

# Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

**Consolidation Period:** From May 14, 2009 to December 14, 2009.

**This is the most current consolidation of this law available on e-Laws.**

## **Notice of additional information:**

The following amendments have been enacted and will be incorporated in a subsequent consolidation:

*Good Government Act, 2009*, S.O. 2009, c. 33, Sched. 2, s. 20, enacted December 15, 2009.

*Good Government Act, 2009*, S.O. 2009, c. 33, Sched. 6, s. 50, enacted December 15, 2009.

See Source Law for text of amendments.

There may be more recent events that are not included in this notice.

**Note: January 1, 2010 has been named by proclamation as the day on which the amendments made by 2006, c. 21, Sched. A, s. 8 come into force.**

Last amendment: 2009, c. 11, ss. 19, 20.

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## Definitions

[1.](#) [\(1\)](#) In this Act,

“action” means a civil proceeding that is not an application and includes a proceeding commenced by,

- (a) claim,
- (b) statement of claim,
- (c) notice of action,
- (d) counterclaim,
- (e) crossclaim,
- (f) third or subsequent party claim, or
- (g) divorce petition or counterpetition; (“action”)

“application” means a civil proceeding that is commenced by notice of application or by application; (“requête”)

“defendant” means a person against whom an action is commenced; (“défendeur”)

“hearing” includes a trial; (“audience”)

“motion” means a motion in a proceeding or an intended proceeding; (“motion”)

“order” includes a judgment or decree; (“ordonnance”)

“plaintiff” means a person who commences an action; (“demandeur”)

“region” means a region prescribed under section 79.1. (“région”) R.S.O. 1990, c. C.43, s. 1; 1993, c. 27, Sched.; 2006, c. 21, Sched. A, s. 1.

## Application to other Acts

[\(2\)](#) This section applies to all other Acts affecting or relating to the courts and the administration of justice. 2006, c. 21, Sched. F, s. 106.

## References to former names of courts

[1.1\(1\)](#) A reference in an Act, rule or regulation to a court or official by the former name of that court or the former title of that official set out in Column 1 of the following table or by a shortened version of that name or title shall be deemed, unless a contrary intention appears, to be a reference to the new name of that court or the new title of that official set out in Column 2.

Column 1 / Colonne 1	Column 2 / Colonne 2
Former names and titles / Anciennes appellations et anciens titres	New names and titles / Nouvelles appellations et nouveaux titres

Ontario Court of Justice	Court of Ontario
Cour de justice de l'Ontario	Cour de l'Ontario
Ontario Court (General Division)	Superior Court of Justice
Cour de l'Ontario (Division générale)	Cour supérieure de justice
Ontario Court (Provincial Division)	Ontario Court of Justice
Cour de l'Ontario (Division provinciale)	Cour de justice de l'Ontario
Chief Justice of the Ontario Court of Justice	Chief Justice of the Superior Court of Justice
Juge en chef de la Cour de justice de l'Ontario	Juge en chef de la Cour supérieure de justice
Associate Chief Justice of the Ontario Court of Justice	Associate Chief Justice of the Superior Court of Justice
Juge en chef adjoint de la Cour de justice de l'Ontario	Juge en chef adjoint de la Cour supérieure de justice
Associate Chief Justice (Family Court) of the Ontario Court of Justice	Associate Chief Justice (Family Court) of the Superior Court of Justice
Juge en chef adjoint (Cour de la famille) de la Cour de justice de l'Ontario	Juge en chef adjoint (Cour de la famille) de la Cour supérieure de justice
Chief Judge of the Ontario Court (Provincial Division)	Chief Justice of the Ontario Court of Justice
Juge en chef de la Cour de l'Ontario (Division provinciale)	Juge en chef de la Cour de justice de l'Ontario
Associate Chief Judge of the Ontario Court (Provincial Division)	Associate Chief Justice of the Ontario Court of Justice
Juge en chef adjoint de la Cour de l'Ontario (Division provinciale)	Juge en chef adjoint de la Cour de justice de l'Ontario
Associate Chief Judge-Co-ordinator of Justices of the Peace	Associate Chief Justice Co-ordinator of Justices of the Peace
Juge en chef adjoint-coordonnateur des juges de paix	Juge en chef adjoint et coordonnateur des juges de paix
Accountant of the Ontario Court	Accountant of the Superior Court of Justice
Comptable de la Cour de l'Ontario	Comptable de la Cour supérieure de justice

**Same**

[\(2\)](#) Subsection (1) does not apply to references to the Ontario Court of Justice enacted or made on or after the date this section comes into force. 1996, c. 25, s. 9 (1).

## PART I COURT OF APPEAL FOR ONTARIO

### **Court of Appeal**

[2.\(1\)](#) The Court of Appeal for Ontario is continued as a superior court of record under the name Court of Appeal for Ontario in English and Cour d'appel de l'Ontario in French.

### **Idem**

[\(2\)](#) The Court of Appeal has the jurisdiction conferred on it by this or any other Act, and in the exercise of its jurisdiction has all the powers historically exercised by the Court of Appeal for Ontario. R.S.O. 1990, c. C.43, s. 2.

### **Composition of court**

[3.\(1\)](#) The Court of Appeal shall consist of,

- (a) the Chief Justice of Ontario, who shall be president of the court;

- (b) the Associate Chief Justice of Ontario; and
- (c) fourteen other judges.

### **Idem**

[\(2\)](#) The Lieutenant Governor in Council may by regulation increase the number of judges of the Court of Appeal who are in addition to the Chief Justice and the Associate Chief Justice.

### **Additional judges**

[\(3\)](#) There shall be such additional offices of judge of the Court of Appeal as are from time to time required, to be held by Chief Justices of Ontario and Associate Chief Justices of Ontario who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Court of Appeal.

### **Supernumerary judges**

[\(4\)](#) There shall be such additional offices of supernumerary judge of the Court of Appeal as are from time to time required, to be held by judges of the Court of Appeal who have elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of the court. R.S.O. 1990, c. C.43, s. 3.

### **Assignment of judges from Superior Court of Justice**

[4.\(1\)](#) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the Superior Court of Justice, may assign a judge of the Superior Court of Justice to perform the work of a judge of the Court of Appeal. R.S.O. 1990, c. C.43, s. 4 (1); 1996, c. 25, s. 9 (14, 17).

### **Superior Court of Justice judges**

[\(2\)](#) A judge of the Superior Court of Justice is, by virtue of his or her office, a judge of the Court of Appeal and has all the jurisdiction, power and authority of a judge of the Court of Appeal. R.S.O. 1990, c. C.43, s. 4 (2); 1996, c. 25, s. 9 (17).

### **Powers and duties of Chief Justice**

[5.\(1\)](#) The Chief Justice of Ontario has general supervision and direction over the sittings of the Court of Appeal and the assignment of the judicial duties of the court.

### **Absence of Chief Justice**

[\(2\)](#) If the Chief Justice of Ontario is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by the Associate Chief Justice of Ontario.

### **Absence of Associate Chief Justice**

[\(3\)](#) If the Chief Justice of Ontario and the Associate Chief Justice of Ontario are both absent from Ontario or for any reason unable to act, the powers and duties of the Chief Justice shall be exercised and performed by a judge of the Court of Appeal designated by the Chief Justice or Associate Chief Justice. R.S.O. 1990, c. C.43, s. 5.

### **Court of Appeal jurisdiction**

[6.\(1\)](#) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;
- (b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;
- (c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 6 (1); 1994, c. 12, s. 1; 1996, c. 25, s. 9 (17).

### **Combining of appeals from other courts**

[\(2\)](#) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal. R.S.O. 1990, c. C.43, s. 6 (2); 1996, c. 25, s. 9 (17).

### **Idem**

[\(3\)](#) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2). R.S.O. 1990, c. C.43, s. 6 (3); 1996, c. 25, s. 9 (17).

### **Composition of court**

#### **Hearings**

[7.\(1\)](#) A proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together, and always by an uneven number of judges.

#### **Motions**

[\(2\)](#) A motion in the Court of Appeal and an appeal under clause 6 (1) (c) shall be heard and determined by one judge.

### **Idem**

[\(3\)](#) Subsection (2) does not apply to a motion for leave to appeal, a motion to quash an appeal or any other motion that is specified by the rules of court.

### **Idem**

[\(4\)](#) A judge assigned to hear and determine a motion may adjourn the motion to a panel of the Court of Appeal.

### **Idem**

[\(5\)](#) A panel of the Court of Appeal may, on motion, set aside or vary the decision of a judge who hears and determines a motion. R.S.O. 1990, c. C.43, s. 7.

### **References to Court of Appeal**

[8. \(1\)](#) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration. R.S.O. 1990, c. C.43, s. 8 (1).



**Opinion of court**

[\(2\)](#) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons for it, and any judge who differs from the opinion may certify his or her opinion and reasons in the same manner. R.S.O. 1990, c. C.43, s. 8 (2).

**Submissions by Attorney General**

[\(3\)](#) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (3).

**Idem**

[\(4\)](#) The Attorney General of Canada shall be notified and is entitled to make submissions to the court if the question relates to the constitutional validity or constitutional applicability of an Act, or of a regulation or by-law made under an Act, of the Parliament of Canada or the Legislature. R.S.O. 1990, c. C.43, s. 8 (4).

**Notice**

[\(5\)](#) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (5).

**Appointment of counsel**

[\(6\)](#) If an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest and the reasonable expenses of counsel shall be paid by the Minister of Finance. R.S.O. 1990, c. C.43, s. 8 (6); 2006, c. 21, Sched. A, s. 2.

**Appeal**

[\(7\)](#) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies from it as from a judgment in an action. R.S.O. 1990, c. C.43, s. 8 (7).

**Meeting of judges**

[9.\(1\)](#) The judges of the Court of Appeal shall meet at least once in each year, on a day fixed by the Chief Justice of Ontario, in order to consider this Act, the rules of court and the administration of justice generally.

**Idem**

[\(2\)](#) The judges shall report their recommendations to the Attorney General. R.S.O. 1990, c. C.43, s. 9.

## **PART II COURT OF ONTARIO**

**Court of Ontario**

[10.\(1\)](#) The Ontario Court of Justice is continued under the name Court of Ontario in English and Cour de l'Ontario in French.

## **Divisions**

[\(2\)](#) The Court of Ontario shall consist of two divisions, the Superior Court of Justice (formerly the Ontario Court (General Division)) and the Ontario Court of Justice (formerly the Ontario Court (Provincial Division)).

## **President**

[\(3\)](#) The person who is the Chief Justice of the Superior Court of Justice shall also be the president of the Court of Ontario. 1996, c. 25, s. 9 (2).

## **SUPERIOR COURT OF JUSTICE**

### **Superior Court of Justice**

[11.\(1\)](#) The Ontario Court (General Division) is continued as a superior court of record under the name Superior Court of Justice in English and Cour supérieure de justice in French. 1996, c. 25, s. 9 (3).

### **Idem**

[\(2\)](#) The Superior Court of Justice has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario. R.S.O. 1990, c. C.43, s. 11 (2); 1996, c. 25, s. 9 (17).

### **Composition of Superior Court of Justice**

[12.\(1\)](#) The Superior Court of Justice consists of,

- (a) the Chief Justice of the Superior Court of Justice, who shall be president of the Superior Court of Justice;
- (b) the Associate Chief Justice of the Superior Court of Justice;
- (c) a regional senior judge of the Superior Court of Justice for each region;
- (d) the Senior Judge of the Family Court; and
- (e) such number of judges of the Superior Court of Justice as is fixed under clause 53 (1) (a). 1998, c. 20, Sched. A, s. 22 (2).

[\(1.1\)](#) Repealed: 1998, c. 20, Sched. A, s. 1 (2).

[\(1.2\)](#) Repealed: 1998, c. 20, Sched. A, s. 1 (2).

[\(1.3\)](#) Repealed: 1998, c. 20, Sched. A, s. 1 (2).

### **Additional judges**

[\(2\)](#) There shall be such additional offices of judge of the Superior Court of Justice as are from time to time required, to be held by Chief Justices of the Superior Court of Justice, Associate Chief Justices of the Superior Court of Justice and regional senior judges of the Superior Court of Justice who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 12 (2); 1996, c. 25, s. 9 (14, 17).

### **Supernumerary judges**

[\(3\)](#) There shall be such additional offices of supernumerary judge of the Superior Court of Justice as are from time to time required, to be held by judges of the Superior Court of Justice who have elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of that court. R.S.O. 1990, c. C.43, s. 12 (3); 1996, c. 25, s. 9 (15, 17).

### **Assignment of judges from Court of Appeal**

[13.\(1\)](#) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the Superior Court of Justice, may assign a judge of the Court of Appeal to perform the work of a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 13 (1); 1996, c. 25, s. 9 (14, 17).

### **Court of Appeal judges**

[\(2\)](#) A judge of the Court of Appeal is, by virtue of his or her office, a judge of the Superior Court of Justice and has all the jurisdiction, power and authority of a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 13 (2); 1996, c. 25, s. 9 (17).

### **Chief Justice, Associate Chief Justice and regional senior judges of Superior Court of Justice; Senior Judge of Family Court**

#### **Powers and duties of Chief Justice**

[14.\(1\)](#) The Chief Justice of the Superior Court of Justice shall direct and supervise the sittings of the Superior Court of Justice and the assignment of its judicial duties.

#### **Regional senior judges**

[\(2\)](#) A regional senior judge of the Superior Court of Justice shall, subject to the authority of the Chief Justice of the Superior Court of Justice, exercise the powers and perform the duties of the Chief Justice in respect of the Superior Court of Justice in his or her region.

#### **Delegation**

[\(3\)](#) A regional senior judge of the Superior Court of Justice may delegate to a judge of the Superior Court of Justice in his or her region the authority to exercise specified functions.

#### **Absence of Chief Justice**

[\(4\)](#) If the Chief Justice of the Superior Court of Justice is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by the Associate Chief Justice of the Superior Court of Justice.

#### **Senior Judge of Family Court**

[\(5\)](#) The Senior Judge of the Family Court shall,

- (a) advise the Chief Justice of the Superior Court of Justice with regard to,
  - (i) the education of judges sitting in the Family Court,
  - (ii) practice and procedure, including mediation, in the Family Court,

- (iii) the expansion of the Family Court, and
- (iv) the expenditure of funds budgeted for the Family Court;
- (b) meet from time to time with the community liaison committees and community resources committees established under sections 21.13 and 21.14; and
- (c) perform other duties relating to the Family Court assigned to the Senior Judge of the Family Court by the Chief Justice.

### **Absence of regional senior judge or Senior Judge of Family Court**

[\(6\)](#) The powers and duties of a regional senior judge of the Superior Court of Justice and the Senior Judge of the Family Court when he or she is absent from Ontario or is for any reason unable to act shall be exercised and performed by a judge of the Superior Court of Justice designated by the Chief Justice of the Superior Court of Justice.

### **Meetings with Associate Chief Justice, regional senior judges and Senior Judge of Family Court**

[\(7\)](#) The Chief Justice of the Superior Court of Justice may hold meetings with the Associate Chief Justice, the regional senior judges and the Senior Judge of the Family Court in order to consider any matters concerning sittings of the Superior Court of Justice and the assignment of its judicial duties. 1998, c. 20, Sched. A, s. 22 (3).

### **Judges assigned to regions**

[15.\(1\)](#) The Chief Justice of the Superior Court of Justice shall assign every judge of the Superior Court of Justice to a region and may re-assign a judge from one region to another. R.S.O. 1990, c. C.43, s. 15 (1); 1996, c. 25, s. 9 (14, 17).

### **At least one judge in each county**

[\(2\)](#) There shall be at least one judge of the Superior Court of Justice assigned to each county and district. R.S.O. 1990, c. C.43, s. 15 (2); 1996, c. 25, s. 9 (17).

### **High Court and District Court judges**

[\(3\)](#) No judge of the Superior Court of Justice who was a judge of the High Court of Justice or the District Court of Ontario before the 1st day of September, 1990 shall be assigned without his or her consent to a region other than the region in which he or she resided immediately before that day. R.S.O. 1990, c. C.43, s. 15 (3); 1996, c. 25, s. 9 (17).

### **Idem**

[\(4\)](#) Subsections (1) to (3) do not prevent the temporary assignment of a judge to a location anywhere in Ontario. R.S.O. 1990, c. C.43, s. 15 (4).

### **Composition of court for hearings**

[16.](#) A proceeding in the Superior Court of Justice shall be heard and determined by one judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 16; 1994, c. 12, s. 4; 1996, c. 25, s. 9 (16, 17).

## **Appeals to Superior Court of Justice**

**17.** An appeal lies to the Superior Court of Justice from,

- (a) an interlocutory order of a master or case management master;
- (b) a certificate of assessment of costs issued in a proceeding in the Superior Court of Justice, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 17; 1996, c. 25, ss. 1 (1), 9 (17).

### **DIVISIONAL COURT**

## **Divisional Court**

**18.(1)** The branch of the Superior Court of Justice known as the Divisional Court is continued under the name Divisional Court in English and Cour divisionnaire in French. R.S.O. 1990, c. C.43, s. 18 (1); 1996, c. 25, s. 9 (17).

## **Same**

**(2)** The Divisional Court consists of the Chief Justice of the Superior Court of Justice, who is president of the Divisional Court, the associate chief justice and such other judges as the Chief Justice designates from time to time. 1994, c. 12, s. 5; 1996, c. 25, s. 9 (14); 1998, c. 20, Sched. A, s. 3.

## **Jurisdiction of judges**

**(3)** Every judge of the Superior Court of Justice is also a judge of the Divisional Court. R.S.O. 1990, c. C.43, s. 18 (3); 1996, c. 25, s. 9 (17).

## **Divisional Court jurisdiction**

**19. (1)** An appeal lies to the Divisional Court from,

- (a) a final order of a judge of the Superior Court of Justice, as described in subsections (1.1) and (1.2);
- (b) an interlocutory order of a judge of the Superior Court of Justice, with leave as provided in the rules of court;
- (c) a final order of a master or case management master. 2006, c. 21, Sched. A, s. 3.

## **Same**

**(1.1)** If the notice of appeal is filed before the day section 3 of Schedule A to the *Access to Justice Act, 2006* comes into force, clause (1) (a) applies in respect of a final order,

- (a) for a single payment of not more than \$25,000, exclusive of costs;
- (b) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the 12 months commencing on the date the first payment is due under the order;
- (c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or

- (d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge or jury indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b). 2006, c. 21, Sched. A, s. 3.

### **Same**

[\(1.2\)](#) If the notice of appeal is filed on or after the day section 3 of Schedule A to the *Access to Justice Act, 2006* comes into force, clause (1) (a) applies in respect of a final order,

- (a) for a single payment of not more than \$50,000, exclusive of costs;
- (b) for periodic payments that amount to not more than \$50,000, exclusive of costs, in the 12 months commencing on the date the first payment is due under the order;
- (c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or
- (d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge or jury indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b). 2006, c. 21, Sched. A, s. 3.

### **Combining of appeals from Superior Court of Justice**

[\(2\)](#) The Divisional Court has jurisdiction to hear and determine an appeal that lies to the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Divisional Court. R.S.O. 1990, c. C.43, s. 19 (2); 1996, c. 25, s. 9 (17).

### **Idem**

[\(3\)](#) The Divisional Court may, on motion, transfer an appeal that has already been commenced in the Superior Court of Justice to the Divisional Court for the purpose of subsection (2). R.S.O. 1990, c. C.43, s. 19 (3); 1996, c. 25, s. 9 (17).

### **Appeal from interlocutory orders**

[\(4\)](#) No appeal lies from an interlocutory order of a judge of the Superior Court of Justice made on an appeal from an interlocutory order of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 19 (4); 1996, c. 25, s. 9 (17, 18).

### **Place for hearing**

#### **Appeals**

[20.\(1\)](#) An appeal to the Divisional Court shall be heard in the region where the hearing or other process that led to the decision appealed from took place, unless the parties agree otherwise or the Chief Justice of the Superior Court of Justice orders otherwise because it is necessary to do so in the interests of justice. 1994, c. 12, s. 7; 1996, c. 25, s. 9 (14).

**Other proceedings**

(2) Any other proceeding in the Divisional Court may be brought in any region. R.S.O. 1990, c. C.43, s. 20 (2).

**Composition of court for hearings**

21.1 (1) A proceeding in the Divisional Court shall be heard and determined by three judges sitting together. R.S.O. 1990, c. C.43, s. 21 (1).

**Idem**

(2) A proceeding in the Divisional Court may be heard and determined by one judge where the proceeding,

- (a) is an appeal under clause 19 (1) (c);
- (b) is an appeal under section 31 from a provincial judge or a deputy judge presiding over the Small Claims Court; or
- (c) is in a matter that the Chief Justice of the Superior Court of Justice or a judge designated by the Chief Justice is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard and determined by one judge. R.S.O. 1990, c. C.43, s. 21 (2); 1996, c. 25, s. 9 (14).

**Idem, motions**

(3) A motion in the Divisional Court shall be heard and determined by one judge, unless otherwise provided by the rules of court.

**Idem**

(4) A judge assigned to hear and determine a motion may adjourn it to a panel of the Divisional Court.

**Idem**

(5) A panel of the Divisional Court may, on motion, set aside or vary the decision of a judge who hears and determines a motion. R.S.O. 1990, c. C.43, s. 21 (3-5).

**FAMILY COURT****Family Court**

21.1 (1) There shall be a branch of the Superior Court of Justice known as the Family Court in English and Cour de la famille in French. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (17).

**Unified Family Court**

(2) The Unified Family Court is amalgamated with and continued as part of the Family Court. 1994, c. 12, s. 8.

**Same**

(3) The Family Court has the jurisdiction conferred on it by this or any other Act. 1994, c. 12, s. 8.

## **Jurisdiction**

[\(4\)](#) The Family Court has jurisdiction in the City of Hamilton and in the additional areas named in accordance with subsection (5). 1994, c. 12, s. 8; 2002, c. 17, Sched. F, Table.

## **Proclamation**

[\(5\)](#) The Lieutenant Governor in Council may, by proclamation, name additional areas in which the Family Court has jurisdiction. 1994, c. 12, s. 8.

## **Composition of Family Court**

[21.2\(1\)](#) The Family Court consists of,

- (a) the Chief Justice of the Superior Court of Justice, who shall be president of the Family Court;
- (b) the Associate Chief Justice;
- (c) the Senior Judge of the Family Court;
- (d) the five judges and one supernumerary judge of the Superior Court of Justice assigned to the Unified Family Court on June 30, 1993;
- (e) the judges of the Superior Court of Justice appointed to be members of the Family Court, the number of whom is fixed by regulation under clause 53 (1) (a.1);
- (f) the judges of the Superior Court of Justice assigned to the Family Court by the Chief Justice from time to time. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (14, 17); 1998, c. 20, Sched. A, s. 4 (1).

## **Supernumerary judges**

[\(2\)](#) There shall be such additional offices of supernumerary judge of the Superior Court of Justice and member of the Family Court as are from time to time required, to be held by judges referred to in clauses (1) (d) and (e) who have elected under the *Judges Act* (Canada) to hold office only as supernumerary judges. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (17).

## **Jurisdiction of judges**

[\(3\)](#) Every judge of the Superior Court of Justice is also a judge of the Family Court. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (17).

## **Temporary assignments**

[\(4\)](#) The Chief Justice of the Superior Court of Justice may, from time to time, temporarily assign a judge referred to in clause (1) (d) or (e) to hear matters outside the jurisdiction of the Family Court. 1998, c. 20, Sched. A, s. 22 (4).

[\(5\)](#) Repealed: 1998, c. 20, Sched. A, s. 4 (2).

[\(6\)](#) Repealed: 1998, c. 20, Sched. A, s. 4 (2).



### **Transitional measure**

**21.3(1)** All proceedings referred to in the Schedule to section 21.8 or in section 21.12 that are pending in the Superior Court of Justice or the Ontario Court of Justice in an area named under subsection 21.1 (5) as an area in which the Family Court has jurisdiction shall be transferred to and continued in the Family Court.

### **Same**

**(2)** If a judge sitting in the Ontario Court of Justice is seized of a matter in a proceeding that is the subject of a transfer under subsection (1), the judge may complete that matter. 1998, c. 20, Sched. A, s. 22 (5).

**21.4** Repealed: 1998, c. 20, Sched. A, s. 5.

**21.5** Repealed: 1998, c. 20, Sched. A, s. 5.

**21.6** Repealed: 1998, c. 20, Sched. A, s. 5.

### **Composition of court for hearings**

**21.7** A proceeding in the Family Court shall be heard and determined by one judge, sitting without a jury. 1994, c. 12, s. 8.

### **Proceedings in Family Court**

**21.8 (1)** In the parts of Ontario where the Family Court has jurisdiction, proceedings referred to in the Schedule to this section, except appeals and prosecutions, shall be commenced, heard and determined in the Family Court. 1994, c. 12, s. 8.

### **Motions for interlocutory relief**

**(2)** A motion for interim or other interlocutory relief in a proceeding referred to in the Schedule that is required or permitted by the rules or an order of a court to be heard and determined in a part of Ontario where the Family Court has jurisdiction shall be heard and determined in the Family Court. 1994, c. 12, s. 8.

### **Same**

**(3)** A motion for interim or other interlocutory relief in a proceeding referred to in the Schedule that is required or permitted by the rules or an order of the Family Court to be heard and determined in a part of Ontario where the Family Court does not have jurisdiction shall be heard and determined in the court that would have had jurisdiction if the proceeding had been commenced in that part of Ontario. 1994, c. 12, s. 8.

## **SCHEDULE**

1. Proceedings under the following statutory provisions:

*Change of Name Act*

*Child and Family Services Act*, Parts III, VI and VII

*Children's Law Reform Act*, except sections 59 and 60

*Divorce Act* (Canada)

*Family Law Act*, except Part V

*Family Responsibility and Support Arrears Enforcement Act, 1996*

*Interjurisdictional Support Orders Act, 2002*

*Marriage Act*, section 6.

2. Proceedings for the interpretation, enforcement or variation of a marriage contract, cohabitation agreement, separation agreement, paternity agreement, family arbitration agreement or family arbitration award.
3. Proceedings for relief by way of constructive or resulting trust or a monetary award as compensation for unjust enrichment between persons who have cohabited.
4. Proceedings for annulment of a marriage or for a declaration of validity or invalidity of a marriage.
5. Appeals of family arbitration awards under the *Arbitration Act, 1991*.

1994, c. 12, s. 8; 1996, c. 31, s. 65; 1999, c. 6, s. 18 (1); 2002, c. 13, s. 56; 2002, c. 14, Sched., s. 9; 2005, c. 5, s. 17 (1); 2006, c. 1, s. 4.

### **Other jurisdiction**

**21.9** Where a proceeding referred to in the Schedule to section 21.8 is commenced in the Family Court and is combined with a related matter that is in the judge's jurisdiction but is not referred to in the Schedule, the court may, with leave of the judge, hear and determine the combined matters. 1994, c. 12, s. 8.

### **Certain appeals**

**21.9.1** A statutory provision referred to in the Schedule to section 21.8 or in section 21.12 that provides for appeals from decisions of the Ontario Court of Justice to the Superior Court of Justice shall be deemed to provide for appeals from decisions of the Family Court to the Divisional Court. 1996, c. 25, ss. 1 (4), 9 (17, 18); 1998, c. 20, Sched. A, s. 6.

### **Orders of predecessor court**

**21.10(1)** The Family Court may hear and determine an application under an Act to discharge, vary or suspend an order made by the Provincial Court (Family Division), the Ontario Court of Justice, the Superior Court of Justice or the Unified Family Court. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (17, 18).

### **Same**

**(2)** The Family Court may enforce orders made by the Provincial Court (Family Division), the Ontario Court of Justice, the Superior Court of Justice or the Unified Family Court. 1994, c. 12, s. 8; 1996, c. 25, s. 9 (17, 18).

### **Place where proceeding commenced**

**21.11(1)** Proceedings referred to in the Schedule to section 21.8 may be commenced in the Family Court if the applicant or the respondent resides in a part of Ontario where the Family Court has jurisdiction.

### **Custody and access**

(2) An application under Part III of the *Children's Law Reform Act* in respect of a child who ordinarily resides in a part of Ontario where the Family Court has jurisdiction may be commenced in the Family Court in that part of Ontario.

### **Transfer to other court**

(3) A judge presiding over the Family Court may, on motion, order that a proceeding commenced in the Family Court be transferred to the appropriate court in a place where the Family Court does not have jurisdiction if, in the judge's opinion, the preponderance of convenience favours having the matter dealt with by that court in that place.

### **Transfer from other court**

(4) A judge of a court having jurisdiction in a proceeding referred to in the Schedule to section 21.8 in an area where the Family Court does not have jurisdiction may, on motion, order that the proceeding be transferred to the Family Court in a particular place if, in the judge's opinion, the preponderance of convenience favours having the matter dealt with by that court in that place.

### **Directions**

(5) A judge making an order under subsection (3) or (4) may give such directions for the transfer as are considered just. 1994, c. 12, s. 8.

### **Enforcement of orders**

**21.12(1)** A judge presiding over the Family Court shall be deemed to be a judge of the Ontario Court of Justice for the purpose of prosecutions under Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act*, the *Children's Law Reform Act*, the *Family Law Act* and the *Family Responsibility and Support Arrears Enforcement Act*, 1996. 1998, c. 20, Sched. A, s. 22 (6).

### **Same**

(2) The Family Court shall continue as a youth court for the purposes of the *Young Offenders Act* (Canada) with respect to all proceedings that were commenced in the Family Court under that Act before the day the *Courts of Justice Amendment Act (Improved Family Court)*, 1998 is proclaimed in force.

### **Repeal**

(3) Subsection (2) is repealed on a day to be named by proclamation of the Lieutenant Governor. 1998, c. 20, Sched. A, s. 7.

### **Community liaison committee**

**21.13(1)** There shall be one or more community liaison committees, as recommended by the Chief Justice of the Superior Court of Justice, or by a person he or she designates for the purpose, and approved by the Attorney General, for each area in which the Family Court has jurisdiction.

### **Composition**

[\(2\)](#)A community liaison committee consists of judges, lawyers, persons employed in court administration and other residents of the community, appointed by the Chief Justice of the Superior Court of Justice or by a person he or she designates for the purpose. 1998, c. 20, Sched. A, s. 22 (7).

### **Function**

[\(3\)](#)A community liaison committee shall consider matters affecting the general operations of the court in the municipality and make recommendations to the appropriate authorities. 1994, c. 12, s. 8.

### **Community resources committee**

[21.14\(1\)](#)There shall be one or more community resources committees, as recommended by the Chief Justice of the Superior Court of Justice, or by a person he or she designates for the purpose, and approved by the Attorney General, for each area in which the Family Court has jurisdiction.

### **Composition**

[\(2\)](#)A community resources committee consists of judges, lawyers, members of social service agencies, persons employed in court administration and other residents of the community, appointed by the Chief Justice of the Superior Court of Justice or by a person whom he or she designates for the purpose. 1998, c. 20, Sched. A, s. 22 (8).

### **Function**

[\(3\)](#)A community resources committee shall develop links between the court and social service resources available in the community, identify needed resources and develop strategies for putting them in place. 1994, c. 12, s. 8.

### **Dispute resolution service**

[21.15](#)A service for the resolution of disputes by alternatives to litigation may be established, maintained and operated as part of the Family Court. 1994, c. 12, s. 8.

## **SMALL CLAIMS COURT**

### **Small Claims Court**

[22.\(1\)](#)The Small Claims Court is continued as a branch of the Superior Court of Justice under the name Small Claims Court in English and Cour des petites créances in French. R.S.O. 1990, c. C.43, s. 22 (1); 1996, c. 25, s. 9 (17).

### **Idem**

[\(2\)](#)The Small Claims Court consists of the Chief Justice of the Superior Court of Justice who shall be president of the court and such other judges of the Superior Court of Justice as the Chief Justice designates from time to time. R.S.O. 1990, c. C.43, s. 22 (2); 1996, c. 25, s. 9 (14, 17).

### **Jurisdiction of judges**

[\(3\)](#)Every judge of the Superior Court of Justice is also a judge of the Small Claims Court. R.S.O. 1990, c. C.43, s. 22 (3); 1996, c. 25, s. 9 (17).

## **Jurisdiction**

23.(1) The Small Claims Court,

- (a) has jurisdiction in any action for the payment of money where the amount claimed does not exceed the prescribed amount exclusive of interest and costs; and
- (b) has jurisdiction in any action for the recovery of possession of personal property where the value of the property does not exceed the prescribed amount. R.S.O. 1990, c. C.43, s. 23 (1).

## **Transfer from Superior Court of Justice**

(2) An action in the Superior Court of Justice may be transferred to the Small Claims Court by the local registrar of the Superior Court of Justice on requisition with the consent of all parties filed before the trial commences if,

- (a) the only claim is for the payment of money or the recovery of possession of personal property; and
- (b) the claim is within the jurisdiction of the Small Claims Court. R.S.O. 1990, c. C.43, s. 23 (2); 1996, c. 25, s. 9 (17).

## **Idem**

(3) An action transferred to the Small Claims Court shall be titled and continued as if it had been commenced in that court. R.S.O. 1990, c. C.43, s. 23 (3).

## **Composition of court for hearings**

24.(1) A proceeding in the Small Claims Court shall be heard and determined by one judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 24 (1); 1996, c. 25, s. 9 (17).

## **Provincial judge or deputy judge may preside**

- (2) A proceeding in the Small Claims Court may also be heard and determined by,
- (a) a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before the 1st day of September, 1990; or
  - (b) a deputy judge appointed under section 32.

## **Where deputy judge not to preside**

(3) A deputy judge shall not hear and determine an action,

- (a) for the payment of money in excess of the prescribed amount; or
- (b) for the recovery of possession of personal property exceeding the prescribed amount in value. R.S.O. 1990, c. C.43, s. 24 (2, 3).

## **Summary hearings**

25. The Small Claims Court shall hear and determine in a summary way all questions of law and fact and may make such order as is considered just and agreeable to good conscience. R.S.O. 1990, c. C.43, s. 25.

## **Representation**

**26.** A party may be represented in a proceeding in the Small Claims Court by a person authorized under the *Law Society Act* to represent the party, but the court may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of the party if it finds that such person is not competent properly to represent the party, or does not understand and comply at the hearing with the duties and responsibilities of an advocate. 2006, c. 21, Sched. C, s. 105 (1).

## **Evidence**

**27.(1)** Subject to subsections (3) and (4), the Small Claims Court may admit as evidence at a hearing and act upon any oral testimony and any document or other thing so long as the evidence is relevant to the subject-matter of the proceeding, but the court may exclude anything unduly repetitious.

## **Idem**

**(2)** Subsection (1) applies whether or not the evidence is given or proven under oath or affirmation or admissible as evidence in any other court.

## **Idem**

**(3)** Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible by reason of any privilege under the law of evidence; or

(b) that is inadmissible by any Act.

## **Conflicts**

**(4)** Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

## **Copies**

**(5)** A copy of a document or any other thing may be admitted as evidence at a hearing if the presiding judge is satisfied as to its authenticity. R.S.O. 1990, c. C.43, s. 27.

## **Instalment orders**

**28.** The Small Claims Court may order the times and the proportions in which money payable under an order of the court shall be paid. R.S.O. 1990, c. C.43, s. 28.

## **Limit on costs**

**29.** An award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding. R.S.O. 1990, c. C.43, s. 29; 2006, c. 21, Sched. C, s. 105 (2).

**30.** Repealed: 1994, c. 12, s. 11.

## **Appeals**

**31.** An appeal lies to the Divisional Court from a final order of the Small Claims Court in an action,

- (a) for the payment of money in excess of \$500, excluding costs; or
  - (b) for the recovery of possession of personal property exceeding \$500 in value.
- R.S.O. 1990, c. C.43, s. 31.

## **Deputy judges**

**32.(1)** A regional senior judge of the Superior Court of Justice may, with the approval of the Attorney General, appoint a lawyer to act as a deputy judge of the Small Claims Court for a term of three years. R.S.O. 1990, c. C.43, s. 32 (1); 1994, c. 12, s. 12; 1996, c. 25, s. 9 (17).

## **Idem**

**(2)** A regional senior judge of the Superior Court of Justice may renew the appointment of a deputy judge for one or more three-year terms. R.S.O. 1990, c. C.43, s. 32 (2); 1996, c. 25, s. 9 (17).

## **Deputy Judges Council**

**33. (1)** A council known as the Deputy Judges Council in English and as Conseil des juges suppléants in French is established. 1994, c. 12, s. 13.

## **Composition**

**(2)** The Deputy Judges Council is composed of,

- (a) the Chief Justice of the Superior Court of Justice, or another judge of the Superior Court of Justice designated by the Chief Justice;
- (b) a regional senior judge of the Superior Court of Justice, appointed by the Chief Justice;
- (c) a judge of the Superior Court of Justice, appointed by the Chief Justice;
- (d) a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, or a deputy judge, appointed by the Chief Justice;
- (e) three persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation. 1994, c. 12, s. 13; 1996, c. 25, s. 9 (14, 17).

## **Criteria**

**(3)** In the appointment of members under clause (2) (e), the importance of reflecting, in the composition of the Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized. 1994, c. 12, s. 13.



**Chair**

(4) The Chief Justice of the Superior Court of Justice, or his or her designate, shall chair the meetings of the Deputy Judges Council. 1994, c. 12, s. 13; 1996, c. 25, s. 9 (14).

**Same**

(5) The chair is entitled to vote, and may cast a second deciding vote if there is a tie. 1994, c. 12, s. 13.

**Functions**

(6) The functions of the Deputy Judges Council are,

- (a) to review and approve standards of conduct for deputy judges as established by the Chief Justice;
- (b) to review and approve a plan for the continuing education of deputy judges as established by the Chief Justice; and
- (c) to make recommendations on matters affecting deputy judges. 1994, c. 12, s. 13.

**Duty of Chief Justice**

(7) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the Deputy Judges Council. 2006, c. 21, Sched. A, s. 4.

**Complaint**

**33.1(1)** Any person may make a complaint alleging misconduct by a deputy judge, by writing to the judge of the Superior Court of Justice designated by the regional senior judge in the region where the deputy judge sits. 1994, c. 12, s. 13; 1996, c. 25, s. 9 (17).

**Dismissal**

(2) The judge shall review the complaint and may dismiss it without further investigation if, in his or her opinion, it falls outside the jurisdiction of the regional senior judge, is frivolous or an abuse of process, or concerns a minor matter to which an appropriate response has already been given.

**Notice of dismissal**

(3) The judge shall notify the regional senior judge, the complainant and the deputy judge in writing of a dismissal under subsection (2), giving brief reasons for it.

**Committee**

(4) If the complaint is not dismissed, the judge shall refer it to a committee consisting of three persons chosen by the regional senior judge. 1994, c. 12, s. 13.

**Same**

(5) The three persons shall be a judge of the Superior Court of Justice, a deputy judge and a person who is neither a judge nor a lawyer, all of whom reside or work in the region where the deputy judge who is the subject of the complaint sits. 1994, c. 12, s. 13; 1996, c. 25, s. 9 (17).



**Investigation**

[\(6\)](#) The committee shall investigate the complaint in the manner it considers appropriate, and the complainant and deputy judge shall be given an opportunity to make representations to the committee, in writing or, at the committee's option, orally.

**Recommendation**

[\(7\)](#) The committee shall make a report to the regional senior judge, recommending a disposition in accordance with subsections (8), (9) and (10).

**Disposition**

[\(8\)](#) The regional senior judge may dismiss the complaint, with or without a finding that it is unfounded, or, if he or she concludes that the deputy judge's conduct presents grounds for imposing a sanction, may,

- (a) warn the deputy judge;
- (b) reprimand the deputy judge;
- (c) order the deputy judge to apologize to the complainant or to any other person;
- (d) order that the deputy judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a deputy judge;
- (e) suspend the deputy judge for a period of up to 30 days;
- (f) inform the deputy judge that his or her appointment will not be renewed under subsection 32 (2);
- (g) direct that no judicial duties or only specified judicial duties be assigned to the deputy judge; or
- (h) remove the deputy judge from office.

**Same**

[\(9\)](#) The regional senior judge may adopt any combination of the dispositions set out in clauses (8) (a) to (g).

**Disability**

[\(10\)](#) If the regional senior judge finds that the deputy judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the regional senior judge shall order that the deputy judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

**Application of subs. (10)**

[\(11\)](#) Subsection (10) applies if,

- (a) the effect of the disability on the deputy judge's performance of the essential duties of the office was a factor in the complaint; and
- (b) the regional senior judge dismisses the complaint or makes a disposition under clauses (8) (a), (b), (c), (d), (e) or (g).

**Undue hardship**

(12) Subsection (10) does not apply if the regional senior judge is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

**Opportunity to participate**

(13) The regional senior judge shall not make an order under subsection (10) against a person without ensuring that the person has had an opportunity to participate and make submissions.

**Crown bound**

(14) An order made under subsection (10) binds the Crown.

**Compensation**

(15) The regional senior judge shall consider whether the deputy judge should be compensated for all or part of his or her costs for legal services incurred in connection with all the steps taken under this section in relation to the complaint.

**Recommendation**

(16) If the regional senior judge is of the opinion that the deputy judge should be compensated, he or she shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

**Same**

(17) If the complaint is dismissed with a finding that it is unfounded, the regional senior judge shall recommend to the Attorney General that the deputy judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

**Maximum**

(18) The amount of compensation recommended under subsection (16) or (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar legal services.

**Payment**

(19) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

**Non-application of SPPA**

(20) The *Statutory Powers Procedure Act* does not apply to a judge, regional senior judge or member of a committee acting under this section.

**Personal liability**

(21) No action or other proceeding for damages shall be instituted against a judge, regional senior judge or member of a committee for any act done in good faith in the execution or intended execution of the person's duty under this section. 1994, c. 12, s. 13.

## ONTARIO COURT OF JUSTICE

### **Ontario Court of Justice**

**34.** The Ontario Court (Provincial Division) is continued as a court of record under the name Ontario Court of Justice in English and Cour de justice de l'Ontario in French. 1996, c. 25, s. 9 (5).

### **Composition of Ontario Court of Justice**

**35.** The Ontario Court of Justice shall consist of,

- (a) the Chief Justice of the Ontario Court of Justice appointed under subsection 42 (3), who shall be president of the Ontario Court of Justice;
- (a.1) the Associate Chief Justice and the Associate Chief Justice-Co-ordinator of Justices of the Peace of the Ontario Court of Justice appointed under subsections 42 (4) and (5);
- (b) a regional senior judge of the Ontario Court of Justice appointed under subsection 42 (6) for each region;
- (c) such provincial judges as are appointed under subsection 42 (1); and
- (d) such provincial judges as were assigned to the Provincial Court (Criminal Division) or the Provincial Court (Family Division) on the 31st day of December, 1989. R.S.O. 1990, c. C.43, s. 35; 1994, c. 12, s. 14; 1996, c. 25, s. 9 (18, 20).

### **Chief Justice, Associate Chief Justice and regional senior judges of Ontario Court of Justice**

#### **Powers and duties of Chief Justice**

**36.(1)** The Chief Justice of the Ontario Court of Justice shall direct and supervise the sittings of the Ontario Court of Justice and the assignment of its judicial duties. R.S.O. 1990, c. C.43, s. 36 (1); 1996, c. 25, s. 9 (16, 18, 20).

#### **Regional senior judges**

**(2)** A regional senior judge of the Ontario Court of Justice shall, subject to the authority of the Chief Justice of the Ontario Court of Justice, exercise the powers and perform the duties of the Chief Justice of the Ontario Court of Justice in his or her region. R.S.O. 1990, c. C.43, s. 36 (2); 1993, c. 27, Sched.; 1996, c. 25, s. 9 (18, 20).

#### **Delegation**

**(3)** A regional senior judge of the Ontario Court of Justice may delegate to a judge of the Ontario Court of Justice in his or her region the authority to exercise specified functions. R.S.O. 1990, c. C.43, s. 36 (3); 1996, c. 25, s. 9 (18).

#### **Absence of Chief Justice**

**(4)** If the Chief Justice of the Ontario Court of Justice is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by an associate chief justice of the Ontario Court of Justice designated by the

Chief Justice of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 36 (4); 1994, c. 12, s. 15; 1996, c. 25, s. 9 (18, 20).

### **Absence of regional senior judge**

[\(5\)](#) The powers and duties of a regional senior judge of the Ontario Court of Justice who is absent from Ontario or is for any reason unable to act shall be exercised and performed by a judge of the Ontario Court of Justice designated by the Chief Justice of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 36 (5); 1996, c. 25, s. 9 (18, 20).

### **Meetings with regional senior judges**

[\(6\)](#) The Chief Justice of the Ontario Court of Justice may hold meetings with the regional senior judges of the Ontario Court of Justice in order to consider any matters concerning sittings of the Ontario Court of Justice and the assignment of its judicial duties. R.S.O. 1990, c. C.43, s. 36 (6); 1996, c. 25, s. 9 (16, 18, 20).

### **Judges assigned to regions**

[37.\(1\)](#) The Chief Justice of the Ontario Court of Justice shall assign every provincial judge to a region and may re-assign a judge from one region to another. R.S.O. 1990, c. C.43, s. 37 (1); 1996, c. 25, s. 9 (18, 20).

### **Idem**

[\(2\)](#) Subsection (1) does not prevent the temporary assignment of a provincial judge to a location anywhere in Ontario. R.S.O. 1990, c. C.43, s. 37 (2).

### **Jurisdiction of Ontario Court of Justice**

#### **Criminal matters**

[38. \(1\)](#) A provincial judge has the power and authority of two or more justices of the peace when sitting in the Ontario Court of Justice and shall exercise the powers and perform the duties that any Act of the Parliament of Canada confers on a provincial court judge when sitting in the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 38 (1); 1996, c. 25, s. 9 (18).

#### **Provincial offences and family matters**

[\(2\)](#) The Ontario Court of Justice shall perform any function assigned to it by or under the *Provincial Offences Act*, the *Family Law Act*, the *Children's Law Reform Act*, the *Child and Family Services Act* or any other Act. R.S.O. 1990, c. C.43, s. 38 (2); 1996, c. 25, s. 9 (18).

#### **Youth court and youth justice court**

[\(3\)](#) The Ontario Court of Justice is a youth court for the purposes of the *Young Offenders Act* (Canada) and a youth justice court for the purposes of the *Youth Criminal Justice Act* (Canada). 2006, c. 19, Sched. D, s. 5 (1).

### **Judge to preside**

[39.\(1\)](#) A proceeding in the Ontario Court of Justice shall be heard and determined by one judge of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 39 (1); 1996, c. 25, s. 9 (18).

### **Justice of the peace may preside**

[\(2\)](#) A justice of the peace may preside over the Ontario Court of Justice in a proceeding under the *Provincial Offences Act*. R.S.O. 1990, c. C.43, s. 39 (2); 1996, c. 25, s. 9 (18).

### **Appeals**

[40.\(1\)](#) If no provision is made concerning an appeal from an order of the Ontario Court of Justice, an appeal lies to the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 40 (1); 1993, c. 27, Sched.; 1996, c. 25, s. 9 (17, 18).

### **Exception**

[\(2\)](#) Subsection (1) does not apply to a proceeding under the *Criminal Code* (Canada) or the *Provincial Offences Act*. R.S.O. 1990, c. C.43, s. 40 (2).

### **Penalty for disturbance outside courtroom**

[41.](#) Any person who knowingly disturbs or interferes with a proceeding in the Ontario Court of Justice without reasonable justification while outside the courtroom is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1990, c. C.43, s. 41; 1996, c. 25, s. 9 (18).

## **PROVINCIAL JUDGES**

### **Appointment of provincial judges**

[42. \(1\)](#) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary. 1994, c. 12, s. 16.

### **Qualification**

- [\(2\)](#) No person shall be appointed as a provincial judge unless he or she,
- (a) has been a member of the bar of one of the provinces or territories of Canada for at least 10 years; or
  - (b) has, for an aggregate of at least 10 years,
    - (i) been a member of a bar mentioned in clause (a), and
    - (ii) after becoming a member of such a bar, exercised powers and performed duties of a judicial nature on a full-time basis in respect to a position held under a law of Canada or of one of its provinces or territories. 2006, c. 21, Sched. A, s. 5 (1).

### **Chief Justice**

[\(3\)](#) The Lieutenant Governor in Council may, on the recommendation of the Attorney General, appoint a provincial judge as Chief Justice of the Ontario Court of Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20); 2006, c. 21, Sched. A, s. 5 (2).

### **Associate chief justices**

[\(4\)](#) The Lieutenant Governor in Council may, on the recommendation of the Attorney General, appoint two provincial judges as associate chief justices of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 5 (3).

#### **Same**

[\(5\)](#) One of the associate chief justices shall be appointed to the office of Associate Chief Justice-Co-ordinator of Justices of the Peace, which is created for the purposes of the *Justices of the Peace Act*. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Regional senior judges**

[\(6\)](#) The Lieutenant Governor in Council may, on the recommendation of the Attorney General, appoint a provincial judge to be the regional senior judge of the Ontario Court of Justice for each region. 2006, c. 21, Sched. A, s. 5 (4).

#### **Same**

[\(6.1\)](#) Before making a recommendation referred to in subsection (4) or (6), the Attorney General shall consult with the Chief Justice of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 5 (4).

### **Terms of office**

[\(7\)](#) The associate chief justices each hold office for six years, and regional senior judges each hold office for three years. 1994, c. 12, s. 16; 1996, c. 25, ss. 1 (5), 9 (20).

#### **Same**

[\(7.1\)](#) The Chief Justice holds office for eight years from the time of his or her appointment. If a successor has not yet been appointed on the day the term expires, the Chief Justice continues in office until a successor is appointed, but shall not hold office for more than nine years in any event. 1996, c. 25, ss. 1 (6), 9 (20).

### **Reappointment**

[\(8\)](#) The Chief Justice and associate chief justices shall not be reappointed. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

#### **Same**

[\(9\)](#) A regional senior judge may be reappointed once, for a further three years, on the Chief Justice's recommendation; if the Chief Justice so recommends, the Lieutenant Governor in Council shall reappoint the regional senior judge. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Salary at end of term**

[\(10\)](#) A Chief Justice, associate chief justice or regional senior judge whose term expires continues to be a provincial judge and is entitled to receive the greater of the current annual salary of a provincial judge and the annual salary he or she received immediately before the expiry. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

## **Transition**

[\(11\)](#) The following applies to the Chief Judge and regional senior judges who are in office on the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force:

1. The Chief Judge holds office for eight years from the time of his or her appointment. If a successor has not yet been appointed on the day the term expires, the Chief Judge continues in office until a successor is appointed, but shall not hold office for more than nine years in any event.
2. A regional senior judge holds office for five years from the time of his or her appointment, and may be reappointed once, for a further three years, on the Chief Judge's recommendation. If the Chief Judge so recommends, the Lieutenant Governor in Council shall reappoint the regional senior judge. 1994, c. 12, s. 16; 1996, c. 25, s. 1 (7).

## **Judicial Appointments Advisory Committee**

[43.\(1\)](#) A committee known as the Judicial Appointments Advisory Committee in English and as Comité consultatif sur les nominations à la magistrature in French is established. 1994, c. 12, s. 16.

## **Composition**

[\(2\)](#) The Committee is composed of,

- (a) two provincial judges, appointed by the Chief Justice of the Ontario Court of Justice;
- (b) three lawyers, one appointed by The Law Society of Upper Canada, one by the Canadian Bar Association-Ontario and one by the County and District Law Presidents' Association;
- (c) seven persons who are neither judges nor lawyers, appointed by the Attorney General;
- (d) a member of the Judicial Council, appointed by it. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

## **Criteria**

[\(3\)](#) In the appointment of members under clauses (2) (b) and (c), the importance of reflecting, in the composition of the Committee as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

## **Term of office**

[\(4\)](#) The members hold office for three-year terms and may be reappointed.

## **Staggered terms**

[\(5\)](#) Despite subsection (4), the following applies to the first appointments made under subsection (2):



1. One of the provincial judges holds office for a two-year term.
2. The lawyer appointed by the Canadian Bar Association-Ontario holds office for a two-year term and the lawyer appointed by the County and District Law Presidents' Association holds office for a one-year term.
3. Two of the persons who are neither judges nor lawyers hold office for two-year terms and two hold office for one-year terms.

**Chair**

[\(6\)](#) The Attorney General shall designate one of the members to chair the Committee for a three-year term.

**Term of office**

[\(7\)](#) The same person may serve as chair for two or more terms.

**Function**

[\(8\)](#) The function of the Committee is to make recommendations to the Attorney General for the appointment of provincial judges.

**Manner of operating**

[\(9\)](#) The Committee shall perform its function in the following manner:

1. When a judicial vacancy occurs and the Attorney General asks the Committee to make a recommendation, it shall advertise the vacancy and review all applications.
2. For every judicial vacancy with respect to which a recommendation is requested, the Committee shall give the Attorney General a ranked list of at least two candidates whom it recommends, with brief supporting reasons.
3. The Committee shall conduct the advertising and review process in accordance with criteria established by the Committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in judicial appointments.
4. The Committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

**Qualification**

[\(10\)](#) A candidate shall not be considered by the Committee unless he or she has been a member of the bar of one of the provinces or territories of Canada for at least ten years or, for an aggregate of at least ten years, has been a member of such a bar or served as a judge anywhere in Canada after being a member of such a bar.



### **Recommendation by Attorney General**

[\(11\)](#)The Attorney General shall recommend to the Lieutenant Governor in Council for appointment to fill a judicial vacancy only a candidate who has been recommended for that vacancy by the Committee under this section.

### **Rejection of list**

[\(12\)](#)The Attorney General may reject the Committee's recommendations and require it to provide a fresh list.

### **Annual report**

[\(13\)](#)The Committee shall submit to the Attorney General an annual report of its activities.

### **Tabling**

[\(14\)](#)The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1994, c. 12, s. 16.

### **Full and part-time service**

[44.\(1\)](#)A provincial judge may, at his or her option and with the Chief Justice's consent, change from full-time to part-time service or the reverse, or increase or decrease the amount of part-time service. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Part-time judges**

[\(2\)](#)The Chief Justice, with the Attorney General's consent, may designate a former provincial judge who has retired from office to serve as a provincial judge on a part-time basis, not to exceed 50 per cent of full-time service in a calendar year. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Same**

[\(3\)](#)A person designated under subsection (2) is a provincial judge and a member of the Ontario Court of Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18).

### **Same**

[\(4\)](#)A judge who is serving on a part-time basis under subsection (1) or (2) shall not engage in any other remunerative occupation. 1994, c. 12, s. 16.

### **Application for order that needs be accommodated**

[45.\(1\)](#)A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

### **Duty of Judicial Council**

[\(2\)](#)If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

**Undue hardship**

[\(3\)](#) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

**Guidelines and rules of procedure**

[\(4\)](#) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

**Opportunity to participate**

[\(5\)](#) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

**Crown bound**

[\(6\)](#) The order binds the Crown. 1994, c. 12, s. 16.

**Outside activities**

[46.\(1\)](#) A provincial judge may act as commissioner, arbitrator, adjudicator, referee, conciliator or mediator only if expressly authorized by an Act of the Parliament of Canada or the Legislature or appointed or authorized by the Governor in Council or Lieutenant Governor in Council.

**Same**

[\(2\)](#) A judge who, before January 1, 1985, had the consent of the Attorney General to act as an arbitrator or conciliator may continue to do so.

**Remuneration**

[\(3\)](#) A judge acting under subsection (1) shall not receive remuneration but shall be reimbursed for reasonable travelling and other expenses incurred while so acting. 1994, c. 12, s. 16.

**Retirement**

[47.\(1\)](#) Every provincial judge shall retire upon attaining the age of sixty-five years.

**Same**

[\(2\)](#) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years. 1994, c. 12, s. 16.

**Continuation of judges in office**

[\(3\)](#) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

**Same, regional senior judges**

[\(4\)](#) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

**Same, Chief Justice and associate chief justices**

[\(5\)](#) A Chief Justice or associate chief justice of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

**Same**

[\(6\)](#) If the Judicial Council does not approve a Chief Justice's or associate chief justice's continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3). 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Criteria**

[\(7\)](#) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Transition**

[\(8\)](#) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this Act as it read immediately before that day. 1994, c. 12, s. 16.

**Resignation and election****Resignation of judge**

[48.\(1\)](#) A provincial judge may at any time resign from his or her office by delivering a signed letter of resignation to the Attorney General. 1994, c. 12, s. 16.

**Resignation as Chief Justice, etc.**

[\(2\)](#) A Chief Justice, an associate chief justice or a regional senior judge may, before the expiry of his or her term of office under section 42, elect to hold the office of a provincial judge only, by delivering a signed letter to that effect to the Attorney General. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Former Co-ordinator of Justices of the Peace**

[\(3\)](#) The former Co-ordinator of Justices of the Peace holds the office of a provincial judge, and is entitled to an annual salary equal to the greater of the current annual salary

of a provincial judge or the annual salary he or she received immediately before ceasing to be Co-ordinator. R.S.O. 1990, c. C.43, s. 48 (5). (See: 1994, c. 12, s. 16.)

### **Effective date**

[\(4\)](#) A resignation or election under this section takes effect on the day the letter is delivered to the Attorney General or, if the letter specifies a later day, on that day. 1994, c. 12, s. 16.

[\(5\)](#) Spent: 1994, c. 12, s. 16.

## **ONTARIO JUDICIAL COUNCIL**

### **Judicial Council**

[49.\(1\)](#) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French. 1994, c. 12, s. 16.

### **Composition**

[\(2\)](#) The Judicial Council is composed of,

- (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
- (b) the Chief Justice of the Ontario Court of Justice, or another judge of that court designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
- (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
- (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
- (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
- (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
- (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

### **Temporary members**

[\(3\)](#) The Chief Justice of the Ontario Court of Justice may appoint a judge of that court to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

**Criteria**

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

**Term of office**

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

**Same**

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

**Staggered terms**

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

**Chair**

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5). 1994, c. 12, s. 16.

**Same**

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that court designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

**Same**

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

**Open and closed hearings and meetings**

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this Act provides otherwise.

**Vacancies**

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

**Quorum**

(13) The following quorum rules apply, subject to subsections (15) and (17):

1. Eight members, including the chair, constitute a quorum.

2. At least half the members present must be judges and at least four must be persons who are not judges.

### **Review panels**

[\(14\)](#) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose. 1994, c. 12, s. 16.

### **Same**

[\(15\)](#) The following rules apply to a panel established under subsection (14):

1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Hearing panels**

[\(16\)](#) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

### **Same**

[\(17\)](#) The following rules apply to a panel established under subsection (16):

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
2. At least one member must be a person who is neither a judge nor a lawyer.
3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.
5. All the members of the panel constitute a quorum.

### **Chair**

[\(18\)](#) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

### **Participation in stages of process**

[\(19\)](#) The members of the subcommittee that investigated a complaint shall not,

- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

**Same**

[\(20\)](#) The members of the Judicial Council who dealt with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) shall not participate in a hearing of the complaint under section 51.6.

**Expert assistance**

[\(21\)](#) The Judicial Council may engage persons, including counsel, to assist it.

**Support services**

[\(22\)](#) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

**Same**

[\(23\)](#) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities.

**Confidential records**

[\(24\)](#) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

**Same**

[\(25\)](#) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

**Exceptions**

[\(26\)](#) Subsection (24) does not apply to information and documents,

- (a) that this Act requires the Judicial Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

**Personal liability**

[\(27\)](#) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

**Remuneration**

[\(28\)](#) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council. 1994, c. 12, s. 16.

## **Complaint against Chief Justice, Associate Chief Justice or regional senior judge of the Ontario Court of Justice**

### **Complaint against Chief Justice**

**50. (1)** If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,

- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
- (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
- (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

### **Suspension of Chief Justice**

**(2)** If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),

- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
- (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

### **Complaint against Associate Chief Justice or regional senior judge**

**(3)** If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of. 1996, c. 25, s. 9 (6).



## **Other duties of Judicial Council**

### **Provision of information to public**

[51.1](#) (1) The Judicial Council shall provide, in courthouses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

### **Same**

[2](#) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

### **Assistance to public**

[3](#) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

### **Telephone access**

[4](#) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

### **Persons with disabilities**

[5](#) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

### **Annual report**

[6](#) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

### **Tabling**

[7](#) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1994, c. 12, s. 16.

### **Rules**

[51.1](#) (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22).

4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).
6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10). 1994, c. 12, s. 16.

### ***Legislation Act, 2006, Part III***

[\(2\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to rules, guidelines or criteria established by the Judicial Council. 1994, c. 12, s. 16; 2006, c. 21, Sched. F, s. 136 (1).

### **Sections 28, 29 and 33 of SPPA**

[\(3\)](#) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council. 1994, c. 12, s. 16.

### **Use of official languages of courts**

[51.2\(1\)](#) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

### **Same**

[\(2\)](#) Complaints against provincial judges may be made in English or French.

### **Same**

[\(3\)](#) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

### **Same**

[\(4\)](#) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

### **Bilingual hearing or mediation**

[\(5\)](#) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

**Part of hearing or mediation**

[\(6\)](#) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

**Same**

[\(7\)](#) In a bilingual hearing or mediation,

- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- (b) documents may be filed in either language;
- (c) in the case of a mediation, discussions may take place in either language;
- (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

**Same**

[\(8\)](#) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language. 1994, c. 12, s. 16.

**Complaint re provincial judge**

[51.3\(1\)](#) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

**Same**

[\(2\)](#) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

**Same**

[\(3\)](#) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

**Carriage of matter**

[\(4\)](#) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

**Information re complaint**

[\(5\)](#) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it. 1994, c. 12, s. 16.

## **Role of subcommittee**

### **Review**

[51.4\(1\)](#) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Rotation of members**

[\(2\)](#) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

### **Dismissal**

[\(3\)](#) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

### **Investigation**

[\(4\)](#) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

### **Expert assistance**

[\(5\)](#) The subcommittee may engage persons, including counsel, to assist it in its investigation.

### **Investigation private**

[\(6\)](#) The investigation shall be conducted in private.

### **Non-application of SPPA**

[\(7\)](#) The *Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

### **Interim recommendations**

[\(8\)](#) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

### **Same**

[\(9\)](#) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

### **Power of regional senior judge**

[\(10\)](#) The regional senior judge may suspend or reassign the judge as the subcommittee recommends. 1994, c. 12, s. 16.

### **Discretion**

[\(11\)](#) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Exception: complaints against certain judges**

[\(12\)](#) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends. 1996, c. 25, s. 9 (7).

**Subcommittee's decision**

[\(13\)](#) When its investigation is complete, the subcommittee shall,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Same**

[\(14\)](#) The subcommittee may dismiss the complaint or refer it to the Chief Justice or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Conditions, reference to Chief Justice**

[\(15\)](#) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Report**

[\(16\)](#) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Power of Judicial Council**

[\(17\)](#) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council. 1994, c. 12, s. 16.

**Same**

[\(18\)](#) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,

- (a) hold a hearing under section 51.6;
- (b) dismiss the complaint;
- (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or

(d) refer the complaint to a mediator in accordance with section 51.5. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Non-application of SPPA**

[\(19\)](#)The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

### **Notice to judge and complainant**

[\(20\)](#)After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

### **Guidelines and rules of procedure**

[\(21\)](#)In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

### **Same**

[\(22\)](#)In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16.

### **Mediation**

[51.5\(1\)](#)The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

### **Criteria**

[\(2\)](#)If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

### **Same**

[\(3\)](#)Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:

1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*.
3. The public interest requires a hearing of the complaint.

**Legal advice**

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

**Trained mediator**

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

**Impartiality**

(6) The mediator shall be impartial.

**Exclusion**

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation. 1994, c. 12, s. 16.

**Review by Council**

(8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,

- (a) approve the disposition of the complaint; or
- (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
  - (i) dismiss the complaint,
  - (ii) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
  - (iii) hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

**Report**

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge. 1994, c. 12, s. 16.

**Referral to Council**

(10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or

(c) hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Non-application of SPPA**

[\(11\)](#) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (8) and (10).

### **Notice to judge and complainant**

[\(12\)](#) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

### **Guidelines and rules of procedure**

[\(13\)](#) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16.

### **Adjudication by Council**

[51.6 \(1\)](#) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section. 1994, c. 12, s. 16.

### **Application of SPPA**

[\(2\)](#) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing. 1994, c. 12, s. 16.

### **Rules of procedure**

[\(3\)](#) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing. 1994, c. 12, s. 16.

### **Communication re subject-matter of hearing**

[\(4\)](#) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person, unless all the parties and the persons representing the parties under the authority of the *Law Society Act* receive notice and have an opportunity to participate. 2006, c. 21, Sched. C, s. 105 (3).

### **Exception**

[\(5\)](#) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law. 1994, c. 12, s. 16.

### **Parties**

[\(6\)](#) The Judicial Council shall determine who are the parties to the hearing. 1994, c. 12, s. 16.

### **Exception, closed hearing**

[\(7\)](#) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding



open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private. 1994, c. 12, s. 16.

### **Disclosure in exceptional circumstances**

[\(8\)](#) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public. 1994, c. 12, s. 16.

### **Orders prohibiting publication**

[\(9\)](#) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be. 1994, c. 12, s. 16.

### **Publication ban**

[\(10\)](#) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint. 1994, c. 12, s. 16.

### **Dispositions**

[\(11\)](#) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to thirty days;  
or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8. 1994, c. 12, s. 16.

### **Same**

[\(12\)](#) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f). 1994, c. 12, s. 16.

### **Disability**

[\(13\)](#) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her

needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties. 1994, c. 12, s. 16.

### **Application of subs. (13)**

[\(14\)](#) Subsection (13) applies if,

- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
- (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f). 1994, c. 12, s. 16.

### **Undue hardship**

[\(15\)](#) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. 1994, c. 12, s. 16.

### **Opportunity to participate**

[\(16\)](#) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions. 1994, c. 12, s. 16.

### **Crown bound**

[\(17\)](#) An order made under subsection (13) binds the Crown. 1994, c. 12, s. 16.

### **Report to Attorney General**

[\(18\)](#) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest. 1994, c. 12, s. 16.

### **Non-identification of persons**

[\(19\)](#) The following persons shall not be identified in the report:

1. A complainant or witness at whose request an order was made under subsection (9).
2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed. 1994, c. 12, s. 16.

### **Continuing publication ban**

[\(20\)](#) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent. 1994, c. 12, s. 16.

## **Compensation**

[51.7\(1\)](#) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

## **Consideration of question combined with hearing**

[\(2\)](#) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

## **Public or private consideration of question**

[\(3\)](#) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

## **Recommendation**

[\(4\)](#) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

## **Same**

[\(5\)](#) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

## **Disclosure of name**

[\(6\)](#) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

## **Amount of compensation**

[\(7\)](#) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

## **Payment**

[\(8\)](#) The Attorney General shall pay compensation to the judge in accordance with the recommendation. 1994, c. 12, s. 16.

## **Removal for cause**

[51.8\(1\)](#) A provincial judge may be removed from office only if,

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,

- (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

### **Tabling of recommendation**

[\(2\)](#) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

### **Order for removal**

[\(3\)](#) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

### **Application**

[\(4\)](#) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

### **Transition**

[\(5\)](#) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this Act as it read immediately before that day. 1994, c. 12, s. 16.

### **Standards of conduct**

[51.9 \(1\)](#) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

### **Duty of Chief Justice**

[\(2\)](#) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20); 2006, c. 21, Sched. A, s. 6.

### **Goals**

[\(3\)](#) The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges:

1. Recognizing the independence of the judiciary.

2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Continuing education**

[51.10\(1\)](#) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

### **Duty of Chief Justice**

[\(2\)](#) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Goals**

[\(3\)](#) Continuing education of judges has the following goals:

1. Maintaining and developing professional competence.
2. Maintaining and developing social awareness.
3. Encouraging personal growth. 1994, c. 12, s. 16.

### **Performance evaluation**

[51.11\(1\)](#) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

### **Duty of Chief Justice**

[\(2\)](#) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Goals**

[\(3\)](#) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.

4. Identifying potential for professional development. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

### **Scope of evaluation**

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

### **Confidentiality**

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

### **Inadmissibility, exception**

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

### **Application of subss. (5), (6)**

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation. 1994, c. 12, s. 16.

### **Consultation**

**51.12** In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

## **PROVINCIAL JUDGES' REMUNERATION**

### **Remuneration and framework agreement**

#### **Provincial Judges Remuneration Commission**

**51.13 (1)** The committee known as the Provincial Judges Remuneration Commission in English and as Commission de rémunération des juges provinciaux in French is continued. 1994, c. 12, s. 16.

#### **Composition and functions**

(2) The composition and functions of the Commission are as set out in Appendix A of the framework agreement set out in the Schedule to this Act. 1994, c. 12, s. 16.

#### **Framework agreement**

(3) The framework agreement forms part of this Act. 1994, c. 12, s. 16.

#### **Same**

(4) The reference in paragraph 11 of the framework agreement to public servants as defined in the *Public Service Act* is deemed to be a reference to public servants employed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 20 (1).

## MISCELLANEOUS

### **Meetings of judges**

#### **Superior Court of Justice**

[52. \(1\)](#) The judges of the Superior Court of Justice shall meet at least once in each year, on a day fixed by the Chief Justice of the Superior Court of Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1994, c. 12, s. 17; 1996, c. 25, s. 9 (14, 17).

#### **Family Court**

[\(2\)](#) The judges of the Family Court shall meet at least once in each year, on a day fixed by the Chief Justice of the Superior Court of Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1998, c. 20, Sched. A, s. 22 (9).

#### **Ontario Court of Justice**

[\(2.1\)](#) The judges of the Ontario Court of Justice shall meet at least once in each year, on a day fixed by the Chief Justice of that court, in order to consider this Act, the rules of court and the administration of justice generally. 1994, c. 12, s. 17; 1996, c. 25, s. 9 (15, 18, 20).

#### **Regional senior judges, Superior Court of Justice**

[\(2.2\)](#) The regional senior judges of the Superior Court of Justice and the Senior Judge of the Family Court shall meet at least once in each year with the Chief Justice and the Associate Chief Justice of the Superior Court of Justice, on a day fixed by the Chief Justice, in order to consider this Act, the rules of court and the administration of justice generally. 1998, c. 20, Sched. A, s. 22 (10).

#### **Ontario Court of Justice**

[\(3\)](#) The regional senior judges of the Ontario Court of Justice shall meet at least once in each year with the Chief Justice of the Ontario Court of Justice, on a day fixed by the Chief Justice, in order to consider this Act, the rules of court and the administration of justice generally. R.S.O. 1990, c. C.43, s. 52 (3); 1996, c. 25, s. 9 (18, 20).

#### **Regional meeting of judges**

[\(4\)](#) The judges of the Court of Ontario in each region shall meet at least once in each year in order to consider this Act, the rules of court and the administration of justice in the region generally, on a day fixed jointly by the regional senior judge of the Superior Court of Justice and the regional senior judge of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 7.

#### **Report of recommendations**

[\(5\)](#) The judges meeting under this section shall report their recommendations to the Attorney General. R.S.O. 1990, c. C.43, s. 52 (5).

#### **Regulations**

[53. \(1\)](#) The Lieutenant Governor in Council may make regulations,



- (a) fixing the number of judges of the Superior Court of Justice for the purpose of clause 12 (1) (e);
- (a.1) fixing the number of judges of the Superior Court of Justice who are members of the Family Court appointed under clause 21.2 (1) (e);
- (a.2) fixing the remuneration of provincial judges;
- (a.3) providing for the benefits to which provincial judges are entitled, including benefits respecting,
  - (i) leave of absence and vacations,
  - (ii) sick leave credits and payments in respect of those credits, and
  - (iii) pension benefits for provincial judges and their surviving spouses and children;
- (b) fixing the remuneration of case management masters and providing for the benefits to which they are entitled;
- (b.1) fixing the remuneration of deputy judges of the Small Claims Court;
- (c) prescribing a period of time for the purposes of subsection 86.1 (2);
- (d) prescribing territorial divisions for the Small Claims Court;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (d) is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule A, section 8. See: 2006, c. 21, Sched. A, ss. 8, 19 (2).**

- (e) prescribing the maximum amount of a claim in the Small Claims Court for the purposes of subsection 23 (1);
- (f) prescribing the maximum amount of a claim over which a deputy judge may preside for the purposes of subsection 24 (3);
- (g), (h) Repealed: 1994, c. 12, s. 18 (4).
- (i) prescribing for each region the minimum number of judges of the Superior Court of Justice and of the Ontario Court of Justice who are to be assigned to that region;
- (j) prescribing for each region the minimum number of judges of the Superior Court of Justice who are members of the Family Court and to be assigned to that region. R.S.O. 1990, c. C.43, s. 53 (1); 1994, c. 12, s. 18 (1, 3-5); 1996, c. 25, ss. 1 (8), 9 (17, 18); 1998, c. 20, s. 2 (1); 1998, c. 20, Sched. A, s. 22 (11); 1999, c. 6, s. 18 (2); 2002, c. 18, Sched. A, s. 4 (1); 2005, c. 5, s. 17 (2).

## **Idem**

(2) A reduction in the number of judges of the Superior Court of Justice under clause (1) (a) does not affect appointments existing at the time of the reduction. R.S.O. 1990, c. C.43, s. 53 (2); 1996, c. 25, s. 9 (17).



**Idem**

(3) If there is a conflict between a regulation made under clause (1) (a.2) or (a.3) and the Framework Agreement set out in the Schedule, the Framework Agreement prevails. 1998, c. 20, s. 2 (2).

**Application of regulations**

(4) A regulation made under subsection (1) may be general or particular in its application. R.S.O. 1990, c. C.43, s. 53 (4).

**Definition**

(5) In clause (1) (a.3),  
“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. 1999, c. 6, s. 18 (3); 2005, c. 5, s. 17 (3, 4).

**PART III** (ss. 54-64, Sched.) Repealed: 1994, c. 12, s. 19.

**PART IV  
RULES OF COURT**

**Civil Rules Committee**

**65. (1)** The committee known as the Civil Rules Committee is continued under the name Civil Rules Committee in English and Comité des règles en matière civile in French. R.S.O. 1990, c. C.43, s. 65 (1).

**Composition**

- (2) The Civil Rules Committee shall be composed of,
- (a) the Chief Justice and Associate Chief Justice of Ontario;
    - (a.1) the Chief Justice and Associate Chief Justice of the Superior Court of Justice;
    - (a.2) the Chief Justice of the Ontario Court of Justice, or another judge of that court designated by the Chief Justice;
  - (b) two judges of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
  - (c) eight judges of the Superior Court of Justice, who shall be appointed by the Chief Justice of the Superior Court of Justice;
  - (d) one judge who was assigned to the Provincial Court (Civil Division) on the 1st day of October, 1989, who shall be appointed by the Chief Justice of the Superior Court of Justice;
  - (e) the Attorney General or a person designated by the Attorney General;
  - (f) one law officer of the Crown, who shall be appointed by the Attorney General;

- (g) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;
- (h) four lawyers, who shall be appointed by The Law Society of Upper Canada;
- (i) one lawyer, who shall be appointed by the Chief Justice of Ontario;
- (j) four lawyers, who shall be appointed by the Chief Justice of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 65 (2); 1994, c. 12, s. 20; 1996, c. 25, s. 9 (14, 17, 18, 20); 1998, c. 20, Sched. A, s. 12; 2006, c. 21, Sched. A, s. 9.

### **Idem**

[\(3\)](#) The Chief Justice of Ontario shall preside over the Civil Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice of Ontario shall preside. R.S.O. 1990, c. C.43, s. 65 (3).

### **Tenure of office**

[\(4\)](#) Each of the members of the Civil Rules Committee appointed under clauses (2) (b), (c), (f), (g), (h), (i) and (j) shall hold office for a period of three years and is eligible for reappointment. R.S.O. 1990, c. C.43, s. 65 (4).

### **Vacancies**

[\(5\)](#) Where a vacancy occurs among the members appointed under clause (2) (b), (c), (f), (g), (h), (i) or (j), a new member similarly qualified may be appointed for the remainder of the unexpired term. R.S.O. 1990, c. C.43, s. 65 (5).

### **Quorum**

[\(6\)](#) One-third of the members of the Civil Rules Committee constitutes a quorum. R.S.O. 1990, c. C.43, s. 65 (6).

### **Civil Rules**

**66. (1)** Subject to the approval of the Attorney General, the Civil Rules Committee may make rules for the Court of Appeal and the Superior Court of Justice in relation to the practice and procedure of those courts in all civil proceedings, except for proceedings in relation to which the Family Rules Committee may make rules under section 68. 2006, c. 21, Sched. A, s. 10 (1).

### **Idem**

[\(2\)](#) The Civil Rules Committee may make rules under subsection (1), even though they alter or conform to the substantive law, in relation to,

- (a) conduct of proceedings in the courts;
- (b) joinder of claims and parties, settlement of claims by or against persons under disability, whether or not a proceeding has been commenced in respect of the claim, the binding effect of orders and representation of parties;
- (c) commencement of proceedings, representation of parties and service of process in or outside Ontario;

- (d) disposition of proceedings without a hearing and its effect and authorizing the Court of Appeal to determine in the first instance a special case arising in a proceeding commenced in the Superior Court of Justice;
- (e) pleadings;
- (f) discovery and other forms of disclosure before hearing, including their scope and the admissibility and use of that discovery and disclosure in a proceeding;
- (g) examination of witnesses in or out of court;
- (h) jurisdiction of masters and case management masters including the conferral on masters and case management masters of any jurisdiction of the Superior Court of Justice, including jurisdiction under an Act, but not including the trial of actions or jurisdiction conferred by an Act on a judge;
- (i) jurisdiction and duties of officers;
- (j) motions and applications, including the hearing of motions and applications in the absence of the public and prohibiting a party from making motions without leave;
- (k) preservation of rights of parties pending the outcome of litigation, including sale, recovery of possession or preservation of property;
- (l) interpleader;
- (m) preparation for trial and offers to settle and their legal consequences;
- (n) the mode and conduct of trials;
- (o) the appointment by the court of independent experts, their remuneration and the admissibility and use of their reports;
- (p) the discount rate to be used in determining the amount of an award in respect of future pecuniary damages;
- (q) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;
- (r) costs of proceedings, including security for costs and, in the case of a person representing a party or other person, the representative's liability for, or disentitlement to, costs;
- (s) enforcement of orders and process or obligations under the rules;
- (t) the time for and procedure on appeals and stays pending appeal;
- (u) payment into and out of court;
- (v) the method of calculating the amount to be included in an award of damages to offset any liability for income tax on income from investment of the award;

- (w) the prejudgment interest rate with respect to the rate of interest on damages for non-pecuniary loss;
- (w.1) the issuance, service, filing and storage of documents by electronic means, including methods of completing and signing documents for those purposes;
- (x) any matter that is referred to in an Act as provided for by rules of court. R.S.O. 1990, c. C.43, s. 66 (2); 1994, c. 12, s. 21; 1996, c. 25, ss. 1 (9), 9 (17); 1998, c. 18, Sched. B, s. 5 (1); 2006, c. 21, Sched. A, s. 10 (2); 2006, c. 21, Sched. C, s. 105 (4).

### **Same**

[\(3\)](#) Nothing in subsection (1) or (2) authorizes the making of rules that conflict with an Act, but rules may be made under subsection (1) supplementing the provisions of an Act in respect of practice and procedure. 2006, c. 21, Sched. A, s. 10 (3).

### **Same**

[\(4\)](#) Rules made under subsection (1) in relation to the matters described in clauses (2) (p), (v) and (w) shall be reviewed at least once in every four-year period. 2006, c. 21, Sched. A, s. 10 (3).

### **Application**

[\(5\)](#) A rule made under this section may be general or particular in its application. 2006, c. 21, Sched. A, s. 10 (3).

### **Family Rules Committee**

[67. \(1\)](#) The committee known as the Family Rules Committee is continued under the name Family Rules Committee in English and Comité des règles en matière de droit de la famille in French. R.S.O. 1990, c. C.43, s. 67 (1).

### **Composition**

- [\(2\)](#) The Family Rules Committee is composed of,
- (a) the Chief Justice and Associate Chief Justice of Ontario;
  - (b) the Chief Justice and the Associate Chief Justice of the Superior Court of Justice;
  - (c) the Senior Judge of the Family Court;
  - (d) the Chief Justice of the Ontario Court of Justice or an associate chief justice designated by the Chief Justice;
  - (e) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
  - (f) four judges of the Superior Court of Justice appointed by the Chief Justice of the Superior Court of Justice, at least two of whom shall be judges of the Family Court referred to in clause 21.2 (1) (d) or (e);

- (g) two judges of the Ontario Court of Justice, who shall be appointed by the Chief Justice of the Ontario Court of Justice;
- (h) the Attorney General or a person designated by the Attorney General;
- (i) one law officer of the Crown, who shall be appointed by the Attorney General;
- (j) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;
- (k) four lawyers, who shall be appointed by The Law Society of Upper Canada;
- (l) four lawyers, who shall be appointed by the Chief Justice of the Superior Court of Justice; and
- (m) two lawyers, who shall be appointed by the Chief Justice of the Ontario Court of Justice. 1998, c. 20, Sched. A, s. 22 (12); 2006, c. 21, Sched. A, s. 11.

### **Who shall preside**

[\(3\)](#) The Chief Justice of Ontario shall preside over the Family Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice shall preside. R.S.O. 1990, c. C.43, s. 67 (3).

### **Tenure of office**

[\(4\)](#) Each of the members of the Family Rules Committee appointed under clauses (2) (e), (f), (g), (i), (j), (k), (l) and (m) shall hold office for a period of three years and is eligible for reappointment. 1998, c. 20, Sched. A, s. 13 (2).

### **Vacancies**

[\(5\)](#) Where a vacancy occurs among the members appointed under clause (2) (e), (f), (g), (i), (j), (k), (l) or (m), a new member similarly qualified may be appointed for the remainder of the unexpired term. 1998, c. 20, Sched. A, s. 13 (2).

### **Quorum**

[\(6\)](#) One-third of the members of the Family Rules Committee constitutes a quorum. R.S.O. 1990, c. C.43, s. 67 (6).

### **Family rules**

[68. \(1\)](#) Subject to the approval of the Attorney General, the Family Rules Committee may make rules for the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice in relation to the practice and procedure of those courts in the proceedings referred to in the Schedule to section 21.8. 2006, c. 21, Sched. A, s. 12.

### **Same**

[\(2\)](#) Subsections 66 (2), (3) and (5) apply with necessary modifications to the Family Rules Committee making rules under subsection (1). 2006, c. 21, Sched. A, s. 12.

[\(3\)](#) Repealed: 2006, c. 21, Sched. A, s. 12.

[\(4\)](#) Repealed: 2006, c. 19, Sched. D, s. 5 (2).

## **Criminal Rules Committee**

69.(1) The committee known as the Criminal Rules Committee is continued under the name Criminal Rules Committee in English and Comité des règles en matière criminelle in French. R.S.O. 1990, c. C.43, s. 69 (1).

### **Idem**

(2) The Criminal Rules Committee shall be composed of,

- (a) the Chief Justice and Associate Chief Justice of Ontario, the Chief Justice and Associate Chief Justice of the Superior Court of Justice and the Chief Justice and associate chief justices of the Ontario Court of Justice;
- (b) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
- (c) three judges of the Superior Court of Justice, who shall be appointed by the Chief Justice of the Superior Court of Justice;
- (d) four judges of the Ontario Court of Justice, who shall be appointed by the Chief Justice of the Ontario Court of Justice;
- (e) Repealed: 1994, c. 12, s. 23 (2).
- (f) the Attorney General or a person designated by the Attorney General;
- (g) one law officer of the Crown, who shall be appointed by the Attorney General;
- (h) four Crown attorneys, deputy Crown attorneys or assistant Crown attorneys, who shall be appointed by the Attorney General;
- (i) two persons employed in court administration, who shall be appointed by the Attorney General;
- (j) two lawyers, who shall be appointed by The Law Society of Upper Canada;
- (k) one lawyer, who shall be appointed by the Chief Justice of Ontario;
- (l) one lawyer, who shall be appointed by the Chief Justice of the Superior Court of Justice; and
- (m) two lawyers, who shall be appointed by the Chief Justice of the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 69 (2); 1994, c. 12, s. 23; 1996, c. 25, s. 9 (14, 17, 18, 20).

### **Idem**

(3) The Chief Justice of Ontario shall preside over the Criminal Rules Committee but, if the Chief Justice of Ontario is absent or so requests, another member designated by the Chief Justice of Ontario shall preside.

## **Tenure of office**

[\(4\)](#) Each of the members of the Criminal Rules Committee appointed under clauses (2) (b), (c), (d), (e), (g), (h), (i), (j), (k), (l) and (m) shall hold office for a period of three years and is eligible for reappointment.

## **Vacancies**

[\(5\)](#) Where a vacancy occurs among the members appointed under clause (2) (b), (c), (d), (e), (g), (h), (i), (j), (k), (l) or (m), a new member similarly qualified may be appointed for the remainder of the unexpired term.

## **Quorum**

[\(6\)](#) One-third of the members of the Criminal Rules Committee constitutes a quorum. R.S.O. 1990, c. C.43, s. 69 (3-6).

## **Criminal and provincial offences rules**

### **Criminal rules**

[70. \(1\)](#) At the request of the Court of Appeal, the Superior Court of Justice or the Ontario Court of Justice, the Criminal Rules Committee may prepare rules for the purposes of section 482 of the *Criminal Code* (Canada) for consideration by the relevant court. 1994, c. 12, s. 24; 1996, c. 25, s. 9 (17, 18).

### **Provincial offences rules**

[\(2\)](#) Subject to the approval of the Attorney General, the Criminal Rules Committee may make rules for the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice in relation to the practice and procedure of those courts in proceedings under the *Provincial Offences Act*. R.S.O. 1990, c. C.43, s. 70 (2); 1996, c. 25, s. 9 (17, 18); 2006, c. 21, Sched. A, s. 13.

## **Idem**

- [\(3\)](#) The Criminal Rules Committee may make rules under subsection (2),
- (a) regulating any matters relating to the practice and procedure of proceedings under the *Provincial Offences Act*;
  - (b) prescribing forms;
  - (c) regulating the duties of the employees of the courts;
  - (c.1) regulating the duties of municipal employees and other persons who act under the authority of agreements made under Part X of the *Provincial Offences Act*;
  - (d) prescribing and regulating the procedures under any Act that confers jurisdiction under the *Provincial Offences Act* on the Ontario Court of Justice or a judge or justice of the peace sitting in it;
  - (e) prescribing any matter relating to proceedings under the *Provincial Offences Act* that is referred to in an Act as provided for by the rules of court. R.S.O. 1990, c. C.43, s. 70 (3); 1996, c. 25, s. 9 (18); 1998, c. 4, s. 2.

## **PART V**

### **ADMINISTRATION OF THE COURTS**

#### **Goals**

- 71.** The administration of the courts shall be carried on so as to,
- (a) maintain the independence of the judiciary as a separate branch of government;
  - (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice;
  - (c) encourage public access to the courts and public confidence in the administration of justice;
  - (d) further the provision of high-quality services to the public; and
  - (e) promote the efficient use of public resources. 2006, c. 21, Sched. A, s. 14.

#### **Role of Attorney General**

**72.** The Attorney General shall superintend all matters connected with the administration of the courts, other than the following:

1. Matters that are assigned by law to the judiciary, including authority to direct and supervise the sittings and the assignment of the judicial duties of the court.
2. Matters related to the education, conduct and discipline of judges and justices of the peace, which are governed by other provisions of this Act, the *Justices of the Peace Act* and Acts of the Parliament of Canada.
3. Matters assigned to the judiciary by a memorandum of understanding under section 77. 2006, c. 21, Sched. A, s. 14.

#### **Court officers and staff**

##### **Appointment**

**73. (1)** Registrars, sheriffs, court clerks, assessment officers and any other administrative officers and employees that are considered necessary for the administration of the courts in Ontario may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 21, Sched. A, s. 14; 2006, c. 35, Sched. C, s. 20 (3).

##### **Exercise of powers**

**(2)** A power or duty given to a registrar, sheriff, court clerk, bailiff, assessment officer, Small Claims Court referee or official examiner under an Act, regulation or rule of court may be exercised or performed by a person or class of persons to whom the power or duty has been assigned by the Deputy Attorney General or a person designated by the Deputy Attorney General. 2006, c. 21, Sched. A, s. 14.



## **Same**

[\(3\)](#) Subsection (2) applies in respect of an Act, regulation or rule of court made under the authority of the Legislature or of the Parliament of Canada. 2006, c. 21, Sched. A, s. 14.

## **Destruction of documents**

[74.](#) Documents and other materials that are no longer required in a court office shall be disposed of in accordance with the directions of the Deputy Attorney General, subject to the approval of,

- (a) in the Court of Appeal, the Chief Justice of Ontario;
- (b) in the Superior Court of Justice, the Chief Justice of the Superior Court of Justice;
- (c) in the Ontario Court of Justice, the Chief Justice of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 14.

## **Powers of chief or regional senior judge**

[75. \(1\)](#) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:

- 1. Determining the sittings of the court.
- 2. Assigning judges to the sittings.
- 3. Assigning cases and other judicial duties to individual judges.
- 4. Determining the sitting schedules and places of sittings for individual judges.
- 5. Determining the total annual, monthly and weekly workload of individual judges.
- 6. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases. 2006, c. 21, Sched. A, s. 14.

## **Powers re masters, case management masters**

[\(2\)](#) Subsection (1) applies, with necessary modifications, in respect of directing and supervising the sittings and assigning the judicial duties of masters and case management masters. 2006, c. 21, Sched. A, s. 14.

## **Direction of court staff**

[76. \(1\)](#) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

## **Same**

[\(2\)](#) Court personnel referred to in subsection (1) who are assigned to and present in a courtroom shall act at the direction of the presiding judge, master or case management master while the court is in session. 2006, c. 21, Sched. A, s. 14.

## **Memoranda of understanding between Attorney General and Chief Justices Court of Appeal**

[77. \(1\)](#) The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal. 2006, c. 21, Sched. A, s. 14.

## **Superior Court of Justice**

[\(2\)](#) The Attorney General and the Chief Justice of the Superior Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court. 2006, c. 21, Sched. A, s. 14.

## **Ontario Court of Justice**

[\(3\)](#) The Attorney General and the Chief Justice of the Ontario Court of Justice may enter into a memorandum of understanding governing any matter relating to the administration of that court. 2006, c. 21, Sched. A, s. 14.

## **Scope**

[\(4\)](#) A memorandum of understanding under this section may deal with the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice, but shall not deal with any matter assigned by law to the judiciary. 2006, c. 21, Sched. A, s. 14.

## **Publication**

[\(5\)](#) The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public, in English and French. 2006, c. 21, Sched. A, s. 14.

## **Ontario Courts Advisory Council**

[78. \(1\)](#) The council known as the Ontario Courts Advisory Council is continued under the name Ontario Courts Advisory Council in English and Conseil consultatif des tribunaux de l'Ontario in French. 2006, c. 21, Sched. A, s. 14.

## **Same**

- [\(2\)](#) The Ontario Courts Advisory Council is composed of,
- (a) the Chief Justice of Ontario, who shall preside, and the Associate Chief Justice of Ontario;
  - (b) the Chief Justice and the Associate Chief Justice of the Superior Court of Justice and the Senior Judge of the Family Court;
  - (c) the Chief Justice and the associate chief justices of the Ontario Court of Justice; and

- (d) the regional senior judges of the Superior Court of Justice and of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 14.

### **Mandate**

[\(3\)](#) The Ontario Courts Advisory Council shall meet to consider any matter relating to the administration of the courts that is referred to it by the Attorney General or that it considers appropriate on its own initiative, and shall make recommendations on the matter to the Attorney General and to its members. 2006, c. 21, Sched. A, s. 14.

### **Ontario Courts Management Advisory Committee**

[79. \(1\)](#) The committee known as the Ontario Courts Management Advisory Committee is continued under the name Ontario Courts Management Advisory Committee in English and Comité consultatif de gestion des tribunaux de l'Ontario in French. 2006, c. 21, Sched. A, s. 14.

### **Same**

- [\(2\)](#) The Ontario Courts Management Advisory Committee is composed of,
- (a) the Chief Justice and Associate Chief Justice of Ontario, the Chief Justice and Associate Chief Justice of the Superior Court of Justice, the Senior Judge of the Family Court and the Chief Justice and associate chief justices of the Ontario Court of Justice;
  - (b) the Attorney General, the Deputy Attorney General, the Assistant Deputy Attorney General responsible for courts administration, the Assistant Deputy Attorney General responsible for criminal law and two other public servants chosen by the Attorney General;
  - (c) three lawyers appointed by The Law Society of Upper Canada and three lawyers appointed by the County and District Law Presidents' Association; and
  - (d) not more than six other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c). 2006, c. 21, Sched. A, s. 14.

### **Who presides**

[\(3\)](#) The following persons shall preside over meetings of the Committee, by rotation at intervals fixed by the Committee:

1. A judge mentioned in clause (2) (a), selected by the judges mentioned in that clause.
2. The Attorney General, or a person mentioned in clause (2) (b) and designated by the Attorney General.
3. A lawyer appointed under clause (2) (c), selected by the lawyers appointed under that clause.

4. A person appointed under clause (2) (d), selected by the persons appointed under that clause. 2006, c. 21, Sched. A, s. 14.

### **Function of Committee**

[\(4\)](#) The function of the Committee is to consider and recommend to the relevant bodies or authorities policies and procedures to promote the better administration of justice and the effective use of human and other resources in the public interest. 2006, c. 21, Sched. A, s. 14.

### **Regions**

[79.1 \(1\)](#) For administrative purposes related to the administration of justice in the province, Ontario is divided into the regions prescribed under subsection (2). 2006, c. 21, Sched. A, s. 14.

### **Regulations**

[\(2\)](#) The Lieutenant Governor in Council may make regulations prescribing regions for the purposes of this Act. 2006, c. 21, Sched. A, s. 14.

### **Regional Courts Management Advisory Committee**

[79.2 \(1\)](#) The committee in each region known as the Regional Courts Management Advisory Committee is continued under the name Regional Courts Management Advisory Committee in English and Comité consultatif régional de gestion des tribunaux in French, and is composed of,

- (a) the regional senior judge of the Superior Court of Justice, the regional senior judge of the Ontario Court of Justice and, in a region where the Family Court has jurisdiction, a judge chosen by the Chief Justice of the Superior Court of Justice;
- (b) the regional director of courts administration for the Ministry of the Attorney General and the regional director of Crown attorneys;
- (c) two lawyers appointed jointly by the presidents of the county and district law associations in the region; and
- (d) not more than two other persons, appointed by the Attorney General with the concurrence of the judges mentioned in clause (a) and the lawyers appointed under clause (c). 2006, c. 21, Sched. A, s. 14.

### **Who presides**

[\(2\)](#) The following persons shall preside over meetings of the Committee, by rotation at intervals fixed by the Committee:

1. A judge mentioned in clause (1) (a), selected by the judges mentioned in that clause.
2. An official mentioned in clause (1) (b), selected by the officials mentioned in that clause.

3. A lawyer appointed under clause (1) (c), selected by the lawyers appointed under that clause.
4. A person appointed under clause (1) (d), selected by the persons appointed under that clause. 2006, c. 21, Sched. A, s. 14.

### **Function of Committee**

[\(3\)](#) The function of the Committee is to consider and recommend to the relevant bodies or authorities policies and procedures for the region to promote the better administration of justice and the effective use of human and other resources in the public interest. 2006, c. 21, Sched. A, s. 14.

### **Frequency of meetings**

[\(4\)](#) The Committee shall meet at least once each year. 2006, c. 21, Sched. A, s. 14.

### **Annual report on administration of courts**

[79.3 \(1\)](#) Within six months after the end of every fiscal year, the Attorney General shall cause a report to be prepared on the administration of the courts during that fiscal year, in consultation with the Chief Justice of Ontario, the Chief Justice of the Superior Court of Justice and the Chief Justice of the Ontario Court of Justice. 2006, c. 21, Sched. A, s. 14.

### **Same**

[\(2\)](#) The annual report shall provide information about progress in meeting the goals set out in section 71 and shall be made available to the public in English and French. 2006, c. 21, Sched. A, s. 14.

### **Inclusion in Ministry's annual report**

[\(3\)](#) The Attorney General may cause all or part of the annual report on the administration of the courts to be incorporated into the corresponding annual report referred to in the *Ministry of the Attorney General Act*. 2006, c. 21, Sched. A, s. 14.

## **PART VI JUDGES AND OFFICERS**

### **Oath of office**

[80.](#) Every judge or officer of a court in Ontario, including a deputy judge of the Small Claims Court, shall, before entering on the duties of office, take and sign the following oath or affirmation in either the English or French language:

I solemnly swear (affirm) that I will faithfully, impartially and to the best of my skill and knowledge execute the duties of .....

So help me God. (*Omit this line in an affirmation.*)

1994, c. 12, s. 30.

### ***Persona designata abolished***

**81.** Where an adjudicative function is given by an Act to a judge or officer of a court in Ontario, the jurisdiction shall be deemed to be given to the court. 1994, c. 12, s. 31.

### **Liability of judges and other officers**

**82.** The following persons have the same immunity from liability as judges of the Superior Court of Justice:

1. Judges of all courts in Ontario, including judges presiding in the Small Claims Court and deputy judges of that court.
2. Masters.
3. Case management masters. 1996, c. 25, ss. 1 (15), 9 (17).

**83.** Repealed: 1996, c. 25, s. 1 (16).

### **Extra-judicial services**

**84.(1)** A judge of the Court of Appeal or the Superior Court of Justice may act as a commissioner, arbitrator, adjudicator, referee, conciliator or mediator or on a commission of inquiry under an Act of the Legislature or under an agreement made under any such Act. R.S.O. 1990, c. C.43, s. 84 (1); 1996, c. 25, ss. 1 (17), 9 (17).

### **Remuneration**

**(2)** A judge acting under subsection (1) shall not receive any remuneration but shall be reimbursed for reasonable travelling and other expenses incurred while so acting. R.S.O. 1990, c. C.43, s. 84 (2).

### **Judges' gowns**

**85.** The Lieutenant Governor in Council may make regulations respecting the form of the gown to be worn in court by all judges appointed after the 1st day of September, 1990. R.S.O. 1990, c. C.43, s. 85.

### **How certain judges to be addressed**

**86.(1)** Every judge of the Court of Ontario may be addressed as "Your Honour" or as "*(Mr. or Madam) Justice (naming the judge)*" in English or as "*Votre Honneur*" ou "*(M. ou M<sup>me</sup>) le/la Juge (nom du juge)*" in French. R.S.O. 1990, c. C.43, s. 86 (1); 1996, c. 25, s. 9 (10); 1998, c. 20, Sched. A, s. 19 (1).

### **Idem**

**(2)** A judge appointed to the High Court of Justice before the 1st day of September, 1990 may elect to be addressed according to the practice in existence before that day. R.S.O. 1990, c. C.43, s. 86 (2).

**(3)** Repealed: 1996, c. 25, s. 9 (11).

**(4)** Repealed: 1998, c. 20, Sched. A, s. 19 (2).

## **Case management masters**

### **Appointment**

[86.1](#) [\(1\)](#) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such case management masters as are considered necessary. 1996, c. 25, s. 1 (18).

### **Qualification**

[\(2\)](#) No person shall be appointed as a case management master unless he or she has been a member of the bar of one of the provinces or territories of Canada for at least the period of time prescribed in the regulations or, for an aggregate of at least that period, has been a member of such a bar or served as a judge anywhere in Canada after being a member of such a bar. 1996, c. 25, s. 1 (18).

### **Term of office**

[\(3\)](#) A case management master holds office for seven years. 1996, c. 25, s. 1 (18).

### **Reappointment**

[\(4\)](#) Subject to subsections (5) and (5.1), a case management master shall be reappointed for an additional seven-year term at the expiry of his or her initial seven-year term and each subsequent seven-year term. 2002, c. 18, Sched. A, s. 4 (2).

### **Expiry of term at age of 65**

[\(5\)](#) If the case management master is 58 years of age or older, the reappointment under subsection (4) shall provide for a term that expires when he or she reaches the age of 65. 2002, c. 18, Sched. A, s. 4 (2).

### **Resignation or removal from office**

[\(5.1\)](#) Subsection (4) does not apply if,

- (a) the case management master has resigned under section 48; or
- (b) the Chief Justice has decided to remove the case management master from office under clause 86.2 (8) (g) and,
  - (i) the time for an appeal from the decision has expired without an appeal being filed, or
  - (ii) any appeal has been finally disposed of and the Chief Justice's decision has been confirmed. 2002, c. 18, Sched. A, s. 4 (2).

### **Annual reappointments until age of 75**

[\(5.2\)](#) A case management master who has reached the age of 65 may be reappointed by the Lieutenant Governor in Council, on the joint recommendation of the Attorney General and the Chief Justice, for a one-year term, subject to subsection (5.3); if the Attorney General and the Chief Justice so recommend, the Lieutenant Governor in Council shall reappoint the case management master. 2002, c. 18, Sched. A, s. 4 (2).

**Expiry of term at age of 75**

[\(5.3\)](#) If the case management master is 74 years of age or older, the reappointment under subsection (5.2) shall provide for a term that expires when he or she reaches the age of 75. 2002, c. 18, Sched. A, s. 4 (2).

**No limit**

[\(5.4\)](#) Subject to subsections (5) and (5.3), there is no limit to the number of times a case management master can be reappointed under subsection (4) and subsection (5.2). 2002, c. 18, Sched. A, s. 4 (2).

**Jurisdiction**

[\(6\)](#) A case management master has,

- (a) the jurisdiction of a master conferred by the rules of court; and
- (b) the case management jurisdiction conferred by the rules of court. 1996, c. 25, s. 1 (18).

**Application of ss. 46 to 48**

[\(7\)](#) Sections 46 to 48, except subsection 47 (3), apply to case management masters, with necessary modifications, in the same manner as to provincial judges. 1996, c. 25, s. 1 (18).

**Same**

[\(8\)](#) Section 46 does not apply in circumstances in which the rules of court require participation in alternative dispute resolution. 1996, c. 25, s. 1 (18).

**Standards of conduct**

[\(9\)](#) The Chief Justice may establish standards of conduct for case management masters. 1996, c. 25, s. 1 (18).

**Duty of Chief Justice**

[\(10\)](#) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French. 2006, c. 21, Sched. A, s. 15.

**Complaint re case management master**

**86.2** [\(1\)](#) Any person may make a complaint alleging misconduct by a case management master, by writing to the Chief Justice of the Superior Court of Justice. 1996, c. 25, ss. 1 (18), 9 (14).

**Dismissal**

[\(2\)](#) The Chief Justice shall review the complaint and may dismiss it without further investigation if, in his or her opinion, it is frivolous or an abuse of process, or concerns a minor matter to which an appropriate response has already been given. 1996, c. 25, s. 1 (18).



**Notice of dismissal**

(3) The Chief Justice shall notify the complainant and the case management master in writing of a dismissal under subsection (2), giving brief reasons for it. 1996, c. 25, s. 1 (18).

**Committee**

(4) If the complaint is not dismissed, the Chief Justice shall refer it to a committee consisting of three persons chosen by him or her. 1996, c. 25, s. 1 (18).

**Same**

(5) The three persons shall be a judge of the Superior Court of Justice, a case management master and a person who is neither a judge nor a lawyer. 1996, c. 25, ss. 1 (18), 9 (17).

**Investigation**

(6) The committee shall investigate the complaint in the manner it considers appropriate, and the complainant and the case management master shall be given an opportunity to make representations to the committee, in writing or, at the committee's option, orally. 1996, c. 25, s. 1 (18).

**Recommendation**

(7) The committee shall make a report to the Chief Justice, recommending a disposition in accordance with subsections (8), (9) and (10). 1996, c. 25, s. 1 (18).

**Disposition**

(8) The Chief Justice may dismiss the complaint, with or without a finding that it is unfounded, or, if he or she concludes that the case management master's conduct presents grounds for imposing a sanction, may,

- (a) warn the case management master;
- (b) reprimand the case management master;
- (c) order the case management master to apologize to the complainant or to any other person;
- (d) order that the case management master take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a case management master;
- (e) suspend the case management master for a period of up to 30 days;
- (f) direct that no judicial duties or only specified judicial duties be assigned to the case management master; or
- (g) remove the case management master from office. 1996, c. 25, s. 1 (18).

**Same**

(9) The Chief Justice may adopt any combination of the dispositions set out in clauses (8) (a) to (f). 1996, c. 25, s. 1 (18).

**Appeal**

[\(9.1\)](#) The Chief Justice's decision may be appealed to the Court of Appeal,

(a) by the case management master, as of right; or

(b) by the complainant, with leave of the Court of Appeal. 2002, c. 18, Sched. A, s. 4 (3).

**Parties**

[\(9.2\)](#) The case management master and the complainant are parties to any appeal and the Attorney General is the respondent. 2002, c. 18, Sched. A, s. 4 (3).

**Power of Court of Appeal**

[\(9.3\)](#) The Court of Appeal may substitute its opinion for that of the Chief Justice on all questions of fact and law. 2002, c. 18, Sched. A, s. 4 (3).

**Time for appeal**

[\(9.4\)](#) The notice of appeal or motion for leave to appeal shall be filed within 30 days after the date of the Chief Justice's decision. 2002, c. 18, Sched. A, s. 4 (3).

**Stay**

[\(9.5\)](#) On the filing of a notice of appeal, the imposition of any sanction is stayed until the final disposition of the appeal. 2002, c. 18, Sched. A, s. 4 (3).

**Compensation**

[\(10\)](#) The Chief Justice shall consider whether the case management master should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken under this section in relation to the complaint. 1996, c. 25, s. 1 (18).

**Recommendation**

[\(11\)](#) If the Chief Justice is of the opinion that the case management master should be compensated, he or she shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation. 1996, c. 25, s. 1 (18).

**Same**

[\(12\)](#) If the complaint is dismissed with a finding that it is unfounded, the Chief Justice shall recommend to the Attorney General that the case management master be compensated for his or her costs for legal services and shall indicate the amount of compensation. 1996, c. 25, s. 1 (18).

**Compensation**

[\(12.1\)](#) When there is an appeal or motion for leave to appeal under subsection (9.1), the Court of Appeal shall consider whether the case management master should be compensated for all or part of his or her costs for legal services incurred in connection with the appeal or motion. 2002, c. 18, Sched. A, s. 4 (4).

## **Recommendation**

[\(12.2\)](#) If the Court of Appeal is of the opinion that the case management master should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation. 2002, c. 18, Sched. A, s. 4 (4).

## **Same**

[\(12.3\)](#) If a complainant's motion for leave to appeal is dismissed, the Court of Appeal shall recommend to the Attorney General that the case management master be compensated for his or her costs for legal services and shall indicate the amount of compensation. 2002, c. 18, Sched. A, s. 4 (4).

## **Maximum**

[\(13\)](#) The amount of compensation recommended under subsection (11), (12), (12.2) or (12.3) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar legal services. 1996, c. 25, s. 1 (18); 2002, c. 18, Sched. A, s. 4 (5).

## **Payment**

[\(14\)](#) The Attorney General shall pay compensation to the case management master in accordance with the recommendation. 1996, c. 25, s. 1 (18).

## **Confidential records**

[\(15\)](#) The committee may order that any information or documents relating to a complaint that was not dealt with in a manner that was open to the public are confidential and shall not be disclosed or made public. 1996, c. 25, s. 1 (18).

## **Same**

[\(16\)](#) Subsection (15) applies whether the information or documents are in the possession of the committee, the Chief Justice, the Attorney General or any other person. 1996, c. 25, s. 1 (18).

## **Limitation**

[\(17\)](#) Subsection (15) applies only to information and documents that have been treated as confidential or were prepared exclusively for the committee, or for submission to the committee, in relation to its investigation. 1996, c. 25, s. 1 (18).

## **Non-application of SPPA**

[\(18\)](#) The *Statutory Powers Procedure Act* does not apply to a judge, case management master or member of a committee acting under this section. 1996, c. 25, s. 1 (18).

## **Personal liability**

[\(19\)](#) No action or other proceeding for damages shall be instituted against a judge, case management master or member of a committee for any act done in good faith in the execution or intended execution of the person's duty under this section. 1996, c. 25, s. 1 (18).

## **Masters**

**87.(1)** Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 87 (1); 1996, c. 25, s. 9 (17).

## **Jurisdiction**

**(2)** Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 87 (2); 1996, c. 25, s. 9 (17).

## **Application of ss. 44 to 51.12**

**(3)** Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges. 1994, c. 12, s. 34.

## **Exception**

**(4)** The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44 (1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14, 18, 20).

## **Same**

**(5)** The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14).

## **Same**

**(6)** When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the master who is to replace the judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14, 17, 18, 20).

## **Same**

**(7)** Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Superior Court of Justice consents. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14).

## **Compensation**

[\(8\)](#)Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this Act. 1994, c. 12, s. 34.

## **Small Claims Court judges**

[87.1\(1\)](#)This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. 1994, c. 12, s. 35.

## **Full and part-time service**

[\(2\)](#)The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44 (1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14, 18, 20).

## **Continuation in office**

[\(3\)](#)The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14).

## **Complaints**

[\(4\)](#)When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14, 17, 18, 20).

## **Application of ss. 51.9, 51.10, 51.11**

[\(5\)](#)Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14).

## Regulations

**88.(1)** The Lieutenant Governor in Council may make regulations,

- (a) prescribing the officer or employee to whom money paid into the Superior Court of Justice shall be paid and providing for the vesting of that money and any securities in which that money is invested in that officer or employee;
- (b) governing the management and investment of money paid into a court;
- (c) providing for the payment of interest on money paid into a court and fixing the rate of interest so paid;
- (d) prescribing the officer or employee in whose name mortgages and other securities taken under an order of the Superior Court of Justice and instruments taken as security in respect of a proceeding in the Superior Court of Justice shall be taken;

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (d) is repealed by the Statutes of Ontario, 2001, chapter 9, Schedule B, section 6. See: 2001, c. 9, Sched. B, ss. 6, 14 (2).**

- (e) respecting the deposit of the mortgages, securities and instruments and the duty or obligation, if any, in respect of them of the officer or employee in whose name they are taken. R.S.O. 1990, c. C.43, s. 88; 1994, c. 12, s. 36; 1996, c. 25, s. 9 (17).

**Note: On a day to be named by proclamation of the Lieutenant Governor, clause (e) is repealed by the Statutes of Ontario, 2001, chapter 9, Schedule B, section 6. See: 2001, c. 9, Sched. B, ss. 6, 14 (2).**

## Regulations under *Public Guardian and Trustee Act*

**(2)** With respect to all functions performed by the Public Guardian and Trustee in his or her capacity as Accountant of the Superior Court of Justice, the *Public Guardian and Trustee Act* and the regulations made under that Act prevail over subsection (1) and the regulations made under it. 1997, c. 23, s. 5; 1996, c. 25, s. 9 (12); 2000, c. 26, Sched. A, s. 5.

## Children's Lawyer

**89.(1)** The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint a Children's Lawyer for Ontario. 1994, c. 27, s. 43 (1).

## Qualification

**(2)** No person shall be appointed as Children's Lawyer unless he or she has been a member of the bar of one of the provinces or territories of Canada for at least ten years or, for an aggregate of at least ten years, has been a member of such a bar or served as a judge anywhere in Canada after being a member of such a bar. 1994, c. 12, s. 37; 1994, c. 27, s. 43 (2).

**Duties**

(3) Where required to do so by an Act or the rules of court, the Children's Lawyer shall act as litigation guardian of a minor or other person who is a party to a proceeding. 1994, c. 12, s. 37; 1994, c. 27, s. 43 (2).

**Same**

(3.1) At the request of a court, the Children's Lawyer may act as the legal representative of a minor or other person who is not a party to a proceeding. 1994, c. 12, s. 37; 1999, c. 12, Sched. B, s. 4 (1).

**Costs**

(4) The same costs as are payable to litigation guardians are payable to the Children's Lawyer and costs recovered by the Children's Lawyer shall be paid into the Consolidated Revenue Fund. R.S.O. 1990, c. C.43, s. 89 (4); 1994, c. 27, s. 43 (2).

**Security for costs**

(5) The Children's Lawyer shall not be required to give security for costs in any proceeding. R.S.O. 1990, c. C.43, s. 89 (5); 1994, c. 27, s. 43 (2).

**Mortgages held by Accountant**

(6) Where a person for whom the Children's Lawyer has acted is interested in a mortgage held by the Accountant of the Superior Court of Justice, the Children's Lawyer shall take reasonable care to ensure that,

- (a) money payable on the mortgage is promptly paid;
- (b) the mortgaged property is kept properly insured; and
- (c) taxes on the mortgaged property are promptly paid. R.S.O. 1990, c. C.43, s. 89 (6); 1994, c. 27, s. 43 (2); 1996, c. 25, s. 9 (13).

**Payment into court**

(7) Money received by the Children's Lawyer on behalf of a person for whom he or she acts shall, unless the court orders otherwise, be paid into court to the credit of the person entitled. R.S.O. 1990, c. C.43, s. 89 (7); 1994, c. 27, s. 43 (2).

**Assessment of costs**

(8) Where the amount payable into court under subsection (7) is to be ascertained by the deduction of unassessed costs from a fund, the Children's Lawyer may require the costs to be assessed forthwith. R.S.O. 1990, c. C.43, s. 89 (8); 1994, c. 27, s. 43 (2).

**Audit**

(9) The Auditor General shall examine and report on the accounts and financial transactions of the Children's Lawyer. R.S.O. 1990, c. C.43, s. 89 (9); 1994, c. 27, s. 43 (2); 2004, c. 17, s. 32.



### **Assessment officers**

[90.\(1\)](#) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint assessment officers. R.S.O. 1990, c. C.43, s. 90 (1); 1999, c. 12, Sched. B, s. 4 (2).

### **Idem**

[\(2\)](#) Every master is an assessment officer. R.S.O. 1990, c. C.43, s. 90 (2).

### **Jurisdiction**

[\(3\)](#) Every assessment officer has jurisdiction to assess costs in a proceeding in any court. R.S.O. 1990, c. C.43, s. 90 (3); 1996, c. 25, s. 1 (19).

### **Appeal from assessment of costs before tribunal**

[\(4\)](#) Where costs of a proceeding before a tribunal other than a court are to be assessed by an assessment officer,

- (a) the rules of court governing the procedure on an assessment of costs apply with necessary modifications; and
- (b) an appeal lies to the Superior Court of Justice from a certificate of assessment of the costs if an objection was served in respect of the issue appealed in accordance with the rules of court. R.S.O. 1990, c. C.43, s. 90 (4); 1996, c. 25, s. 9 (17).

### **Officers of court**

[91](#) Every official examiner and deputy official examiner is an officer of every court in Ontario. R.S.O. 1990, c. C.43, s. 91.

### **Administration of oaths**

[92](#) Every officer of a court has, for the purposes of any matter before him or her, power to administer oaths and affirmations and to examine parties and witnesses. R.S.O. 1990, c. C.43, s. 92.

### **Money held by officer of court**

[93](#) Money or property vested in or held by an officer of a court shall be deemed to be vested in the officer in trust for Her Majesty, subject to being disposed of in accordance with any Act, rule of court or order. R.S.O. 1990, c. C.43, s. 93.

### **Disposition of court fees**

[94.\(1\)](#) All fees payable to a salaried officer of a court in respect of a proceeding in the court shall be paid into the Consolidated Revenue Fund.

### **Exception**

[\(2\)](#) Subsection (1) does not apply to fees payable to court reporters under the *Administration of Justice Act*. R.S.O. 1990, c. C.43, s. 94.



## **PART VII COURT PROCEEDINGS**

### **Application of Part**

#### **Civil proceedings**

[95.\(1\)](#) This Part applies to civil proceedings in courts of Ontario.

#### **Criminal proceedings**

[\(2\)](#) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126 (5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the *Criminal Code* (Canada), except in so far as they are inconsistent with that Act. R.S.O. 1990, c. C.43, s. 95 (1, 2).

#### **Provincial offences proceedings**

[\(3\)](#) Sections 109 (constitutional questions), 125, 126 (language of proceedings), 132 (judge sitting on appeal), 136 (prohibition against photography at court hearings), 144 (arrest and committal warrants enforceable by police) and 146 (where procedures not provided) also apply to proceedings under the *Provincial Offences Act* and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court of Justice. R.S.O. 1990, c. C.43, s. 95 (3); 1996, c. 25, s. 9 (18).

## **COMMON LAW AND EQUITY**

### **Rules of law and equity**

[96.\(1\)](#) Courts shall administer concurrently all rules of equity and the common law. R.S.O. 1990, c. C.43, s. 96 (1); 1993, c. 27, Sched.

### **Rules of equity to prevail**

[\(2\)](#) Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails. R.S.O. 1990, c. C.43, s. 96 (2); 1993, c. 27, Sched.

### **Jurisdiction for equitable relief**

[\(3\)](#) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided. 1994, c. 12, s. 38; 1996, c. 25, s. 9 (17).

### **Declaratory orders**

[97.](#) The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

### **Relief against penalties**

[98.](#) A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just. R.S.O. 1990, c. C.43, s. 98; 1993, c. 27, Sched.

### **Damages in substitution for injunction or specific performance**

[99.](#) A court that has jurisdiction to grant an injunction or order specific performance may award damages in addition to, or in substitution for, the injunction or specific performance. R.S.O. 1990, c. C.43, s. 99.

### **Vesting orders**

[100.](#) A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100.

## **INTERLOCUTORY ORDERS**

### **Injunctions and receivers**

[101.\(1\)](#) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

### **Terms**

[\(2\)](#) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

### **Injunction in labour dispute**

#### **Definition**

[102.\(1\)](#) In this section,

“labour dispute” means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

### **Notice**

[\(2\)](#) Subject to subsection (8), no injunction to restrain a person from an act in connection with a labour dispute shall be granted without notice.

### **Steps before injunction proceeding**

[\(3\)](#) In a motion or proceeding for an injunction to restrain a person from an act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry or exit from the premises in question or breach of the peace have been unsuccessful.

### **Evidence**

[\(4\)](#) Subject to subsection (8), affidavit evidence in support of a motion for an injunction to restrain a person from an act in connection with a labour dispute shall be confined to statements of facts within the knowledge of the deponent, but any party may

by notice to the party filing such affidavit, and payment of the proper attendance money, require the attendance of the deponent to be cross-examined at the hearing.

### **Interim injunction**

(5) An interim injunction to restrain a person from an act in connection with a labour dispute may be granted for a period of not longer than four days.

### **Notice**

(6) Subject to subsection (8), at least two days notice of a motion for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the responding party and to any other person affected thereby but not named in the notice of motion.

### **Idem**

(7) Notice required by subsection (6) to persons other than the responding party may be given,

- (a) where such persons are members of a labour organization, by personal service on an officer or agent of the labour organization; and
- (b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

### **Interim injunction without notice**

(8) Where notice as required by subsection (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction;
- (b) notice as required by subsection (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service;
- (c) reasonable notification, by telephone or otherwise, has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under section 89 of the *Labour Relations Act* to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purpose of clauses (a), (b) and (c) is established by oral evidence.

### **Misrepresentation as contempt of court**

[\(9\)](#) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly, in a proceeding for an injunction under this section, constitutes a contempt of court.

### **Appeal**

[\(10\)](#) An appeal from an order under this section lies to the Court of Appeal without leave. R.S.O. 1990, c. C.43, s. 102.

### **Certificate of pending litigation**

[103.\(1\)](#) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2).

### **Registration**

[\(2\)](#) Where a certificate of pending litigation is issued under subsection (1) it may be registered whether the land is registered under the *Land Titles Act* or the *Registry Act*.

### **Exception**

[\(3\)](#) Subsections (1) and (2) do not apply to a proceeding for foreclosure or sale on a registered mortgage or to enforce a lien under the *Construction Lien Act*.

### **Liability where no reasonable claim**

[\(4\)](#) A party who registers a certificate under subsection (2) without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration.

### **Recovery of damages**

[\(5\)](#) The liability for damages under subsection (4) and the amount thereof may be determined in the proceeding in respect of which the certificate was registered or in a separate proceeding.

### **Order discharging certificate**

[\(6\)](#) The court may make an order discharging a certificate,

- (a) where the party at whose instance it was issued,
  - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
  - (ii) does not have a reasonable claim to the interest in the land claimed, or
  - (iii) does not prosecute the proceeding with reasonable diligence;
- (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
- (c) on any other ground that is considered just,

and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just.

### **Effect**

[\(7\)](#) Where a certificate is discharged, any person may deal with the land as fully as if the certificate had not been registered. R.S.O. 1990, c. C.43, s. 103.

### **Interim order for recovery of personal property**

[104.\(1\)](#) In an action in which the recovery of possession of personal property is claimed and it is alleged that the property,

- (a) was unlawfully taken from the possession of the plaintiff; or
- (b) is unlawfully detained by the defendant,

the court, on motion, may make an interim order for recovery of possession of the property.

### **Damages**

[\(2\)](#) A person who obtains possession of personal property by obtaining or setting aside an interim order under subsection (1) is liable for any loss suffered by the person ultimately found to be entitled to possession of the property. R.S.O. 1990, c. C.43, s. 104.

### **Physical or mental examination**

#### **Definition**

[105.\(1\)](#) In this section,

“health practitioner” means a person licensed to practise medicine or dentistry in Ontario or any other jurisdiction, a member of the College of Psychologists of Ontario or a person certified or registered as a psychologist by another jurisdiction. R.S.O. 1990, c. C.43, s. 105 (1); 1998, c. 18, Sched. G, s. 48.

#### **Order**

[\(2\)](#) Where the physical or mental condition of a party to a proceeding is in question, the court, on motion, may order the party to undergo a physical or mental examination by one or more health practitioners.

#### **Idem**

[\(3\)](#) Where the question of a party’s physical or mental condition is first raised by another party, an order under this section shall not be made unless the allegation is relevant to a material issue in the proceeding and there is good reason to believe that there is substance to the allegation.

#### **Further examinations**

[\(4\)](#) The court may, on motion, order further physical or mental examinations.

#### **Examiner may ask questions**

[\(5\)](#) Where an order is made under this section, the party examined shall answer the questions of the examining health practitioner relevant to the examination and the answers given are admissible in evidence. R.S.O. 1990, c. C.43, s. 105 (2-5).

**Stay of proceedings**

**106.** A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just. R.S.O. 1990, c. C.43, s. 106.

**Consolidation of proceedings in different courts**

**107.(1)** Where two or more proceedings are pending in two or more different courts, and the proceedings,

- (a) have a question of law or fact in common;
  - (b) claim relief arising out of the same transaction or occurrence or series of transactions or occurrences; or
  - (c) for any other reason ought to be the subject of an order under this section,
- an order may, on motion, be made,
- (d) transferring any of the proceedings to another court and requiring the proceedings to be consolidated, or to be heard at the same time, or one immediately after the other; or
  - (e) requiring any of the proceedings to be,
    - (i) stayed until after the determination of any other of them, or
    - (ii) asserted by way of counterclaim in any other of them. R.S.O. 1990, c. C.43, s. 107 (1).

**Transfer from Small Claims Court**

**(2)** A proceeding in the Small Claims Court shall not be transferred under clause (1) (d) to the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court. R.S.O. 1990, c. C.43, s. 107 (2); 1996, c. 25, s. 9 (17).

**Idem**

**(3)** A proceeding in the Small Claims Court shall not be required under subclause (1) (e) (ii) to be asserted by way of counterclaim in a proceeding in the Superior Court of Justice without the consent of the plaintiff in the proceeding in the Small Claims Court. R.S.O. 1990, c. C.43, s. 107 (3); 1996, c. 25, s. 9 (17).

**Motions**

**(4)** The motion shall be made to a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 107 (4); 1996, c. 25, s. 9 (17).

**Directions**

**(5)** An order under subsection (1) may impose such terms and give such directions as are considered just, including dispensing with service of a notice of readiness or listing for trial and abridging the time for placing an action on the trial list.

## **Transfer**

[\(6\)](#) A proceeding that is transferred to another court under clause (1) (d) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court.

## **Discretion at hearing**

[\(7\)](#) Where an order has been made that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise. R.S.O. 1990, c. C.43, s. 107 (5-7).

## **PROCEDURAL MATTERS**

## **Jury trials**

[108. \(1\)](#) In an action in the Superior Court of Justice that is not in the Small Claims Court, a party may require that the issues of fact be tried or the damages assessed, or both, by a jury, unless otherwise provided. R.S.O. 1990, c. C.43, s. 108 (1); 1996, c. 25, s. 9 (17).

## **Trials without jury**

[\(2\)](#) The issues of fact and the assessment of damages in an action shall be tried without a jury in respect of a claim for any of the following kinds of relief:

1. Injunction or mandatory order.
2. Partition or sale of real property.
3. Relief in proceedings referred to in the Schedule to section 21.8.
4. Dissolution of a partnership or taking of partnership or other accounts.
5. Foreclosure or redemption of a mortgage.
6. Sale and distribution of the proceeds of property subject to any lien or charge.
7. Execution of a trust.
8. Rectification, setting aside or cancellation of a deed or other written instrument.
9. Specific performance of a contract.
10. Declaratory relief.
11. Other equitable relief.
12. Relief against a municipality. R.S.O. 1990, c. C.43, s. 108 (2); 1994, c. 12, s. 41; 2006, c. 21, Sched. A, s. 16.

## **Idem**

[\(3\)](#) On motion, the court may order that issues of fact be tried or damages assessed, or both, without a jury. R.S.O. 1990, c. C.43, s. 108 (3).

**Composition of jury**

(4) Where a proceeding is tried with a jury, the jury shall be composed of six persons selected in accordance with the *Juries Act*. R.S.O. 1990, c. C.43, s. 108 (4).

**Verdicts or questions**

(5) Where a proceeding is tried with a jury,

- (a) the judge may require the jury to give a general verdict or to answer specific questions, subject to section 15 of the *Libel and Slander Act*; and
- (b) judgment may be entered in accordance with the verdict or the answers to the questions. R.S.O. 1990, c. C.43, s. 108 (5).

**Idem**

(6) It is sufficient if five of the jurors agree on the verdict or the answer to a question, and where more than one question is submitted, it is not necessary that the same five jurors agree to every answer. R.S.O. 1990, c. C.43, s. 108 (6).

**Discharge of juror at trial**

(7) The judge presiding at a trial may discharge a juror on the ground of illness, hardship, partiality or other sufficient cause. R.S.O. 1990, c. C.43, s. 108 (7).

**Continuation with five jurors**

(8) Where a juror dies or is discharged, the judge may direct that the trial proceed with five jurors, in which case the verdict or answers to questions must be unanimous. R.S.O. 1990, c. C.43, s. 108 (8).

**Specifying negligent acts**

(9) Where a proceeding to which subsection 193 (1) of the *Highway Traffic Act* applies is tried with a jury, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the proceeding is brought. R.S.O. 1990, c. C.43, s. 108 (9).

**Malicious prosecution**

(10) In an action for malicious prosecution, the trier of fact shall determine whether or not there was reasonable and probable cause for instituting the prosecution. R.S.O. 1990, c. C.43, s. 108 (10).

**Notice of constitutional question**

**109.(1)** Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:

1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common law is in question.
2. A remedy is claimed under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario.



**Failure to give notice**

[\(2\)](#) If a party fails to give notice in accordance with this section, the Act, regulation, by-law or rule of common law shall not be adjudged to be invalid or inapplicable, or the remedy shall not be granted, as the case may be.

**Form of notice**

[\(2.1\)](#) The notice shall be in the form provided for by the rules of court or, in the case of a proceeding before a board or tribunal, in a substantially similar form.

**Time of notice**

[\(2.2\)](#) The notice shall be served as soon as the circumstances requiring it become known and, in any event, at least fifteen days before the day on which the question is to be argued, unless the court orders otherwise. 1994, c. 12, s. 42 (1).

**Notice of appeal**

[\(3\)](#) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

**Right of Attorneys General to be heard**

[\(4\)](#) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

**Right of Attorneys General to appeal**

[\(5\)](#) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceeding for the purpose of any appeal in respect of the constitutional question. R.S.O. 1990, c. C.43, s. 109 (3-5).

**Boards and tribunals**

[\(6\)](#) This section applies to proceedings before boards and tribunals as well as to court proceedings. 1994, c. 12, s. 42 (2).

**Proceeding in wrong forum**

[110.\(1\)](#) Where a proceeding or a step in a proceeding is brought or taken before the wrong court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.

**Continuation of proceeding**

[\(2\)](#) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court. R.S.O. 1990, c. C.43, s. 110.

**Set off**

[111.\(1\)](#) In an action for payment of a debt, the defendant may, by way of defence, claim the right to set off against the plaintiff's claim a debt owed by the plaintiff to the defendant.

**Idem**

[\(2\)](#) Mutual debts may be set off against each other even if they are of a different nature.

**Judgment for defendant**

[\(3\)](#) Where, on a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance. R.S.O. 1990, c. C.43, s. 111.

**Investigation and report of Children's Lawyer**

[112.\(1\)](#) In a proceeding under the *Divorce Act* (Canada) or the *Children's Law Reform Act* in which a question concerning custody of or access to a child is before the court, the Children's Lawyer may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education. R.S.O. 1990, c. C.43, s. 112 (1); 1994, c. 27, s. 43 (2).

**Idem**

[\(2\)](#) The Children's Lawyer may act under subsection (1) on his or her own initiative, at the request of a court or at the request of any person. R.S.O. 1990, c. C.43, s. 112 (2); 1994, c. 27, s. 43 (2).

**Report as evidence**

[\(3\)](#) An affidavit of the person making the investigation, verifying the report as to facts that are within the person's knowledge and setting out the source of the person's information and belief as to other facts, with the report attached as an exhibit thereto, shall be served on the parties and filed and on being filed shall form part of the evidence at the hearing of the proceeding. R.S.O. 1990, c. C.43, s. 112 (3).

**Attendance on report**

[\(4\)](#) Where a party to the proceeding disputes the facts set out in the report, the Children's Lawyer shall if directed by the court, and may when not so directed, attend the hearing on behalf of the child and cause the person who made the investigation to attend as a witness. R.S.O. 1990, c. C.43, s. 112 (4); 1994, c. 27, s. 43 (2).

**Agreement preventing third party claim or crossclaim**

[113.](#) Rules of court permitting a defendant to make a third party claim or crossclaim apply despite any agreement that provides that no action may be brought until after judgment against the defendant. R.S.O. 1990, c. C.43, s. 113.

**Agreement as to place of hearing**

[114.](#) Where a party moves to change the place of hearing in a proceeding, an agreement as to the place of hearing is not binding, but may be taken into account. R.S.O. 1990, c. C.43, s. 114.

**Security**

[115.](#) Where a person is required to give security in respect of a proceeding in a court, a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity

insurance is sufficient, unless the court orders otherwise. R.S.O. 1990, c. C.43, s. 115; 1997, c. 19, s. 32.

### **Periodic payment and review of damages**

**116.(1)** In a proceeding where damages are claimed for personal injuries or under Part V of the *Family Law Act* for loss resulting from the injury to or death of a person, the court,

- (a) if all affected parties consent, may order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just; and
- (b) if the plaintiff requests that an amount be included in the award to offset any liability for income tax on income from the investment of the award, shall order the defendant to pay all or part of the award periodically on such terms as the court considers just. R.S.O. 1990, c. C.43, s. 116 (1); 1996, c. 25, s. 1 (20).

### **No order**

**(2)** An order under clause (1) (b) shall not be made if the parties otherwise consent or if the court is of the opinion that the order would not be in the best interests of the plaintiff, having regard to all the circumstances of the case.

### **Best interests**

**(3)** In considering the best interests of the plaintiff, the court shall take into account,

- (a) whether the defendant has sufficient means to fund an adequate scheme of periodic payments;
- (b) whether the plaintiff has a plan or a method of payment that is better able to meet the interests of the plaintiff than periodic payments by the defendant; and
- (c) whether a scheme of periodic payments is practicable having regard to all the circumstances of the case.

### **Future review**

**(4)** In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just.

### **Amount to offset liability for income tax**

**(5)** If the court does not make an order for periodic payment under subsection (1), it shall make an award for damages that shall include an amount to offset liability for income tax on income from investment of the award. R.S.O. 1990, c. C.43, s. 116 (2-5).

### **Periodic payment, medical malpractice actions**

**116.1 (1)** Despite section 116, in a medical malpractice action where the court determines that the award for the future care costs of the plaintiff exceeds the prescribed amount, the court shall, on a motion by the plaintiff or a defendant that is liable to pay the

plaintiff's future care costs, order that the damages for the future care costs of the plaintiff be satisfied by way of periodic payments. 2006, c. 21, Sched. A, s. 17.

### **The order**

[\(2\)](#) If the court makes an order under subsection (1), the court shall determine the amount and frequency of the periodic payments without regard to inflation and shall order the defendant to provide security for those payments in the form of an annuity contract that satisfies the criteria set out in subsection (3). 2006, c. 21, Sched. A, s. 17.

### **Form of security**

[\(3\)](#) The annuity contract shall satisfy the following criteria:

1. The annuity contract must be issued by a life insurer.
2. The annuity must be designed to generate payments in respect of which the beneficiary is not required to pay income taxes.
3. The annuity must include protection from inflation to a degree reasonably available in the market for such annuities. 2006, c. 21, Sched. A, s. 17.

### **Directions from the court**

[\(4\)](#) If the parties are unable to agree on the terms of the annuity, either party may seek directions from the court about the terms. 2006, c. 21, Sched. A, s. 17.

### **Filing and approval of plan**

[\(5\)](#) Unless the court orders otherwise, a proposed plan to provide security required by an order under subsection (2) shall be filed with the court within 30 days of the judgment or within another period that the court may specify, and the court may approve the proposed plan, with or without modifications. 2006, c. 21, Sched. A, s. 17.

### **Effect of providing security**

[\(6\)](#) If security is provided in accordance with a plan approved by the court, the defendant by whom or on whose behalf the security is provided is discharged from all liability to the plaintiff in respect of damages that are to be paid by periodic payments, but the owner of the security remains liable for the periodic payments until they are paid. 2006, c. 21, Sched. A, s. 17.

### **Effect of not providing security**

[\(7\)](#) If a proposed plan is not filed in accordance with subsection (5) or is not approved by the court, the court shall, at the request of any party to the proceeding, vacate the portions of the judgment in which periodic payments are awarded and substitute a lump sum award. 2006, c. 21, Sched. A, s. 17.

### **Application for lump sum**

[\(8\)](#) The court may order that the future care costs be paid in whole or in part by way of a lump sum payment to the extent that the plaintiff satisfies the court that a periodic payment award is unjust, having regard to the capacity of the periodic payment award to meet the needs for which the damages award for future care costs is intended to provide compensation. 2006, c. 21, Sched. A, s. 17.

### **Amount to offset liability for income tax**

(9) If the court does not make an order for periodic payments under subsection (1) or makes an order for a lump sum payment under subsection (7) or (8), the court shall make an award for damages that shall include an amount to offset liability for income tax on income from investment of the award except to the extent that the evidence shows that the plaintiff will not derive taxable income from investing the award. 2006, c. 21, Sched. A, s. 17.

### **Periodic payments exempt from garnishment, etc.**

(10) Periodic payments of damages for future care costs are exempt from seizure or garnishment to the same extent that wages are exempt under section 7 of the *Wages Act*, unless the seizure or garnishment is made by a provider of care to the plaintiff and the seizure or garnishment is to pay for the costs of products, services or accommodations or any one of them with respect to the plaintiff. 2006, c. 21, Sched. A, s. 17.

### **Future review**

(11) In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just. 2006, c. 21, Sched. A, s. 17.

### **Regulations**

(12) The Lieutenant Governor in Council may make regulations prescribing or calculating the amount of future care costs for the purpose of subsection (1). 2006, c. 21, Sched. A, s. 17.

### **Definitions**

(13) In this section,

“future care costs” means the cost of medical care or treatment, rehabilitation services or other care, treatment, services, products or accommodations that is incurred at a time after judgment; (“coûts des soins futurs”)

“medical malpractice action” means an action for personal injuries alleged to have arisen from negligence or malpractice in respect of professional services requested of, or rendered by, a health professional who is a member of a health profession as defined in the *Regulated Health Professions Act, 1991* or an employee of the health professional or for which a hospital as defined in the *Public Hospitals Act* is held liable; (“action pour faute professionnelle médicale”)

“prescribed amount” means \$250,000 or such greater amount as may be prescribed by regulation, calculated as a present value at the time of judgment in accordance with the Rules of Civil Procedure. (“montant prescrit”) 2006, c. 21, Sched. A, s. 17.

### **Transition**

(14) This section applies to all proceedings in which a final judgment at trial or final settlement has not been made on the day the *Access to Justice Act, 2006* receives Royal Assent. 2006, c. 21, Sched. A, s. 17.

### **Assessment of damages**

**117.**Where damages are to be assessed in respect of,

- (a) a continuing cause of action;
- (b) repeated breaches of a recurring obligation; or
- (c) intermittent breaches of a continuing obligation,

the damages, including damages for breaches occurring after the commencement of the proceeding, shall be assessed down to the time of the assessment. R.S.O. 1990, c. C.43, s. 117.

### **Guidance and submissions**

**118.**In an action for damages for personal injury, the court may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages. R.S.O. 1990, c. C.43, s. 118.

### **Power of court on appeal**

**119.**On an appeal from an award for damages for personal injury, the court may, if it considers it just, substitute its own assessment of the damages. R.S.O. 1990, c. C.43, s. 119.

### **Advance payments**

**120.(1)**If a defendant makes a payment to a plaintiff who is or alleges to be entitled to recover from the defendant, the payment constitutes, to the extent of the payment, a release by the plaintiff or the plaintiff's personal representative of any claim that the plaintiff or the plaintiff's personal representative or any person claiming through or under the plaintiff or by virtue of Part V of the *Family Law Act* may have against the defendant.

### **Idem**

**(2)**Nothing in this section precludes the defendant making the payment from demanding, as a condition precedent to such payment, a release from the plaintiff or the plaintiff's personal representative or any other person to the extent of such payment.

### **Payment to be taken into account**

**(3)**The court shall adjudicate upon the matter first without reference to the payment but, in giving judgment, the payment shall be taken into account and the plaintiff shall only be entitled to judgment for the net amount, if any.

### **Disclosure**

**(4)**The fact of any payment shall not be disclosed to the judge or jury until after judgment but shall be disclosed before formal entry thereof. R.S.O. 1990, c. C.43, s. 120.

### **Foreign money obligations**

**121.(1)**Subject to subsections (3) and (4), where a person obtains an order to enforce an obligation in a foreign currency, the order shall require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada) at the close of

business on the first day on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by the creditor.

### **Multiple payments**

[\(2\)](#) Where more than one payment is made under an order referred to in subsection (1), the rate of conversion shall be the rate determined as provided in subsection (1) for each payment.

### **Discretion of court**

[\(3\)](#) Subject to subsection (4), where, in a proceeding to enforce an obligation in a foreign currency, the court is satisfied that conversion of the amount of the obligation to Canadian currency as provided in subsection (1) would be inequitable to any party, the order may require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a bank in Ontario on such other day as the court considers equitable in the circumstances.

### **Other obligations that include conversion**

[\(4\)](#) Where an obligation enforceable in Ontario provides for a manner of conversion to Canadian currency of an amount in a foreign currency, the court shall give effect to the manner of conversion in the obligation.

### **Enforcement by seizure or garnishment**

[\(5\)](#) Where a writ of seizure and sale or notice of garnishment is issued under an order to enforce an obligation in a foreign currency, the day the sheriff, bailiff or clerk of the court receives money under the writ or notice shall be deemed, for the purposes of this section and any obligation referred to in subsection (4), to be the day payment is received by the creditor. R.S.O. 1990, c. C.43, s. 121.

### **Actions for accounting**

[122.\(1\)](#) Where an action for an accounting could have been brought against a person, the action may be brought against the person's personal representative. R.S.O. 1990, c. C.43, s. 122 (1).

### **Idem**

[\(2\)](#) An action for an accounting may be brought by a joint tenant or tenant in common, or his or her personal representative, against a co-tenant for receiving more than the co-tenant's just share. R.S.O. 1990, c. C.43, s. 122 (2); 1993, c. 27, Sched.

### **Judge's retirement, etc., inability or failure to give decision**

#### **Definitions**

[123.\(1\)](#) In this section,

“chief judge” means a person having authority to assign duties to the judge; (“juge en chef”)

“judge” includes a master and a case management master. (“juge”) R.S.O. 1990, c. C.43, s. 123 (1); 1996, c. 25, s. 1 (21).



**Decision after retirement, etc.**

[\(2\)](#) A judge may, within ninety days of,

- (a) reaching retirement age;
- (b) resigning; or
- (c) being appointed to another court,

give a decision or participate in the giving of a decision in any matter previously tried or heard before the judge.

**Inability to give decision; panel of judges**

[\(3\)](#) Where a judge has commenced a hearing together with other judges and,

- (a) dies before the decision is given;
- (b) is for any reason unable to participate in the giving of the decision; or
- (c) does not participate in the giving of the decision under subsection (2),

the remaining judges may complete the hearing and give the decision of the court but, if the remaining judges are equally divided, a party may make a motion to the chief judge for an order that the matter be reheard.

**Inability to give decision; sitting alone**

[\(4\)](#) Where a judge has commenced hearing a matter sitting alone and,

- (a) dies without giving a decision;
- (b) is for any reason unable to make a decision; or
- (c) does not give a decision under subsection (2),

a party may make a motion to the chief judge for an order that the matter be reheard.

**Failure to give decision**

[\(5\)](#) Where a judge has heard a matter and fails to give a decision,

- (a) in the case of a judgment, within six months; or
- (b) in any other case, within three months,

the chief judge may extend the time in which the decision may be given and, if necessary, relieve the judge of his or her other duties until the decision is given.

**Continued failure**

[\(6\)](#) Where time has been extended under subsection (5) but the judge fails to give the decision within that time, unless the chief judge grants a further extension,

- (a) the chief judge shall report the failure and the surrounding circumstances to the appropriate judicial council; and
- (b) a party may make a motion to the chief judge for an order that the matter be reheard.



## **Rehearing**

[\(7\)](#) Where an order is made under subsection (3), (4) or (6) for the rehearing of a matter, the chief judge may,

- (a) dispose of the costs of the original hearing or refer the question of those costs to the judge or judges presiding at the rehearing;
- (b) direct that the rehearing be conducted on the transcript of evidence taken at the original hearing, subject to the discretion of the court at the rehearing to recall a witness or require further evidence; and
- (c) give such other directions as are considered just. R.S.O. 1990, c. C.43, s. 123 (2-7).

## **Service on Sunday**

[124.](#) No document shall be served and no order shall be executed on Sunday, except with leave of the court. R.S.O. 1990, c. C.43, s. 124.

## **LANGUAGE**

### **Official languages of the courts**

[125.\(1\)](#) The official languages of the courts of Ontario are English and French.

### **Proceedings in English unless otherwise provided**

[\(2\)](#) Except as otherwise provided with respect to the use of the French language,

- (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
- (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator. R.S.O. 1990, c. C.43, s. 125.

### **Bilingual proceedings**

[126.\(1\)](#) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. R.S.O. 1990, c. C.43, s. 126 (1).

### **Idem**

[\(2\)](#) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.
2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.
3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English

or French shall be received, recorded and transcribed in the language in which they are given.

4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.
5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.
6. In an area named in Schedule 2, a party may file pleadings and other documents written in French.
7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.
8. The reasons for a decision may be written in English or French.
9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language. R.S.O. 1990, c. C.43, s. 126 (2).

### **Prosecutions**

[\(2.1\)](#) When a prosecution under the *Provincial Offences Act* by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French. 1994, c. 12, s. 43 (1).

### **Appeals**

[\(3\)](#) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications. R.S.O. 1990, c. C.43, s. 126 (3).

### **Documents**

[\(4\)](#) A document filed by a party before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court may be written in French. 1994, c. 12, s. 43 (2); 1996, c. 25, s. 9 (17, 18).

### **Process**

[\(5\)](#) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice may be written in French. 1994, c. 12, s. 43 (2); 1996, c. 25, s. 9 (17, 18).

### **Translation**

[\(6\)](#) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language. R.S.O. 1990, c. C.43, s. 126 (6).

## **Interpretation**

[\(7\)](#)At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English. R.S.O. 1990, c. C.43, s. 126 (7).

## **Parties who are not natural persons**

[\(8\)](#)A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise. R.S.O. 1990, c. C.43, s. 126 (8).

## **Regulations**

[\(9\)](#)The Lieutenant Governor in Council may make regulations,

- (a) prescribing procedures for the purpose of this section;
- (b) adding areas to Schedule 1 or 2. R.S.O. 1990, c. C.43, s. 126 (9).

### **SCHEDULE 1**

#### **Bilingual Juries**

Paragraphs 2 and 3 of subsection 126 (2)

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Municipality of Chatham Kent.

The City of Hamilton.

The City of Ottawa.

The Regional Municipality of Peel.

The City of Greater Sudbury.

The City of Toronto.

1994, c. 12, s. 43 (3); 1997, c. 26, Sched.; O. Reg. 441/97, s. 1; 2002, c. 17, Sched. F,  
Table.

## SCHEDULE 2

### Bilingual Documents

#### Paragraph 6 of subsection 126 (2)

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Municipality of Chatham Kent.

The City of Hamilton.

The City of Ottawa.

The Regional Municipality of Peel.

The City of Greater Sudbury.

The City of Toronto.

1994, c. 12, s. 43 (3); 1997, c. 26, Sched.; O. Reg. 441/97, s. 2; 2002, c. 17, Sched. F, Table.

## INTEREST AND COSTS

### **Prejudgment and postjudgment interest rates**

#### **Definitions**

127. (1) In this section and in sections 128 and 129,

“bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to banks listed in Schedule I to the *Bank Act* (Canada); (“taux d’escompte”)

“date of the order” means the date the order is made, even if the order is not entered or enforceable on that date, or the order is varied on appeal, and in the case of an order directing a reference, the date the report on the reference is confirmed; (“date de l’ordonnance”)

“postjudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the date of the order falls, rounded to the next higher whole number where the bank rate includes a fraction, plus 1 per cent; (“taux d’intérêt postérieur au jugement”)

“prejudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point; (“taux d’intérêt antérieur au jugement”)

“quarter” means the three-month period ending with the 31st day of March, 30th day of June, 30th day of September or 31st day of December. (“trimestre”) R.S.O. 1990, c. C.43, s. 127 (1).

#### **Calculation and publication of interest rates**

(2) After the first day of the last month of each quarter, a person designated by the Deputy Attorney General shall forthwith,

- (a) determine the prejudgment and postjudgment interest rate for the next quarter; and
- (b) publish in the prescribed manner a table showing the rate determined under clause (a) for the next quarter and the rates determined under clause (a) or under a predecessor of that clause for all the previous quarters during the preceding 10 years. 2006, c. 21, Sched. A, s. 18.

#### **Regulations**

(3) The Attorney General may, by regulation, prescribe the manner in which the table described in clause (2) (b) is to be published. 2006, c. 21, Sched. A, s. 18.

### **Prejudgment interest**

**128.(1)** A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order. R.S.O. 1990, c. C.43, s. 128 (1).

### **Exception for non-pecuniary loss on personal injury**

**(2)** Despite subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the rate determined by the rules of court made under clause 66 (2) (w). R.S.O. 1990, c. C.43, s. 128 (2); 1994, c. 12, s. 44.

### **Special damages**

**(3)** If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order.

### **Exclusion**

**(4)** Interest shall not be awarded under subsection (1),

- (a) on exemplary or punitive damages;
- (b) on interest accruing under this section;
- (c) on an award of costs in the proceeding;
- (d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the court;
- (e) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made;
- (f) where the order is made on consent, except by consent of the debtor; or
- (g) where interest is payable by a right other than under this section. R.S.O. 1990, c. C.43, s. 128 (3, 4).

### **Postjudgment interest**

**129.(1)** Money owing under an order, including costs to be assessed or costs fixed by the court, bears interest at the postjudgment interest rate, calculated from the date of the order.

### **Interest on periodic payments**

**(2)** Where an order provides for periodic payments, each payment in default shall bear interest only from the date of default.

### **Interest on orders originating outside Ontario**

**(3)** Where an order is based on an order given outside Ontario or an order of a court outside Ontario is filed with a court in Ontario for the purpose of enforcement, money owing under the order bears interest at the rate, if any, applicable to the order given outside Ontario by the law of the place where it was given.

**Costs assessed without order**

[\(4\)](#)Where costs are assessed without an order, the costs bear interest at the postjudgment interest rate in the same manner as if an order were made for the payment of costs on the date the person to whom the costs are payable became entitled to the costs.

**Other provision for interest**

[\(5\)](#)Interest shall not be awarded under this section where interest is payable by a right other than under this section. R.S.O. 1990, c. C.43, s. 129.

**Discretion of court**

[130.\(1\)](#)The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 128 or 129,

- (a) disallow interest under either section;
- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

**Idem**

[\(2\)](#)For the purpose of subsection (1), the court shall take into account,

- (a) changes in market interest rates;
- (b) the circumstances of the case;
- (c) the fact that an advance payment was made;
- (d) the circumstances of medical disclosure by the plaintiff;
- (e) the amount claimed and the amount recovered in the proceeding;
- (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and
- (g) any other relevant consideration. R.S.O. 1990, c. C.43, s. 130.

**Costs**

[131.\(1\)](#)Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid. R.S.O. 1990, c. C.43, s. 131 (1).

**Crown costs**

[\(2\)](#)In a proceeding to which Her Majesty is a party, costs awarded to Her Majesty shall not be disallowed or reduced on assessment merely because they relate to a lawyer who is a salaried officer of the Crown, and costs recovered on behalf of Her Majesty shall be paid into the Consolidated Revenue Fund. R.S.O. 1990, c. C.43, s. 131 (2); 1994, c. 12, s. 45.

## APPEALS

### **Judge not to hear appeal from own decision**

**132.** A judge shall not sit as a member of a court hearing an appeal from his or her own decision. R.S.O. 1990, c. C.43, s. 132.

### **Leave to appeal required**

**133.** No appeal lies without leave of the court to which the appeal is to be taken,

- (a) from an order made with the consent of the parties; or
- (b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs. R.S.O. 1990, c. C.43, s. 133.

### **Powers on appeal**

**134.(1)** Unless otherwise provided, a court to which an appeal is taken may,

- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
- (b) order a new trial;
- (c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

### **Interim orders**

**(2)** On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

### **Power to quash**

**(3)** On motion, a court to which an appeal is taken may, in a proper case, quash the appeal.

### **Determination of fact**

**(4)** Unless otherwise provided, a court to which an appeal is taken may, in a proper case,

- (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside;
- (b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; and
- (c) direct a reference or the trial of an issue,

to enable the court to determine the appeal.

### **Scope of decisions**

**(5)** The powers conferred by this section may be exercised even if the appeal is as to part only of an order or decision, and may be exercised in favour of a party even though the party did not appeal. R.S.O. 1990, c. C.43, s. 134 (3-5).



**New trial**

[\(6\)](#) A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred. R.S.O. 1990, c. C.43, s. 134 (6); 1994, c. 12, s. 46 (1).

**Idem**

[\(7\)](#) Where some substantial wrong or miscarriage of justice has occurred but it affects only part of an order or decision or some of the parties, a new trial may be ordered in respect of only that part or those parties. R.S.O. 1990, c. C.43, s. 134 (7); 1994, c. 12, s. 46 (2).

**PUBLIC ACCESS****Public hearings**

[135.\(1\)](#) Subject to subsection (2) and rules of court, all court hearings shall be open to the public.

**Exception**

[\(2\)](#) The court may order the public to be excluded from a hearing where the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

**Disclosure of information**

[\(3\)](#) Where a proceeding is heard in the absence of the public, disclosure of information relating to the proceeding is not contempt of court unless the court expressly prohibited the disclosure of the information. R.S.O. 1990, c. C.43, s. 135.

**Prohibition against photography, etc., at court hearing**

[136.\(1\)](#) Subject to subsections (2) and (3), no person shall,

- (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,
    - (i) at a court hearing,
    - (ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or
    - (iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;
  - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or
  - (c) broadcast or reproduce an audio recording made as described in clause (2) (b).
- R.S.O. 1990, c. C.43, s. 136 (1).

## **Exceptions**

[\(2\)](#) Nothing in subsection (1),

- (a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or
- (b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

## **Exceptions**

[\(3\)](#) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- (b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

## **Offence**

[\(4\)](#) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1990, c. C.43, s. 136 (3, 4).

## **Documents public**

[137.\(1\)](#) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

## **Sealing documents**

[\(2\)](#) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

## **Court lists public**

[\(3\)](#) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

## **Copies**

[\(4\)](#) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

## MISCELLANEOUS

### **Multiplicity of proceedings**

[138.](#) As far as possible, multiplicity of legal proceedings shall be avoided. R.S.O. 1990, c. C.43, s. 138.

### **Joint liability not affected by judgment or release**

[139.\(1\)](#) Where two or more persons are jointly liable in respect of the same cause of action, a judgment against or release of one of them does not preclude judgment against any other in the same or a separate proceeding. R.S.O. 1990, c. C.43, s. 139 (1); 1993, c. 27, Sched.

### **Two proceedings in respect of same damage**

[\(2\)](#) Where a person who has suffered damage brings two or more proceedings in respect of the damage, the person is not entitled to costs in any of the proceedings, except the first proceeding in which judgment is obtained, unless the court is of the opinion that there were reasonable grounds for bringing more than one proceeding. R.S.O. 1990, c. C.43, s. 139 (2).

### **Vexatious proceedings**

[140.\(1\)](#) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,

(a) instituted vexatious proceedings in any court; or

(b) conducted a proceeding in any court in a vexatious manner,

the judge may order that,

(c) no further proceeding be instituted by the person in any court; or

(d) a proceeding previously instituted by the person in any court not be continued,

except by leave of a judge of the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 140 (1); 1996, c. 25, s. 9 (17).

[\(2\)](#) Repealed: 1998, c. 18, Sched. B, s. 5 (2).

### **Application for leave to proceed**

[\(3\)](#) Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, the person shall do so by way of an application in the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 140 (3); 1996, c. 25, s. 9 (17).

### **Leave to proceed**

[\(4\)](#) Where an application for leave is made under subsection (3),

(a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;

- (b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;
- (c) the court may rescind the order made under subsection (1);
- (d) the Attorney General is entitled to be heard on the application; and
- (e) no appeal lies from a refusal to grant relief to the applicant.

### **Abuse of process**

[\(5\)](#) Nothing in this section limits the authority of a court to stay or dismiss a proceeding as an abuse of process or on any other ground. R.S.O. 1990, c. C.43, s. 140 (4, 5).

### **Civil orders directed to sheriffs**

[141.\(1\)](#) Unless an Act provides otherwise, orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to a sheriff for enforcement.

### **Police to assist sheriff**

[\(2\)](#) A sheriff who believes that the execution of an order may give rise to a breach of the peace may require a police officer to accompany the sheriff and assist in the execution of the order. R.S.O. 1990, c. C.43, s. 141.

### **Protection for acting under court order**

[142.](#) A person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario. R.S.O. 1990, c. C.43, s. 142.

### **Enforcement**

#### **Bonds and recognizances**

[143.\(1\)](#) A bond or recognizance arising out of a civil proceeding may be enforced in the same manner as an order for the payment of money by leave of a judge on motion by the Attorney General or any other person entitled to enforcement.

#### **Fines for contempt**

[\(2\)](#) A fine for contempt of court may be enforced by the Attorney General in the same manner as an order for the payment of money or in any other manner permitted by law.

### **Sheriff**

[\(3\)](#) The sheriff to whom a writ obtained under subsection (1) or (2) is directed shall proceed immediately to carry out the writ without a direction to enforce. R.S.O. 1990, c. C.43, s. 143.

### **No garnishment of certain amounts**

[143.1\(1\)](#) No benefit, allowance or assistance paid under the *Family Benefits Act* or the *General Welfare Assistance Act* may be garnished by a creditor of the person to whom it is payable.

### **Deemed protection**

[\(2\)](#) Subsection (1) applies even if the amount has been paid into the person's account at a financial institution. 1994, c. 27, s. 43 (4).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 143.1 is repealed by the Statutes of Ontario, 1999, chapter 12, Schedule B, subsection 4 (4). See: 1999, c. 12, Sched. B, ss. 4 (4), 20 (4).**

### **Orders enforceable by police**

[144.](#) Warrants of committal, warrants for arrest and any other orders requiring persons to be apprehended or taken into custody shall be directed to police officers for enforcement. R.S.O. 1990, c. C.43, s. 144.

### **Consul as official representative**

[145.](#) Where a person who is ordinarily resident in a foreign country is entitled to money or property that is in the hands of a court or an executor or administrator, and if the foreign country has a consul in Canada who is authorized to act as the person's official representative, the money or property may be paid or delivered to the consul. R.S.O. 1990, c. C.43, s. 145.

### **Where procedures not provided**

[146.](#) Jurisdiction conferred on a court, a judge or a justice of the peace shall, in the absence of express provision for procedures for its exercise in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. R.S.O. 1990, c. C.43, s. 146.

### **Seal of court**

[147.\(1\)](#) The courts shall have such seals as are approved by the Attorney General.

### **Idem**

[\(2\)](#) Every document issued out of a court in a civil proceeding shall bear the seal of the court. R.S.O. 1990, c. C.43, s. 147.

### **Jurisdiction of Federal Court**

[148.](#) The Federal Court of Canada has jurisdiction,

- (a) in controversies between Canada and Ontario;
- (b) in controversies between Ontario and any other province in which an enactment similar to this section is in force,

in accordance with section 19 of the *Federal Court Act* (Canada). R.S.O. 1990, c. C.43, s. 148.

## **PART VIII MISCELLANEOUS**

[149.](#) Repealed: R.S.O. 1990, c. C.43, s. 149 (2). (see 1994, c. 12, s. 47)

## **Renewal of writs of execution issued before January 1, 1985**

**150.** A writ of execution that was issued before the 1st day of January, 1985 may be renewed in the same manner and with the same effect as a writ of execution issued on or after that day. R.S.O. 1990, c. C.43, s. 150.

## **References to counties for judicial purposes**

**151.(1)** A reference in this Act or any other Act, rule or regulation to a county or district for judicial purposes is deemed to be a reference to the corresponding area that, for municipal or territorial purposes, comprises the county, district, union of counties or regional, district or metropolitan municipality.

## **Separated municipalities**

**(2)** For the purpose of subsection (1), every city, town and other municipality is united to and forms part of the county in which it is situate.

## **Exceptions**

**(3)** Subsection (1) is subject to the following:

1. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Haldimand-Norfolk, deemed to be a reference to the following areas:
  - i. All the area of the County of Haldimand as it existed on the 31st day of March, 1974.
  - ii. All the area of the County of Norfolk as it existed on the 31st day of March, 1974.
2. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Niagara, deemed to be a reference to the following areas:
  - i. All the area of the County of Lincoln as it existed on the 31st day of December, 1969.
  - ii. All the area of the County of Welland as it existed on the 31st day of December, 1969.
3. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of The Regional Municipality of Sudbury and the Territorial District of Sudbury, deemed to be a reference to all the area in The Regional Municipality of Sudbury and in the Territorial District of Sudbury.
4. A reference in an Act or regulation to a county or district for judicial purposes is, in the case of an area described below, deemed to be a reference to all the area in the areas described below:
  - i. All the area in the County of Victoria.
  - ii. All the area in the County of Haliburton.

- iii. All the area in any part of the townships of Sherborne, McClintock, Livingstone, Lawrence and Nightingale located in Algonquin Park, so long as the part remains part of Algonquin Park. R.S.O. 1990, c. C.43, s. 151.

### **Meaning unchanged**

**151.1** Despite the repeal of the *Municipal Act*, for the purposes of this Act and any provision of another Act or regulation that relates to the operation of the courts or the administration of justice, the terms “county”, “district”, “union of counties”, “regional municipality” and “district municipality” have the same meaning as they did on December 31, 2002, unless the context otherwise requires. 2002, c. 17, Sched. F, Table.

## **SCHEDULE**

### **APPENDIX A OF FRAMEWORK AGREEMENT**

#### **BETWEEN:**

Her Majesty the Queen in right of the Province of Ontario represented by the Chair of Management Board

(“the Minister”)

and

the Judges of the Ontario Court (Provincial Division) and the former Provincial Court (Civil Division) represented by the respective Presidents of The Ontario Judges Association, The Ontario Family Law Judges Association, and the Ontario Provincial Court (Civil Division) Judges’ Association

(“the Judges”)

These are the terms to which the Minister and the Judges agree:

#### **Definitions**

**1.**In this agreement,

“Commission” means the Provincial Judges’ Remuneration Commission;

(“Commission”)

“Crown” means Her Majesty the Queen in right of the Province of Ontario;

(“Couronne”)

“judges’ associations” means the associations representing the Judges of the Ontario Court (Provincial Division) and the former Provincial Court (Civil Division);

(“associations de juges”)

“parties” means the Crown and the judges’ associations. (“parties”)

#### **Introduction**

**2.**The purpose of this agreement is to establish a framework for the regulation of certain aspects of the relationship between the executive branch of the government and

the Judges, including a binding process for the determination of Judges' compensation. It is intended that both the process of decision-making and the decisions made by the Commission shall contribute to securing and maintaining the independence of the Provincial Judges. Further, the agreement is intended to promote co-operation between the executive branch of the government and the judiciary and the efforts of both to develop a justice system which is both efficient and effective, while ensuring the dispensation of independent and impartial justice.

**3.**It is the intention of the parties that the binding process created by this document will take effect with respect to the 1995 Provincial Judges Remuneration Commission, and thereafter.

**4.**The Minister or the Judges may designate one or more persons to act on their behalf under this agreement.

#### Commission and Appointments

**5.**The parties agree that the Provincial Judges Remuneration Commission is continued.

**6.**The parties agree that the Commission shall consist of the following three members:

1. One appointed jointly by the associations representing provincial judges.
2. One appointed by the Lieutenant Governor in Council.
3. One, who shall head the Commission, appointed jointly by the parties referred to in paragraphs 1 and 2.

**7.**The parties agree that the members of the Commission shall serve for a term of three years beginning on the first day of July in the year their inquiry under paragraph 13 is to be conducted.

**8.**The parties agree that the term of office of the persons who are members of the Commission on May 1, 1991 shall expire on June 30, 1995.

**9.**The parties agree that the members of the Commission may be reappointed when their term of office expires.

**10.**The parties agree that if a vacancy occurs on the Commission, a replacement may be appointed for the unexpired part of the term.

**11.**The parties agree that judges and public servants, as defined in the *Public Service Act*, shall not be members of the Commission.

**12.**The parties agree that the members of the Commission shall be paid the remuneration fixed by the Management Board of Cabinet and, subject to Management Board's approval, the reasonable expenses actually incurred in carrying out their duties.

#### Scope



**13.**The parties agree that in 1995, and in every third year after 1995, the Commission shall conduct an inquiry respecting:

- (a) the appropriate base level of salaries,
- (b) the appropriate design and level of pension benefits, and
- (c) the appropriate level of and kind of benefits and allowances of provincial judges.

**14.**The parties agree that in addition to the inquiry referred to in paragraph 13, the Commission may, in its discretion, conduct any further inquiries into any matter relating to salary levels, allowances and benefits of provincial judges that are mutually agreed by the judges and the Government of Ontario.

**15.**The parties agree that the Commission whose term begins on July 1, 1995 and all subsequent Commissions shall begin their inquiry under paragraph 13 immediately after their term begins and shall, on or before the thirty-first day of December in the year the inquiry began, present recommendations and a report to the Chair of the Management Board of Cabinet.

**16.**The parties agree that the Commission shall make an annual report of its activities to the Chair of Management Board and the Chair shall table the report in the Legislature.

#### Powers and Procedures

**17.**The parties agree that the Commission may retain support services and professional services, including the services of counsel, as it considers necessary, subject to the approval of the Management Board.

**18.**The parties agree that the representatives of the Judges and the Lieutenant Governor in Council may confer prior to, during or following the conduct of an inquiry and may file such agreements with the Commission as they may be advised.

**19.**The parties agree that the Commission may participate in joint working committees with the judges and the government on specific items related to the inquiry of the Commission mentioned in paragraphs 13 and 14.

**20.**The parties agree that in conducting its inquiries, the Commission shall consider written and oral submissions made by provincial judges' associations and by the Government of Ontario.

**21.**The parties agree that the following rules govern the presentation to the Commission of submissions by provincial judges' associations and by the Government of Ontario, and their consideration by the Commission:

1. Each judges' association is entitled to receive advance disclosure of written submissions by the Government of Ontario and is entitled to make a written submission in reply.

2. The Government of Ontario is likewise entitled to receive advance disclosure of written submissions by provincial judges' associations and is entitled to make a written submission in reply.
3. When a representative of the Government of Ontario or of a judges' association makes an oral submission, the Commission may exclude from the hearing all persons except representatives of the Government of Ontario and of the judges' associations.
4. The representatives of the Government of Ontario and of the judges' associations are entitled to reply to each other's oral submissions.
5. If people have been excluded from the hearing under paragraph 3, the submissions of the Government of Ontario and of the judges' associations shall not be made public except to the extent that they are mentioned in the Commission's report.

**22.** The parties agree that the Commission may hold hearings, and may consider written and oral submissions from other interested persons and groups.

**23.** The parties agree that the Government of Ontario and the provincial judges' associations are entitled to be present when other persons make oral submissions to the Commission and are entitled to receive copies of other persons' written submissions.

**24.** In connection with, and for the purposes of, any inquiry, the Commission or any member thereof has the powers of a commission under the *Public Inquiries Act*.

#### Criteria

**25.** The parties agree that the Commission in making its recommendation on provincial judges' compensation shall give every consideration to, but not limited to, the following criteria, recognizing the purposes of this agreement as set out in paragraph 2:

- (a) the laws of Ontario,
- (b) the need to provide fair and reasonable compensation for judges in light of prevailing economic conditions in the province and the overall state of the provincial economy,
- (c) the growth or decline in real per capita income,
- (d) the parameters set by any joint working committees established by the parties,
- (e) that the Government may not reduce the salaries, pensions or benefits of Judges, individually or collectively, without infringing the principle of judicial independence,
- (f) any other factor which it considers relevant to the matters in issue.

#### Report

**26.** The parties agree that they may jointly submit a letter to the Commission requesting that it attempt, in the course of its deliberations under paragraph 13, to

produce a unanimous report, but in the event that the Commission cannot deliver a majority report, the Report of the Chair shall be the Report of the Commission for the purpose of paragraphs 13 and 14.

#### Binding and Implementation

**27.** The recommendations of the Commission under paragraph 13, except those related to pensions, shall come into effect on the first day of April in the year following the year the Commission began its inquiry, except in the case of salary recommendations which shall come into effect on the first of April in the year in which the Commission began its inquiry and shall have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of any schedule made pursuant to this Agreement and shall be implemented by the Lieutenant Governor in Council by order-in-council within sixty days of the delivery of the Commission's report pursuant to paragraph 15.

**28.** The parties agree that the Commission may, within thirty days, upon application by the Crown or the judges' associations made within ten days after the delivery of its recommendations and report pursuant to paragraph 15, subject to affording the Crown and the judges' associations the opportunity to make representations thereupon to the Commission, amend, alter or vary its recommendations and report where it is shown to the satisfaction of the Commission that it has failed to deal with any matter properly arising from the inquiry under paragraph 13 or that an error relating to a matter properly under paragraph 13 is apparent on the report, and such decision is final and binding on the Crown and the judges' associations, except those related to pensions.

**29.** Where a difference arises between the Crown and the judges' associations relating to the implementation of recommendations properly within the scope of issues set out in paragraph 13, except those related to pensions, the difference shall be referred to the Commission and, subject to affording the Crown and the judges' associations the opportunity to make representation thereupon to the Commission, its decision is final and binding on the Crown and the judges' associations.

**30.** The parties agree that the recommendations with respect to pensions, or any reconsideration under paragraph 28 of a matter relating to pensions, shall be presented to the Management Board of Cabinet for consideration.

**31.** The parties agree the recommendations and report of the Commission following a discretionary inquiry pursuant to paragraph 14 shall be presented to the Chair of Management Board of Cabinet.

**32.** The parties agree that the recommendations of the Commission in consequence of an inquiry pursuant to paragraph 14 shall be given every consideration by Management Board of Cabinet, but shall not have the same force and effect as recommendations referred to in paragraph 13.

**33.** The parties agree that if the Management Board of Cabinet endorses recommendations referenced in paragraph 30 or 31, or some variation of those

recommendations, the Chair of Management Board shall make every effort to implement them at the earliest possible date, following subsequent approval from Cabinet.

#### Disputes

**34.**The parties agree that if disputes arise as to whether a recommendation is properly the subject of an inquiry referenced in paragraph 13, or whether the recommendation falls within the parameters of paragraph 27 or 30, or with respect to the process, either party may require the Commission to consider the matter further.

**35.**The parties agree that requests by either party, made under paragraph 34, shall be presented to the Commission for consideration within one month of the presentation of the report to the Chair of Management Board.

**36.**The parties agree that the Commission, upon receiving notice from either party as set out in paragraph 34, shall present to the Chair of Management Board a decision with respect to the said matter, within one month of receiving such notice.

**37.**The parties may, during the course of the Commission's inquiry set out in paragraph 34, present either written or oral positions to the Commission for consideration on the said matter, which shall be disclosed to either party.

**38.**The parties agree that the decision of the Commission, as set out in paragraph 36, shall be given every consideration and very great weight by the Management Board of Cabinet.

**39.**Neither party can utilize the dispute clauses to limit, or to narrow, the scope of the Commission's review as set out under paragraph 13, or the binding effect of recommendations within its scope as set out under paragraphs 27 and 28.

**40.**The parties agree that in the event that an item(s) is referred to the Commission under paragraph 34, the Minister will proceed to implement the other recommendations of the Commission as set out in paragraphs 27, 28 and 33, except where the matter in dispute under paragraph 34 directly impacts the remaining items.

#### Review

**41.**The parties agree that either party may, at any time, request the other party to meet and discuss improvements to the process.

**42.**The parties agree that any amendments agreed to by the parties in paragraph 41 shall have the same force and effect as if enacted by the Legislature and are in substitution for the provisions of this Act or any schedule made pursuant to this Act.

#### Communication

**43.**The parties agree that all provincial judges should be made aware of any changes to their compensation package as a result of recommendations of the Commission.

**44.**The parties agree that all provincial judges should receive updated copies of legislation, regulations or schedules as necessary, related to compensation changes.

#### Salaries and Indexing

**45.**The parties agree that effective on the first day of April in every year after 1995, the annual salaries for full-time provincial judges shall be adjusted as follows:

1. Determine the Industrial Aggregate for the twelve-month period that most recently precedes the first day of April of the year for which the salaries are to be calculated.
2. Determine the Industrial Aggregate for the twelve-month period immediately preceding the period referred to in paragraph 1.
3. Calculate the percentage that the Industrial Aggregate under paragraph 1 is of the Industrial Aggregate under paragraph 2.
4. If the percentage calculated under paragraph 3 exceeds 100 per cent, the salaries are to be calculated by multiplying the appropriate salaries for the year preceding the year for which the salaries are to be calculated by the lesser of that percentage and 107 per cent.
5. If the percentage calculated under paragraph 3 does not exceed 100 per cent, the salaries shall remain unchanged.

**46.**In paragraph 45, “Industrial Aggregate” for a twelve-month period is the average for the twelve-month period of the weekly wages and salaries of the Industrial Aggregate in Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada).

**47.**The salaries, allowances and benefits of provincial judges shall be paid out of the Consolidated Revenue Fund.

#### Additional Provisions

**48.**This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

APPENDIX B OF FRAMEWORK AGREEMENT	
Judicial Salaries	
Date	Formula
April 1, 1991	\$124,250
April 1, 1992	0%
April 1, 1993	AIW*
April 1, 1994	AIW*
*Note: See paragraph 46 of Appendix “A”.	

1994, c. 12, s. 48.

**Note: A reference in a court seal or printed court form to the name of a court or the title of an official changed by the Statutes of Ontario, 1996, chapter 25, section 8**

**does not prevent the form or seal from being used during the one year period following April 19, 1999. This section applies only to court seals and printed court forms in existence on that date. See: 1996, c. 25, ss. 10, 11 (2).**

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