judgments in the courtroom to interviews with the media.

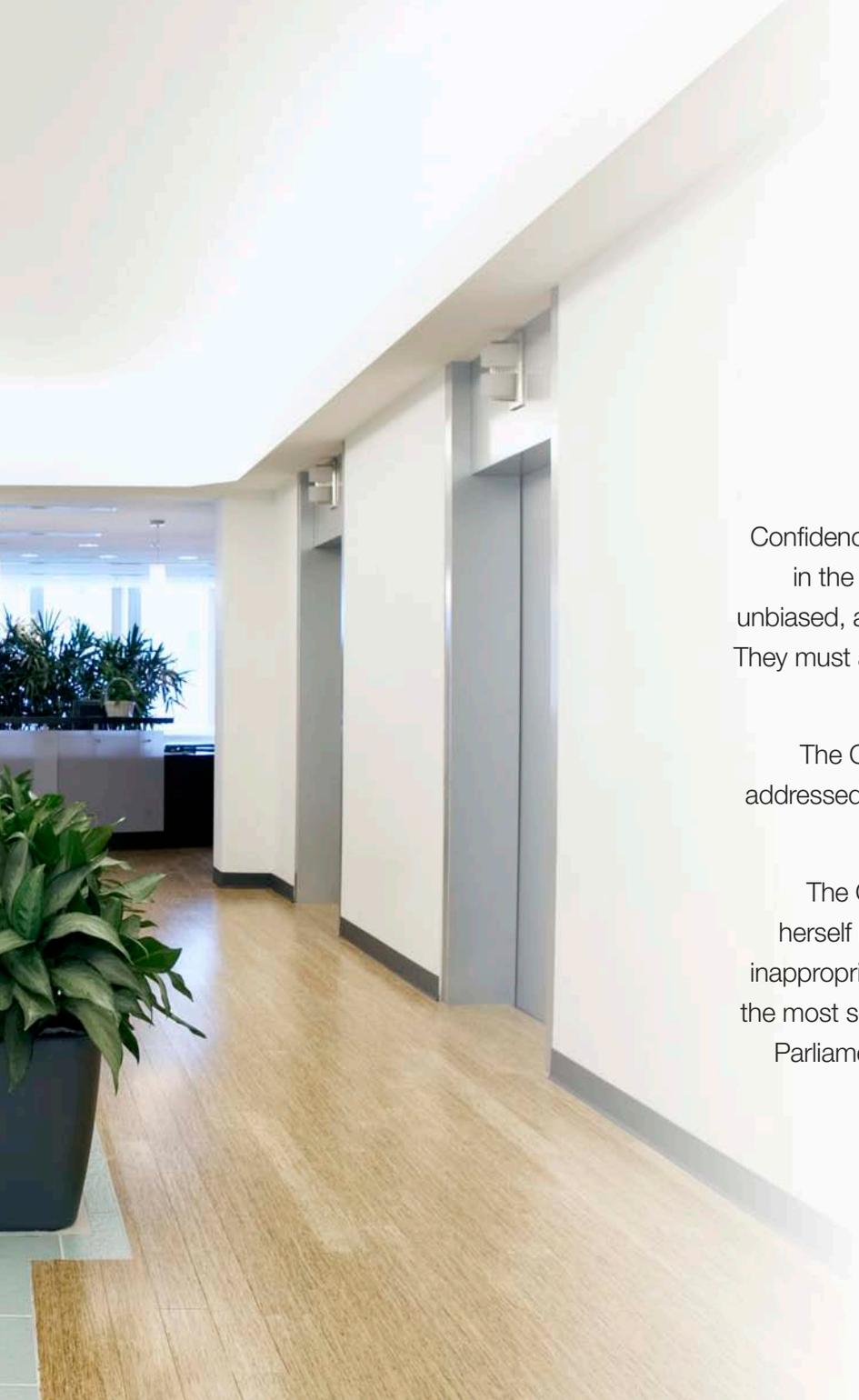
To help meet the needs of self-represented litigants in court, the Council with the National Judicial Institute published an electronic *Bench Book for Sitting Judges: Self-represented Litigants and Self-represented Accused*. Its stated objective is to promote access to the justice system for all persons on an equal basis, regardless of representation. It gives guidance to judges on the needs of self-represented litigants in court, and suggests the use of everyday language to explain the law and court procedures to lay litigants.

Delivering quality services

The Council's constantly aims to provide quality services to the judiciary, committee members, and the public. Judicial education remains at the forefront of the Council's work and it approved many new courses for the judiciary last year. And, working with the National Judicial Institute, the judges themselves are involved in developing training material, tools and resources to help judges make quality decisions.

The Council's National Committee on Jury Instructions continue to add model jury instructions for criminal cases as a step towards improving the quality and consistency of jury instructions, reducing case dismissals resulting from errors in instructing the jury, and making the court system more efficient. These jury instructions provide a "script" for judges to read when informing juries about the nature of the criminal charge and the issues that are specific to the case. The working group responsible for pattern jury instructions recently added instructions on assault and related offences, as well as instructions on self-defence and intoxication.





Ensuring judicial integrity

Confidence in our justice system begins with litigants and the general public having confidence in the decisions our judges are making. They must believe that the judges are impartial and unbiased, and are meeting the highest ethical standards both inside and outside the courtroom. They must also have an opportunity to formally criticize our courts and judges if they believe that a judge did not uphold the highest standards of conduct.

The Canadian Judicial Council has a major role to play in ensuring that these criticisms are addressed and that judicial standards of conduct are met. We ask our judges to settle disputes impartially, and we ask them to be courteous, professional and respectful.

The Council investigates allegations that a federally appointed judge conducted himself or herself in an inappropriate way. The Council has the authority to investigate a judge's alleged inappropriate behaviour, receive responses to the allegations from the judge in question and, in the most severe cases where the judge is not fit to be a member of the judiciary, recommend to Parliament that he or she be removed from office. The process is efficient, fair, and objective.

There is an important distinction between a judge's *decision* and a judge's *conduct* when it comes to seeking remedy for one or the other.



Issue

Remedy

A judge's *decision* is questioned → An *appeal* to a higher court for the decision to be reviewed

A judge's *conduct* is questioned → A *complaint* to the Canadian Judicial Council for the judge's conduct to be reviewed

The Council recognizes the importance of complaints being handled quickly and thoroughly. The time for processing judicial conduct complaints continues to improve. Council staff ensure all relevant information is obtained as soon as possible and judges who are asked for comments respond in a timely manner. As a result, 80% of all complaints are completed within 3 months, and 95% within 6 months.

This year, the Council received 189 complaints. At the beginning of the year, 44 files were in progress. A total of 205 files were finalized during the year, leaving 28 files under consideration as of 31 March 2008. The overall number of complaints received remained fairly constant in recent years. However, many files are increasingly of a complex nature. In addition, more complainants are asking for a reconsideration of the decision in a given case and, in some instances, seeking judicial review of the Council's decisions.

The nature of the complaint determines how it is handled. Some complaints are very serious and raise issues of courtroom ethics, judicial bias, or conduct that brings the judiciary into disrepute. In all cases, it is important to ensure that the public can continue to have confidence in its judges. The following complaint concerned a judge convicted of impaired driving.



Complaint

The Chief Justice of a superior court filed a complaint against a judge who was convicted of an impaired driving offence. He viewed the judge's conduct as inappropriate and unbecoming the honour and dignity of the judge's office.

Review

The judge unreservedly acknowledged that his conduct was inappropriate and that it may have tarnished the judiciary's reputation. He pleaded guilty to the criminal charges, accepted the recommended sentence without any question, and took steps to ensure that he would not re-offend. Given that the judge was a respected jurist who enjoyed the full confidence of his peers and other legal professionals, the Vice-chairperson of the Judicial Conduct Committee determined that the judge would still be able to perform his functions fairly and impartially.

People who are dissatisfied with the outcome of their case before the Court sometimes make a complaint to the Council. While the Council has authority to review judicial conduct issues, it does not have authority to review judicial decisions, findings of fact and law by judges, or how the judges came to their conclusions. That is a matter for Courts of Appeal.

The Council's limited jurisdiction in such matters is described in the following complaint.



Complaint

A litigant complained that the judge would not hear evidence of her illness as part of divorce proceedings. She also said that the judge did not take into account the fact that she had been recently abused and had to go to a women's shelter. She said the judge became very angry and "stormed out" of the courtroom, and came back to apologize for the outburst but also to "slam her" with a court order.

Review

A review was made of all the material, including a transcript of the proceedings. The judge was also asked to provide comments about the complaint. This review showed that the judge was only involved in a pre-trial conference, which does not decide any of the issues in question, but is intended to ensure the matter is ready for a trial. The judge's role is then to set a date for the trial, not to decide on the evidence. Regarding the complainant's illness, and the abuse she suffered, this was a matter to be addressed at the trial. Regarding the allegation of anger, the judge acknowledged that he had become "cross" with the complainant's lawyer. He explained that this was the lawyer's third appearance in Court that day, and that the lawyer had been uncooperative before him. The judge noted that, on that day, he had apologized to the lawyer for his tone of voice. The judge apologized again by letter to the complainant. The decision on the complaint was that the judge acted appropriately in regard to the evidence raised by the complainant, which was a matter to be heard at the trial. While the judge could have been more patient in dealing with the lawyer, no further action was taken in light of the judge's apology and the lawyer's own conduct at the time.

Some complaints raise allegations of bias and the judge's failure to conduct an impartial hearing. There is no question that a litigant has the right to be heard by an independent and impartial judge. The Supreme Court of Canada has said that there is a presumption that all judges will abide by their oath of office and always act impartially. The party who alleges bias has the responsibility to demonstrate that there is bias, real or apparent. It is also the party's responsibility to raise issues of conflict and ask the judge to recuse himself or herself from the proceedings. The following two complaints are about unsupported allegations of bias.



Complaint

The complainant alleged that several judges committed a series of inappropriate actions, including negligence, bias, obstruction of justice, fraud, and breaches of the *Charter of Rights and Freedoms*. The complainant said that three of the judges and one of the parties named in the case were in a conflict of interest due to membership in the same Association. As one of the judges was a former counsel with the Attorney General's office, it was alleged that he was in a conflict because the former Attorney General was a named respondent in the action. The complainant also said that the chief justices breached their obligation to assign competent, impartial judges to hear the case. The case involved two chief justices, who are therefore members of Council.

Review

Ethical Principles for Judges, published by the Canadian Judicial Council, sets out principles to be considered by judges regarding issues of bias or prejudgment. On this point, it suggests that judges should disqualify themselves in cases in which they do not think they will be able to act impartially. However, the decision on whether or not to recuse from a case rests entirely with the judge. Only if a judge acts in bad faith, or wilfully conceals relevant information, can a matter of recusal become a matter of judicial conduct. The fact that judges and parties belong to the same Association does not preclude a judge from presiding, given the strong presumption in favour of judicial impartiality. There was no evidence to support the allegations of bias or prejudgement. Therefore, the allegation against the chief justices was also without foundation. Because the case involved two members of Council, the complaint and the proposed reply were reviewed by an outside lawyer for comment. The outside lawyer agreed with the decision to close the file without further investigation.



Complaint

The complainant alleged that the judge's spouse was a personal friend of her own spouse and was influencing her lawyer and the divorce proceedings (a pre-trial conference). The complainant also said that the judge acted in "bad faith" and committed "perjury" during the proceedings.

Review

The judge was asked to comment the allegations. The review showed that, at the time of the hearing before the judge, the complainant had not indicated any concerns about the relationship between the judge's spouse and the lawyer. More importantly, the judge explained that neither she nor her spouse had any kind of family, personal, professional or financial relationship of any kind with the opposing lawyer. The judge provided information to support this. The chairperson of the conduct committee found that the other allegations of the complainant were far-fetched and that there was not a shred of evidence to suggest bad faith on the part of the judge involved. The complaint was dismissed.

The significance of impartial hearings and the scope of the Council's jurisdiction are highlighted in the case of an elderly woman who was tried for contempt of court and sentenced to imprisonment.



Complaint

Complaints were made against a judge who heard a trial for contempt of court and sentenced an elderly aboriginal woman to imprisonment. The woman was in poor health and died soon after. At trial, the woman had declined to present her case and make submissions, claiming that the court did not have jurisdiction in light of the *Royal Proclamation* of 1763. The judge was not aware of the aboriginal woman's fragile health. At a subsequent trial in a related matter, the judge was advised that the woman, now in prison, was in failing health. One party informed the court that they had previously sent a letter to the judge about this matter. The complainants requested a review of the judge's decision, and an inquiry into the prison conditions.

Review

After reviewing the entire proceedings that gave rise to this complaint, the conduct committee determined that the complaints were, in fact, about the judge's decision. The letter sent to the judge regarding the aboriginal woman's fragile health was in fact never seen by the judge. The vice-chairperson of the conduct committee found that this was normal. Judges cannot accept communications from individual litigants outside of the courtroom, as this would constitute a serious breach of the right to an impartial hearing. Communications must be made in open court. For this reason, the judge was not made aware of any such correspondence, and was not informed of the accused's health issues. Once the judge had pronounced her sentence, her role in that case was effectively ended. As there was no issue of conduct, the complaint was dismissed. One of the complainants expressed concern about how his complaint was handled, saying that there was not a proper review of the allegations. The chairperson of the conduct committee conducted a new review and decided that the case had been properly dismissed. On the issue of prison conditions, he pointed out that the conditions of a detention centre and its health care services are not within the mandate of the Council to review.

Canadians expect the highest standards of civility on the part of judges. Court proceedings are serious matters which often affect individual rights and freedoms. Civility and decorum promote respect for both the legal process and for the people who are affected by judicial decisions.

The following complaint follows an incident of incivility in the courtroom.



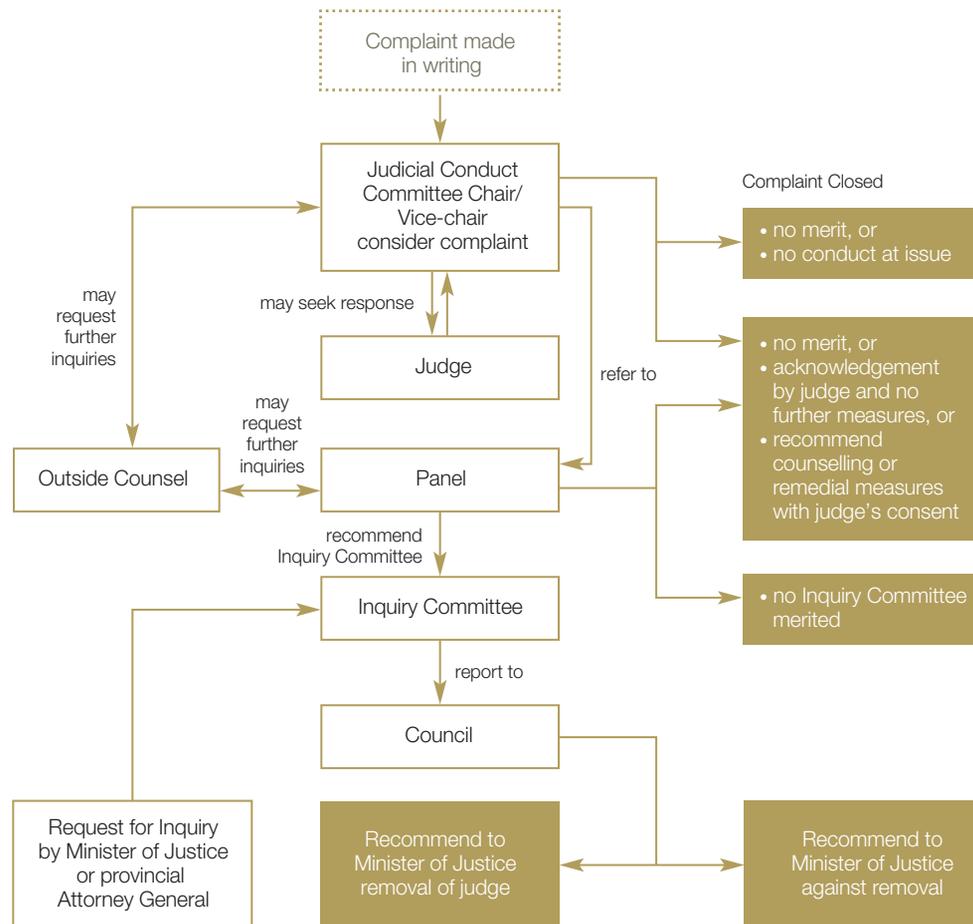
Complaint

A judge used coarse and offensive language during criminal proceedings, while having an exchange with a lawyer about an accused drug dealer. The language used by the judge was widely reported in the media. Many people complained to the Council, indicating they were offended by the judge's conduct.

Review

The judge, shortly after the incident, made a public apology. In his comments to the Council about the complaints received, he indicated that he was truly sorry about his use of language and committed to never making such an error again. The Chairperson of the Judicial Conduct Committee expressed his concerns to the judge. He said that the language used was offensive, that it brought discredit on the judiciary and showed disrespect. He said that judges must lead by example in fostering respect for the legal process. However, given the full public apology and promise that this would not happen again, no further action was taken.

Complaints process



Statistics on complaints

10-Year Overview

	New files created	Carried over from previous year	Total caseload	Closed	Carried into new year
1998-99	145	53	198	162	36
1999-00	169	36	205	171	34
2000-01	150	34	184	155	29
2001-02	180	29	209	174	35
2002-03	170	35	205	173	32
2003-04	138	32	170	122	45
2004-05	149	45	194	145	49
2005-06	176	49	225	155	70
2006-07	193	70	263	219	44
2007-08	189	44	233	205	28

Canadian Judicial Council

Statement of expenditures

Fiscal Year 2007-2008

Salaries and Benefits	\$ 636,525
Transportation and Communications	\$ 130,664
Information	\$ 79,124
Professional and Special Services	\$ 751,326
Rentals	\$ 18,581
Purchased Repair and Upkeep	\$ 2,616
Utilities, Materials and Supplies	\$ 11,700
Construction and Acquisition of Machinery and Equipment	\$ 28,064
TOTAL	\$ 1,658,600