

PROVINCIAL JUDGES

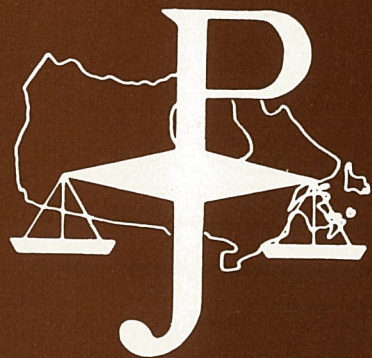
Journal

DES JUGES PROVINCIAUX

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THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

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JUGES DE COURS PROVINCIALES



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President's Page

by/par Judge Kenneth Crowell/M. le juge Kenneth Crowell

ALL ROADS LEAD TO EDMONTON

Alberta will host the Annual Meeting of CAPCJ in Edmonton, September 12th to 17th. Mark your diaries, clear your dockets, make your plans to attend. Already some (if not all) of the events are finalized and we look forward to some real "western style hospitality".

As this will be my last "Presidents Page" I want to express my deep appreciation to you the members and to the CAPCJ Executive and Committees, for their untiring efforts on behalf of our Association, and for the opportunity you have given me to serve.

I approach the end of my term with mixed feelings. Those of satisfaction in being part of the processes which clarified CAPCJ's relationship with the Canadian Judicial Center, and the representations made to the Department of Justice re the future of our association. Also those feelings of some relief from the long hours of travel, out-of-suitcase living and the wide range of education sessions.

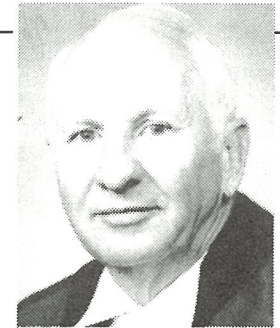
With regard to education I'm pleased to note the excellent caliber and content of the programmes and the dedication of so many Judges who continue to give of their talents and time to ensure that new and experienced Provincial Court Judges receive the training and upgrading that is so much a part of the strength of our bench.

Several jurisdictions are proposing major changes within the judicial system which hopefully will soon come to fruition and which will eventually lead to the creation of a truly unified court wherein a judge, is a judge, is a judge.

Such proposals will guarantee that every person will be assured of being treated fairly and equally by one of the foremost legal systems in the world.

These are very exciting times for those involved with the judicial system. CAPCJ must continue to speak with a strong voice during these major changes. We must remain unified and encourage all provincially appointed judges to join and actively participate in the affairs and programmes of CAPCJ.

Again I express my deep appreciation for this past year and look forward to seeing many of you in Edmonton.



TOUS LES CHEMINS MÈNENT À EDMONTON

La réunion annuelle de l'ACJCP se tiendra à Edmonton, Alberta, du 12 au 17 septembre. Marquez votre agenda, libérez vos rôles des causes, projetez d'y assister. Déjà certains événements (et peut être tous) ont été mis au point et nous attendons avec impatience la vraie hospitalité "style western".

Puisque ceci est ma dernière "page du président" je veux exprimer ma profonde reconnaissance à tous les membres de l'ACJCP, à son bureau et ses comités pour leurs efforts infatigables au nom de notre association et pour la chance que vous m'avez donnée de vous servir.

J'approche la fin de mon terme avec des sentiments contraires: la satisfaction d'avoir fait partie du processus qui a clarifié les relations de l'ACJCP avec le Centre Judiciaire Canadien, et les représentations faites au Ministère de la Justice au sujet du futur de notre Association. Aussi des sentiments de quelque soulagement des longues heures de voyage, de vivre sans jamais vraiment défaire mes baggages et de l'ampleur des sessions éducatrices.

A ce sujet je suis content de constater le calibre et le contenu excellent des programmes et de la dédication de temps des juges qui continuent à offrir leur talent et leur temps pour s'assurer que les juges de la Cour provinciale, nouveaux ou expérimentés, reçoivent l'entraînement et l'amélioration qui contribuent tant à la vigueur de notre Cour.

Plusieurs juridictions proposent des changements majeurs au sein du système judiciaire qui, j'espère, porteront bientôt des fruits et qui éventuellement mèneront à la création d'une vraie Cour unifiée où un juge "est un juge, est un juge."

De tels projets garantirons que chaque personne sera assurée d'être traité d'une façon juste et égale par un des principaux systèmes légaux dans la monde.

Ceci est une époque passionante pour ceux qui sont impliqués dans le système judiciaire. L'ACJCP doit continuer et parler d'une voix sûre pendant ces changements majeures. Nous devons demeurer unifiés, et encourager tout juge nommé par le Province à devenir membre et à participer d'une façon active aux affaires et programmes de l'ACJCP.

De nouveau je tiens à exprimer ma profonde reconnaissance pour cette année passée et hâte de revoir beaucoup d'entre vous à Edmonton.



Please be patient.
I only work here because I
am too old for a paper route
too young for social security,
and too tired to have an affair

— NOTICE —

1989 C.A.P.C.J. CONFERENCE
Ramada Renaissance
Edmonton, Alberta
September 13, 1989
to
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"The commitment is for an excellent conference."
Plan your attendance now.

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In Lighter Vein

A defendant took the stand to support his contention that he failed to provide a proper sample of breath into the Roadside Screening device because of medical problems.

Needless to say he was examined very briefly by his counsel but the crown wanted to test his credibility and so he was cross-examined fairly rigorously as follows:

- Q. You say you have a medical condition that prevented you from blowing into the machine?
- A. Yes Sir.
- Q. Do you take any medication for this condition?
- A. My doctor told me he could give me nothing better than Sinutab, so I take that on my own.
- Q. Does your medical condition interfere with your normal daily activity?
- A. I have trouble driving my car.
- Q. Do you have trouble eating?
- A. No.
- Q. Sleeping?
- A. No.
- Q. Talking?
- A. No.
- Q. Singing?
- A. No, anyway I can't sing!
- Q. Walking?
- A. No.
- Q. Do you play any sports?
- A. (Exasperatedly) Well, I help out at Bingo every Saturday night; does that count?

A police constable on the witness stand related how he had arrested an accused, had given him the caution and rights under the Charter. He then explained that he conveyed the accused to police headquarters for questioning regarding the crime.

The crown wanting to later enter a statement given by the accused to the police was being very meticulous in ensuring that nothing that had transpired between the police and the accused could later be construed as promises, threats or inducements. With that aim in view, Counsel examined his witness as follows:

- Q. What happened next, Constable?
- A. We drove him to headquarters for questioning, Your Honour.
- Q. Who was present during the drive?

- A. Only Constable - - - -, the accused and myself, Your Honour.
- Q. Did you go directly to headquarters?
- A. We did, Your Honour.
- Q. Was there any conversation between you, your partner and the accused on the way to headquarters?
- A. No, Your honour.
- Q. No conversation at all, Constable?
- A. Well, you know, just general conversation; nothing out of the extra-ordinary!

The following exchange occurred recently in a courtroom involving a trial for breach of section 171 (now s. 175) of the Criminal Code.

- Q. Did you arrest the accused, Constable?
- A. Yes Sir, I did.
- Q. And for what did you make that arrest?
- A. He was arrested for disturbing the peace.
- Q. What was he doing that amounted to disturbing the peace?
- A. The accused and another man were engaged in a fist fight, Sir, and a large crowd had gathered round.
- Q. And where did this fight take place, Constable?
- A. In a phone booth on Water Street, Your Honour.
- Q. Where was that again, Constable?
- A. In a phone booth, Your Honour.
- Q. Did you say a fight in a phone bo.....?
- A. Yes, Your Honour, for fighting in a phone booth.

In the same courtroom but on a different day, the following exchange took place on a trial of driving with a blood-alcohol level over 80.

- Q. Where did you first see the defendant's vehicle, Constable?
- A. We saw the vehicle turn off New Gower and go the wrong way down Adelaide Street so we gave chase.
- Q. Constable, can you tell the court where you stopped the vehicle?
- A. On George Street, Your Honour.
- Q. At the time you stopped it was there anyone in the vehicle, constable?
- A. No, Your Honour!!!

Editorial Page

In 1867 drafters of **The British North America Act**, forming the foundation upon which this country was built, saw fit to divide authority over courts in what now seems a peculiar fashion. To the provinces under s-s. 92(14) went authority for the "constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction." To the federal government under s. 101 went authority for the "constitution, maintenance, and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the Laws of Canada". Federal authorities were also conferred authority to appoint the judges of the superior, district and county courts in each province.

In the one hundred and twenty years plus since 1867 a unique but complex court system has evolved. For example, in some provinces such as British Columbia, Ontario and Nova Scotia there are three levels of courts including the Superior or Supreme Court constituted by the province but presided over by federally appointed judges, the District or County Court constituted by the province but presided over by federally appointed judges and the Provincial Court, constituted by the province and presided over by provincially appointed judges. To really confuse matters, all three levels of court generally exercise jurisdiction over family, civil and criminal law and it requires a very wide knowledge of law to understand which court has jurisdiction over any particular matter.

In terms of late 20th century demands, this system is, to say the least, very cumbersome and perplexing to members of the legal profession who must practice their profession within the system, and it is downright confusing to the general public who, with unprecedented frequency, are coming to rely upon the courts for interpretation and enforcement of legal and human rights.

Since its inception the present court system has seen very little structural change and, as a consequence, has fell out of step with present-day requirements. To compound that problem, judicial decisions of the past have tended to favour fixation of the structure in the 1867 timeframe. There have been occasions in the past when questions have been raised concerning the possibility of restructuring some of our courts of all fields of jurisdiction including family law, civil law and criminal law. Judicial decisions have usually gone against such change. There are numerous examples available to attest to a reluctance to change and with little or

no effort such cases as *Valente v. The Queen*, and *McEvoy v. The Queen* out of the Supreme Court and *R. v. Y.D.* out of the New Brunswick Queen's Bench, Family Division, (November 1, 1985) come readily to mind. Needless to say, those decisions do nothing to advance or even concur with Lord Sankey's version of Canada's constitution as "a living tree capable of growth and expansion within its natural limits".

It would not behoove one to pass comment on why the court system as a constitutional institution seems to have become frozen in its 19th century timeframe through judicial interpretation. However, there does seem to be some refreshing recommendations emanating from the Law Reform Commission of Canada on suggested reform to the system to make it more meaningful for the last decade of this the 20th century by creation of a single criminal court.

What is even more impressive and encouraging, in terms of judicial reform, however, is the whole new initiative about to be undertaken by the Attorney General of Ontario for reform of the entire court system in that province and not just the criminal division. In Bill 2, *An Act to Amend the Courts of Justice Act, 1984*, (reproduced elsewhere in this journal) given first reading in the Legislative Assembly of Ontario on May 1, 1989, The Honourable Ian Scott, Attorney General, proposes a single court for Ontario with different divisions to deal with various aspects of the law. Those reforms are far-reaching and visionary. They would see the elimination of artificial barriers to jurisdiction and make the court system both more meaningful and more accessible to the general public.

In our view, Mr. Scott is to be highly commended for the initiative he is taking. No doubt he faces an arduous task if he is to succeed in his aim, for change to the court system will not come easily or swiftly. We hope, however, that the Ontario authorities will not be swayed from their objective by naysayers or interest groups who would prefer to maintain the status quo.

Needless to say, our interest in Mr. Scott's success is not based solely on good neighbourly principle. We confess our interest is somewhat selfish for it is our belief that sensible reform of the court system in any province will have beneficial effects in all jurisdictions since all operate on the same basic format.

M. Reginald Reid
Editor-in-Chief

News Briefs

SASKATCHEWAN

Appointments

Ronald G. Bell was appointed to the Provincial Court of Saskatchewan on March 15, 1989. Judge Bell, who was admitted to the Bar in 1967, is resident in Saskatoon.

ONTARIO

Appointments

His Honour Judge Michael E. Martin, Hamilton, effective May 8, 1989.

A graduate of the University of Manitoba Law School, Judge Martin, 63, was called to the Manitoba Bar in 1953, and the Ontario Bar three years later. He remained in private practice in St. Catharines until 1963 when he was appointed Assistant Crown Attorney for the County of Middlesex in London.

In 1965 Judge Martin was appointed Crown Attorney for the County of Middlesex and in 1977 was named the Regional Crown Attorney for the counties of Middlesex, Oxford, Kent, Lambton and Essex. In 1986 he became Director of Crown Attorneys with responsibility for the 280 Crown and Assistant Crown Attorneys in Ontario.

Judge Martin was involved in establishing a victim/witness assistance program in London, Ontario.

Judge Martin has also served on the faculty of the Law Society Bar Admissions Course in London and has participated as a lecturer and panelist in Law Society educational programs.

Judge Martin is married with four children.

Deaths

His Honour Judge G. Allan Guthrie - London, Ontario.

Deceased April 10, 1989 (age 47).
Appointed January 3, 1984.

Salary Adjustment

The Ontario government has adjusted provincial court judges' salaries to \$105,000 a year, effective April 1, 1989.

In revising the salaries, the government took into account recommendations made last fall by

the Ontario Provincial Courts Committee chaired by Gordon F. Henderson (the Henderson Report).

The salary adjustment includes a retroactive pay increase of four per cent for 1987 and 4.6 per cent for 1988.

The annual salaries of judges with added administrative responsibilities have also been adjusted accordingly, so that chief judges will earn \$120,000; associate chief judges, \$115,000 and senior judges, \$112,000.

Recommendations in the Henderson Report covering other aspects of compensation, including salary indexation, allowances, pensions and benefits for provincial court judges will be reviewed by the standing Committee on the administration of Justice.

NEWFOUNDLAND

Retirements

His Honour Judge Robert Coulton, Clarenville. Effective March 31, 1989. Appointed January 2, 1969.

His Honour Judge Jeremiah G. Horan, Wabush, Labrador. Effective March 31, 1989. Appointed December 1, 1966.

His Honour Judge Ronald L. Jenkins, Woody Point, Bonne Bay, Effective March 31, 1989. Appointed May 1, 1978.

His Honour Judge Gordon W. Seabright, St. John's. Effective March 31, 1989. Appointed December 1, 1964.

Appointments

On May 19 the Minister of Justice and Attorney General announced the following appointments to the Bench of the Newfoundland Provincial Court:

Her Honour Judge Kendra G. Goulding

Judge Goulding is a graduate of the University of Ottawa law school program. She was admitted to the Bar of Newfoundland in 1980 and has practiced law in Central Newfoundland for the past 9 years.

Judge Goulding is a partner in the law firm of Goulding/Boyd. She has conducted prosecu-

the insight into the different workings of the courts is worthwhile, as is any form of cultural exchange.

Judicial review has developed differently in each jurisdiction. In the U.K. there is no Bill of Rights, the U.S. constitution has reached its bicentenary, and the Canadian Charter is seven years a law. Much of the analysis in part one of the book is organized around the growth of judicial review and the impetus the concept of the rights of people has given to judicial restraint of the legislative and executive branches of government. This responsibility of the judiciary is new to Canada and as Mr. Justice Antonio Lamer told the authors:

"And this to us is very, very different. Most of us have been trained not to do that. It is like being right handed and suddenly being told that

you are going to have to use your left hand. We use it but awkwardly. Maybe the next generation of judges and the next generation of lawyers and, also, the next generation of professors of universities, will be more able to cope with the Charter. All I am hoping is that we don't just muffle the whole thing for them, that we manage it, pending people trained with the Charter."

Many of the judges made thoughtful and insightful comments, but there are too many to sample adequately in this space. Because of the format of the book there is no theme or argument that the authors develop. This readable book is really one whole series of samples, analogous to short interview clips on a television documentary. From a reading of this book one comes away undisturbed, passively entertained and better informed.

Outfitting B.C. judges

VANCOUVER (CP) — If you look under a British Columbia judge's robe, you're sure to find one thing.

A Matz-Wozny Custom Tailors label.

Whether it's a slinky little polyester number at around \$600, or a pure silk affair for a cool \$1,200, you can bet **Tony Zeilinger** fitted it.

As the owner of Matz-Wozny Custom Tailors, Zeilinger has been making court robes for more than 20 years.

"County court, provincial court, supreme court

... we make 'em all," says Zeilinger. "We do 25 or 30 judges' robes a year, plus 10 or so for Queen's Counsels. Not to mention a couple hundred barristers."

Zeilinger, who was born in Austria, has faced more judges than a career criminal but he can't think of one judge he didn't like.

"The judges 20 years ago were more . . . eccentric," he says. "But they're all a very civil bunch. Very easy to get along with and quite good-natured."

Book Review

JUDGING THE WORLD

by Garry Sturgess and Philip Chubb
Butterworths (573 pages)

Book Review by Judge G.T.G. Seniuk,
Provincial Court of Saskatchewan

Judging The World is subtitled "Law and Politics in the World's Leading Courts" and that generally describes what the book is about.

It is written by two Australians, one a lawyer with a journalistic background (Garry Sturgess) and the other an accomplished journalist who has written in depth about legal matters (Philip Chubb). The format and the content of the book reflect their journalistic flavor in that the book is based on interviews with 42 judges, including four from Canada. These interviews are reproduced in full in Part II of this book, comprising more than half the total volume, and are liberally quoted in the first part, where the authors analyze the issues raised in the subtitle. The legal knowledge of the authors is reflected in their analysis of these issues and by their knowledgeable questions of the distinguished jurists.

This is not a scandal-sniffing look at the backroom politics of courts or the private frailties of individual judges. It deals with such issues as judicial appointments, independence, review of legislation, law-making and accountability. The judges are allowed to state their answers as they choose and the authors weave their analysis from this raw material. While they impose their own structure to this analysis in Part One, they do not indulge in judging the judges or the issues. The reader is left with an unhindered view of the different opinions and experiences of judges from various corners of the world.

Canadian experience is relevant to all the issues. For example, judicial independence and accountability in the face of public criticism and attack affected the careers of Lord Denning in the United Kingdom, Lionel Murphy in Australia, and Thomas Berger in Canada. These cases are discussed by the very individuals involved, revealing the different experiences in the different countries. Murphy refused to submit to the decision of a Chief Justice or his peers as to whether he or any justice was fit for office. Denning retired at 83 rather than face a law suit alleging racism, but doubts he would have become embroiled in such an issue if younger. Berger resigned, but not before he felt he made his point that only Parliament could remove a judge from office and that the role of Judicial Council and

the Chief Justice must be limited and definite.

"If judges are truly independent, you can't have a Judicial Council that is purporting to censure judges, condemn them and still leave them on the bench. If they are to be condemned for misconduct, then the misconduct has to be serious enough to have them removed from office. It seems to me it's the one thing or the other," he is quoted as saying.

Berger does not believe judges should become involved in political controversy, but because of his acknowledged unique expertise on native issues he felt morally obliged to speak out during the debate of our new constitution. Judicial Council said his conduct was deserving of impeachment but did not recommend it in this case. Terming this a "miserable charade," Berger demanded impeachment or nothing.

"I think that with judges you shouldn't wound them. You either kill them or you leave them alone but you shouldn't leave them wounded and still sitting. I don't see how litigants could have confidence in a judge who is the subject of such a finding."

Other topics are discussed in as frank and illuminated a manner by the judges. For example, on Lord Denning's arguments and reasons against a Bill of Rights for the U.K., Lord Scarman replies, "with respect, this is complete nonsense", and counter-argues. Other law lords discuss Denning's insistence to put justice ahead of certainty, and they and he himself do not recommend that for every judge. "Lord Denning is a specimen tree, you musn't have a whole avenue of them", said one Lord, and Denning himself when asked if he would like to see more dissenting voices replied: "No, I think in a way I am an individualist and my aim, my motto is: let justice be done."

What an individualistic judge, Denning's "bold spirits", can achieve is evident in his story and that of other judges who were interviewed. One of the most interesting stories comes from India and the career of Prafullachandra Bhagwati, who was in the thick of issues of accountability of political pressure of the highest order and of major social changes brought about by the willingness of "bold spirits" to take the law into new territory. The Irish judges had similarly interesting and illuminating experiences.

Many of the judges do not have much of interest to say, but because so many different national and international courts are represented,

tions for the Federal Crown and at the time of appointment was also an ad hoc Human Rights Commissioner.

Judge Goulding will sit at Grand Falls, Newfoundland.

His Honour Judge Garrett A. Handrigan

Judge Handrigan is a native of St. Lawrence, Newfoundland where he received his early education.

In 1974 Judge Handrigan graduated from Memorial University of Newfoundland and in 1977 he graduated from the University of New Brunswick law program. In 1978 he was admitted to the Bar of Newfoundland and has practiced law in Marystown since that time.

At the time of appointment Judge Handrigan was senior partner in the law firm Handrigan, Picco, White. He is married to the former Ursula Grant of Lawn and they have five sons.

Judge Handrigan will sit at Grand Bank.

His Honour Judge Robert B. Hyslop

Judge Hyslop was educated at University of Kings College and Dalhousie Law School, Hali-

fax. He was admitted to the Nova Scotia Bar in 1973 and the Newfoundland Bar in 1976.

Judge Hyslop served as senior Crown Attorney and director of Public Prosecutions and occupied the position of Associate Deputy Attorney General at the time of his appointment.

Judge Hyslop will sit in the Provincial Court at Gander.

His Honour Judge John F. Rorke

Judge Rorke, a native of Carbonear, attended Mount Allison University in N.B., Carlton in Ottawa, Memorial of St. John's and Dalhousie Law School in Halifax where he received his law degree in 1976.

In 1977 Judge Rorke was admitted to the Bar of Newfoundland. He worked in private practice from 1977 to 1981 when he joined the Crown Attorney's office. At the time of his appointment he was a senior Crown Attorney in St. John's and a Bencher of the Newfoundland Law Society.

Judge Rorke is married to the former Kathryn Penny of Carbonear and they have two children. We will be sitting at Corner Brook.

New Brunswick establishes committee to help select judges

FREDERICTON (CP) — The New Brunswick government has established an eight-member advisory committee to help select provincial court judges.

The panel of three judges, three lawyers and two people from outside the legal profession will evaluate candidates and recommend appointments to the bench, Justice Minister James Lockyer told the legislature Wednesday.

Lockyer said any group is welcome to submit the names of nominees to fill a provincial court vacancy.

Cabinet will continue to have the final power of appointment.

Candidates for provincial court judge must have 10 years' experience as a lawyer in Canada, but Lockyer said the minimum requirement may be reduced to eight years so that more women lawyers would be eligible.

CAPCJ : Partner In And With the CJC*

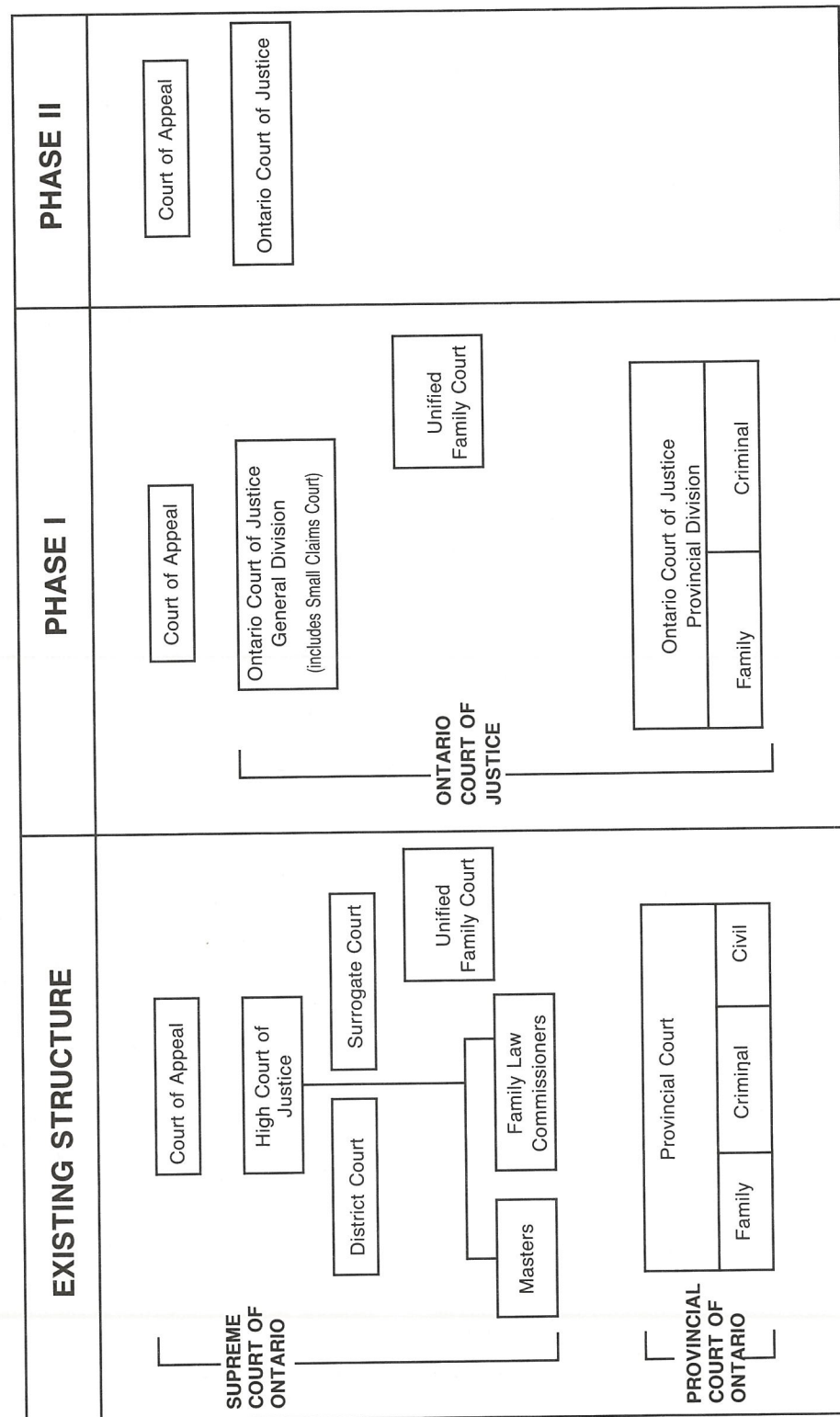
THE NEED FOR, AND THE FUTURE OF THE CAPCJ: THE CHANGING EMPHASIS

- Continuing judicial education has been, is, and will always be of first importance and concern to the CAPCJ. It is one of the principal means of ensuring judicial independence, and of promoting the proper administration of justice. Now the time has come to place greater emphasis on other roles and responsibilities of provincial court judges at national levels in "our expanding and demanding society".
- The CAPCJ concept goes beyond judicial education. In just thirteen years the CAPCJ has established a significant reputation for its sound program of continuing judicial education. As a full partner in the newly formed Canadian Judicial Centre, it will have a greater and more meaningful role in that field. While it continues to discharge its traditional responsibilities, in co-ordination with the Canadian Judicial Centre, there will be new challenges in education.
- Now is the time to emphasize the Association's other obligations and its contributions to fulfillment of the total concept.
- The CAPCJ is a national organization that is a separate and distinct entity, different from federally appointed (section 96) judges and the Canadian Judicial Council:
 - CAPCJ members come from twelve separate provincial and territorial courts, many of which have three separate subdivisions: Adult Criminal, Civil and the ever important Family and Youth Courts.
 - Civil jurisdiction varies greatly from Province to Province.
 - Throughout Canada, provincial court judges generally share the same criminal jurisdiction under federal legislation but, in addition, they also have varying

degrees of quasi-criminal jurisdiction under their respective provincial legislation.

- While *The Young Offenders Act* is common to all Youth Courts, family law jurisdiction has varying degrees of awesome responsibility.
- Government support to fulfill bilingual requirements is neither sufficient nor automatically provided.
- All courts, whether federally or provincially appointed, must be equipped to meet the needs and expectations of the Canadian public. Since the implementation of *The Canadian Charter of Rights and Freedoms*, there has been imposed on all levels of courts a dramatically increased role in the determination of the future of this country.
- As a result of *The Charter*, Canadian courts are more and more subject to public scrutiny as the public begins to realize the effect that judicial decisions are having on the national fabric. It is imperative that the public perceive the courts of Canada to be independent, intelligent, fair, and as truly representative of those they serve, the people of Canada!
- To fulfill the provincial court role the CAPCJ must work closely and confidently with governments at all levels and, in particular, with the Department of Justice. There must be mutual respect and trust. This relationship can best be established and maintained by ongoing consultation concerning all aspects of the administration of justice. We must establish effective and efficient channels for communication and co-operation.
- The CAPCJ has much to offer, but it is also vulnerable. Unlike the federal judiciary, judicial independence of the provincial courts is not entrenched in the Constitution. Instead, the courts rely upon public opinion, traditions, and provincial statutes. Of necessity, the CAPCJ must have a reputable and meaning-

PROPOSED RE-STRUCTURING OF ONTARIO TRIAL COURTS



***Editor's Note:**

In January 1989 representatives of the CAPCJ and the newly formed Canadian Judicial Centre met in Ottawa to discuss business of mutual concern to both agencies.

For those who do not readily recall, the Canadian Judicial Centre was set up in April 1988 and was given a mandate to develop educational programmes for the benefit of all judges in Canada — both federally and provincially appointed.

The mandate of the CAPCJ goes beyond education alone.

At the time of establishment of the CJC, our Association expressed some concern that its funding may be diminished or stopped in favour of the CJC. However, it is apparent to members of the CAPCJ that its function is not synonymous with that of the CJC and it is understood that both the CJC and the Federal Government who contributes to the CAPCJ fully understand that also.

This article and the one which follows reflect that understanding. This first article was adopted and ratified by the CAPCJ Executive at its April meeting in Montreal as part of a submission to the Department of Justice. The second article entitled *CAPCJ and CJC Memorandum of Mutual Understanding* comes from the meeting between the parties in January and was also ratified by the Executive in Montreal.

Both articles are published here for the information of our membership. - MRR).

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 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.

32. Section 212 of the said Act is repealed.

33. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

34. The short title of this Act is the *Courts of Justice Amendment Act, 1989*.

ful public profile. The support of the provincial Attorneys General, provincial Bars and the Canadian Bar Association, is not enough.

9. The Supreme Court of Canada in *Valente* summed up the essentials of judicial independence as:
 1. Security of tenure,
 2. Financial security, and
 3. Institutional independence with respect to matters of administration bearing directly on the exercise of judicial function.
10. Everyone concerned with the administration of justice realizes the importance of promoting and achieving the objectives of these three vital elements.
11. In practice, provincial court judges deal mostly with federal legislation, and section 96 judges deal substantially with provincial legislation.
12. Both levels of courts are faced with common problems in what Pat Peacock, President of the Canadian Bar Association, has described as:

. . . an inefficient, expensive, cumbersome, delay-filled justice system.

He has continued the CBA commitment to put the resources of that association and of its 35,000 members to:
studying and recommending changes and improvements to the judicial system in Canada to make it more open, less mystifying, less expensive and more efficient — in other words, more accessible to the people it serves.

The CAPCJ can do no less!

13. The formation of the Canadian Judicial Centre has added to the emphasis on the educational role of the CAPCJ. It makes our association even more relevant to judicial education in Canada. The CAPCJ is a full partner in the Centre with equal rights and responsibilities. It is not a "we/they" situation. Both organizations share the same goals for judicial education for all judges in Canada. Success will be achieved through common sense, co-operation and good will. There is to be no duplication of effort or cost. Both seek the best, and the biggest bang for the financial buck! All education efforts will be co-ordinated or co-sponsored through both organizations. To be a truly effective partner in education, the CAPCJ must itself be strong, healthy and play a significant role in the administration of justice in Canada. We must re-think and re-assess the responsibilities of the CAPCJ in establishing and main-

taining a sound and efficient Canadian judiciary.

14. It is essential that the provincial/territorial and federal governments understand the total CAPCJ concept. They must continue to provide full financial support to the chief judges of the provincial courts and to the provincial court judges' associations. In particular, government financial assistance to the Canadian Judicial Centre must not be offset, or deducted from provincial/territorial grants. Provincial associations must also remain strong in their roles and as vital members of the CAPCJ. These associations and their individual members are the CAPCJ! Proper financial support is a Must!
15. Clear channels of communication and systems of control are being established between the CAPCJ (through its Canadian Judicial College) and the Canadian Judicial Centre. This central control, organization and co-ordination is essential for the most effective and efficient use of all resources, not just finances. All who are dealing with the CAPCJ and the Canadian Judicial Centre must comprehend and comply with the basic needs of each.
16. Thus, all governments, their agencies and all outside organizations must recognize that the CAPCJ concept goes well beyond judicial education, and that the role of the CAPCJ is continually expanding and constitutes, at both provincial and federal levels, a "Resource", based on its institutional experience, and an informed "Adviser" in the consultative process, based on its fundamental role in the administration of justice.
17. While each province "has its own legal, social and economic milieu and identity" there is also a constitutional and factual identity with Canada as a whole. Certainly that is the public understanding.

Public trust and faith, across Canada, has been placed in provincial court judges, especially under *The Charter of Rights and Freedoms*. Within this national concern for the due administration of justice, is the basic and paramount requirement for an effective and responsible judicial process, that is strictly self accountable at all levels. This fundamental premise starts with the provincial courts as the primary courts of first instance.

18. All of which brings us back to the three elements of judicial independence. While there may be arguments that justify variance in provincial compensation for judges, and other clear responsibilities for the provincial judiciary; there must be, at the national or

federal level, equal regard for proper financial security and security of tenure in the provincial systems, as well as a constant regard for institutional independence in the exercise of judicial functions in those systems.

19. To promote understanding of the importance of the Canadian provincial judicial system it is vital that all provincial court judges have a national Canadian voice. The CAPCJ is that voice! It provides the means of communication inside and beyond the association. That voice is not limited to self education, but extends to all aspects of judicial independence and the administration of justice. Above all, that voice must be heard and spoken in both official languages of Canada.

20. It is the policy of the CAPCJ that all national functions be available to both French and English speaking judges and in order to facilitate that policy, all functions of the CAPCJ at the national level are available in both official languages by using simultaneous translation. As well, it is the stated goal of the CAPCJ that its national publication "The Journal" be published completely in both official languages. The costs of providing these services have risen to the point where it is only by good fortune and volunteer time that we have been able to carry on to date in this regard. It is fundamental to the proper administration of justice in Canada that Judges of the Provincial Courts of Canada be able to communicate openly and freely with one another, to exchange ideas, and information, in both official languages. In this way we can say that Canada's Provincial Court Judges truly represent all Canadians in the fashion expected and demanded by the Canadian public.

21. If only one judge attends a CAPCJ event, and speaks only one of the two official languages of Canada, he or she must hear and be heard.

Unfortunately, this bilingual ability is in serious jeopardy. Because of its unique needs and corporate (i.e. membership) structure, the CAPCJ is not eligible for continued support from the Secretary of State for CAPCJ activities. As a result, the CAPCJ will be unable to fulfill its bilingual obligations. This problem does not face federally appointed judges.

22. It is interesting to note that the Uniform Law Commissioners of Canada have tried to unify substantive law for all the provinces for at least twenty-five years, without much success. This is not to say that the CAPCJ can do more in relation to the administration of

justice. Rather, the CAPCJ encourages better understanding, appreciation and awareness of the many problems that deny access to the judicial system. It truly knows and experiences all of the problems faced by the two other branches of Canadian governments trying to govern this vast country with its many different regional problems and attitudes. The CAPCJ offers its experience and expertise to all levels of government, not to create policy, but to ensure that the public benefits from judicial independence and the proper administration of justice.

CAPCJ AND CJC MEMORANDUM OF MUTUAL UNDERSTANDING

- Both organizations share the same objective and goals in judicial education. All of the details to achieve our common aim will be finalized through common sense, co-operation and good will.
- The CAPCJ is a full partner in the CJC with equal rights and responsibilities. It is not a "we/they" situation.
- There is to be no duplication of effort or cost. We both seek the best, and the biggest bang of the financial buck! All education efforts will be co-ordinated, and/or sponsored through CAPCJ and the CJC.
- For the CAPCJ to be a full, efficient and effective partner it must become even stronger. All governments must recognize that the CAPCJ concept goes well beyond judicial education, and that the Association has an ever increasing role and place at both provincial and federal levels in "our expanding and demanding society". The CAPCJ must be fully involved in the consultative process insofar as the judiciary is concerned with the administration of justice, including judicial independence. The provincial/territorial and federal governments must understand the total CAPCJ concept, and they must agree to continue to provide financial support to the Chief Judges of the Provincial Courts and/or the Provincial Court Judges' Associations. In particular, their financial contributions to the CJC must not affect or be deducted from provincial/territorial grants. Provincial associations must also remain strong in their roles, and as members of the CAPCJ.
- Clean channels of communication and systems of control must be established between the CAPCJ, (Canadian Judicial College) and the CJC. This central control, organization and co-ordination is essential for the most effective and efficient use of all resources (not just finances). Recognition of, and compli-

7. Provincial Court (Civil Division)	Small Claims Court
8. Provincial Court (criminal division)	Ontario Court (Provincial Division)
9. Provincial Court (Criminal Division)	Ontario Court (Provincial Division)
10. Provincial Court (family division)	Ontario Court (Provincial Division)
11. Provincial Court (Family Division)	Ontario Court (Provincial Division)
12. Provincial Offences Court	Ontario Court (Provincial Division)
13. Provincial Offences Court	Ontario Court (Provincial Division)

160a.—(1) A reference in any Act, rule or regulation, or order or other court process, to a term set out in column 1 of the Table, or any form thereof, is deemed to refer to the corresponding term set out opposite thereto in column 2.

TABLE

Column 1	Column 2
1. Accountant of the Supreme Court	Accountant of the Ontario Court
2. administrator <i>ad litem</i>	litigation administrator
3. certificate of <i>lis pendens</i>	certificate of pending litigation
4. conduct money	attendance money
5. guardian <i>ad litem</i>	litigation guardian
6. judicial district	county or district
7. local judge of the High Court	judge of the Ontario Court (General Division)
8. local judge of the Supreme Court	judge of the Ontario Court (General Division)
9. next friend	litigation guardian
10. originating motion	application
11. originating notice	notice of application
12. praecipe	requisition
13. provisional judicial district	territorial district
14. a registrar of a surrogate court	the local registrar of the Ontario Court (General Division)
15. Rules of Civil Procedure	rules of court
16. Rules Committee	applicable rules committee
17. Rules Committee of the Supreme and District Courts	applicable rules committee
18. Rules of Practice and Procedure of The Supreme Court of Ontario made by the Rules Committee	rules of court

19. special examiner	official examiner
20. Surrogate Clerk for Ontario	Estate Registrar for Ontario
21. taxation of costs	assessment of costs
22. taxing officer	assessment officer
23. writ of <i>feri facias</i>	writ of seizure and sale
24. writ of summons	statement of claims or notice of action

(2) A reference in any Act, rule or regulation to the surrogate registrar for a particular county or district is deemed to be a reference to the local registrar of the Ontario Court (General Division) for that county or district.

(3) A reference in any Act, rule or regulation to the clerk of a county or district court of a particular county or district is deemed to be a reference to the local registrar of the Ontario Court (General Division) for that county or district.

(4) A reference in any Act, rule or regulation to an order, direction or decision filed with the Registrar of the Supreme Court is deemed to be a reference to an order, direction or decision filed with the Ontario Court (General Division).

160b. Where an Act, rule or regulation provides that a document is to be filed with, certified to, forwarded to or transmitted to the Supreme Court or the Registrar of the Supreme Court for the purpose of an appeal to the Divisional Court, that document shall be filed with, certified to, forwarded to or transmitted to, as the case may be, the Divisional Court.

160c. (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.

(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 situated.

(3) Subsection (1) is subject to the following:

- 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:
 - All the area of the County of Haldimand as it existed on the 31st day of March, 1974.
 - All the area of the County of Norfolk as it existed on the 31st day of

peace may require a police officer to accompany the sheriff and assist in the execution of the order.

153a. 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. 1984, c. 11, s. 62, *amended*.

29. Sections 157 and 158 of the said Act are repealed and the following substituted therefor:

157. A proceeding pending in a court set out in column 1 of the Table when this section comes into force is continued in the court set out opposite to it in column 2.

TABLE

Column 1	Column 2
1. High Court of Justice	Ontario Court (General Division)
2. District Court	Ontario Court (General Division)
3. Surrogate Court	Ontario Court (General Division)
4. Provincial Court (Criminal Division)	Ontario Court (Provincial Division)
5. Provincial Court (Family Division)	Ontario Court (Provincial Division)
6. Provincial Offences Court	Ontario Court (Provincial Division)
7. Provincial Court (Civil Division)	Small Claims Court

158.—(1) A provincial judge who was a Chief Judge, Associate Chief Judge or senior judge of the Provincial Court (Criminal Division), the Provincial Court (Family Division) or the Provincial Court (Civil Division) immediately before this section comes into force shall continue to hold the office of provincial judge, is entitled to retain the title of Chief Judge, Associate Chief Judge or senior judge, as the case may be, and is entitled to an annual salary equal to the greater of,

- (a) the current annual salary of a provincial judge; or
- (b) the annual salary the judge received immediately before this section comes into force.

(2) A master who was the Senior Master immediately before this section comes into force shall continue to hold the office of master, is entitled to retain the title of Senior Master and is entitled to an annual salary equal to the greater of,

- (a) the current annual salary of a master; or
- (b) the annual salary the master received immediately before this section comes into force.

158a. A document filed in court that refers to a court set out in column 1 of the Table to section 160 is not by that reason invalid and shall be deemed to refer to the court set out opposite to it in column 2.

30. Section 159 of the said Act is repealed and the following substituted therefor:

159. Where by an Act or regulation, jurisdiction is conferred on a particular court set out in column 1 of the Table, the jurisdiction shall be deemed to be conferred on the corresponding court set out in column 2 sitting in the county or district of the court named.

TABLE

Column 1	Column 2
1. county or district court (General Division)	Ontario Court
2. Surrogate Court (General Division)	Ontario Court
3. Provincial Court (family division)	Ontario Court (Provincial Division)
4. Provincial Offences Court (Provincial Division)	Ontario Court
5. Small Claims Court	Small Claims Court

31. Section 160 of the said Act is repealed and the following substituted therefor:

160. A reference in an Act, rule or regulation to a court set out in column 1 of the Table is deemed to be a reference to the court set out opposite to it in column 2.

TABLE

Column 1	Column 2
1. Supreme Court	Ontario Court (General Division)
2. High Court of Justice	Ontario Court (General Division)
3. County or District Court	Ontario Court (General Division)
4. District Court	Ontario Court (General Division)
5. Surrogate Court	Ontario Court (General Division)
6. Small Claims Court	Small Claims Court

ance with this fundamental need must be recognized within the CAPCJ and CJC as well as by all governments and outside agencies.

6. Fund raising and financing:

a. All programs must be co-ordinated between the CAPCJ (Canadian Judicial College) and CJC. Neither wishes to have a veto power over the other. The degree of participation in education and fund raising will often vary. Responsibilities for traditional judicial education programs will remain as is, unless they are changed by mutual consent.

b. The overall concept for each program will be first tentatively approved and agreed upon between the CAPCJ Canadian Judicial College Education Chairman and the proper representatives of the CJC. A joint CAPCJ Canadian Judicial/CJC College policy and procedure will be recommended to the respective organizations and approved by them before fund raising commences.

c. No direct solicitation from governments or other agencies will be undertaken by chairmen of courses/programs/projects of either organizations until joint authoriza-

tion is granted.

d. Generally the financial roles of each organization for education are:

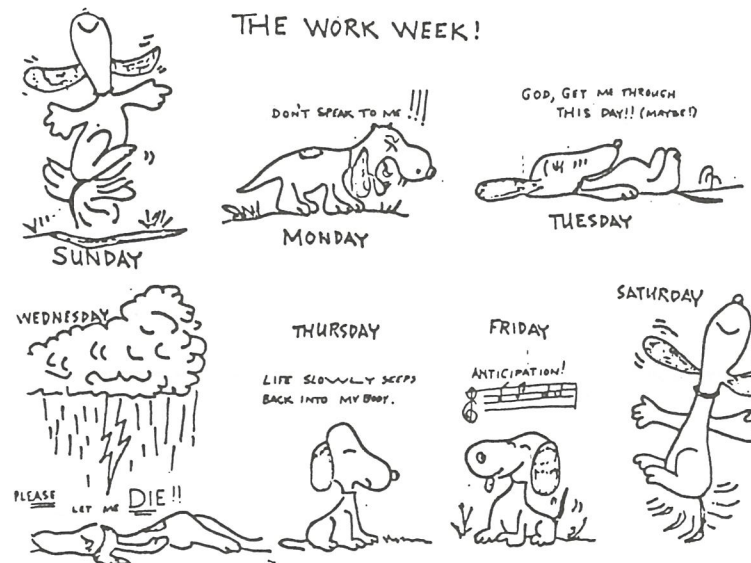
(1) The CJC is to fund from its own budget the costs of planning and coordinating.

(2) The CAPCJ is to fund its share from its pre-approved budget or from special project grants.

(3) Neither organization is responsible for individual student judges costs of attendance (unless the CAPCJ is provided with special grants).

(4) Funds coming from outside agencies for the CAPCJ shall be paid directly to, accounted for and controlled by the CAPCJ. Payments from such agencies shall not be made direct to individual chairmen. Disbursements to the Canadian Judicial College or its chairman are matters of internal control and procedure for the CAPCJ.

7. Regional traditions and responsibilities exist and are valid. The regional problems and differences of the provincial courts must not only be recognized, but when appropriate, reconciled, and honoured and supported.



COURT REFORM IN ONTARIO*

Mr. Speaker:

I am pleased today to announce the intention of the Government to make changes in the structure of the trial court in Ontario. The reorganization of our system of trial courts is not an end in itself; but it is the essential precondition to an efficient, fair, well managed system of justice in which our citizens can continue to have confidence. The changes that are proposed will, I believe, provide the framework for an effective, accessible and affordable system designed to serve the people as we move into the next century.

Our present court system has been with us since 1881. While it has been frequently modified over the last hundred years to reflect new social needs, the system, designed by Oliver Mowat, has remained essentially intact. It has, however, been the object of frequent ad hoc changes. Almost two decades ago the Ontario Law Reform Commission assigned the blame for public dissatisfaction on "the nature of the organization and the inefficiency of the system". Judges, lawyers and lay people alike recognize the essential truth of this statement.

For most people the existing trial court structure is confusing and remote. There are eight different trial courts divided into roughly three hierarchical levels; some courts are located throughout the province while others are centralized mainly at Toronto. In some subject matter areas the jurisdictions of different courts overlap with the result that litigants are faced with a choice of courts in which to bring their proceeding. As well, the existence of different levels in the hierarchy promotes the inaccurate perception that some courts are "better" than others.

In 1987, Mr. Justice Zuber released his report on Ontario's court system. The subsequent consultation between the Ministry and representatives from the courts, the legal profession and public organizations, provided valuable information. I believe that we have carefully examined

*In May 1989 the Attorney General of Ontario introduced a Bill in the Legislature for the reform of Courts in that province. His statement to the Legislature upon introduction of the Bill shows the significance and extent of the proposed changes.

So that the rationale and character of the proposed changes are not misconstrued both Attorney General Scott's statement to the Legislature and the text of Bill 2 are set out herein.

every major structural option presented to us.

Our point of departure has been that the trial court system exists to serve the public by assuring the orderly and expeditious resolution of disputes. The Government's vision for the new trial court structure is based on three principles. First, it will be regional, not centralized. Earlier in the year I announced the regionalization of the Ministry's courts administration program and Crown attorney staff into eight regions. The regionalization of the judiciary will parallel these two changes. All judges will be assigned to a region.

Second, our vision contemplates a single trial court. All judges of the new court would possess the jurisdiction of both Superior and Provincial court judges and would be appointed either by the federal government or under arrangements made by the province with the federal government.

Judges appointed to the new court would generally be expected to devote most of their time to one of three areas of law: civil litigation, criminal law or family law.

This vision contemplates the elimination of the hierarchical divisions which have been a characteristic of the Ontario trial court system since the last century. These divisions were originally justified for purposes of appeal. That justification no longer exists. Increasingly the hierarchy of courts has been confusing and regrettably has often created the sense that one court is better than another or that one court does more important work than another. As well, the hierarchy has made judicial and administrative management of the system particularly difficult.

The creation of a single trial court will allow, for example, parties to a family law dispute to have all aspects of the dispute dealt with in one proceeding before one judge. Currently, family law jurisdiction is fragmented between courts with the result that the resolution of a single dispute often requires two or more proceedings in

18—(1) Subsection 118 (1) is repealed and the following substituted therefor:

(1) In this section, "health practitioner" means a person licensed to practise medicine or dentistry in Ontario or any other jurisdiction, a psychologist registered under the *Psychologists Registration Act* or a person certified or registered as a psychologist by another jurisdiction.

(2) Subsection 118 (2) of the said Act is amended by striking out "medical" in the fourth line and inserting in lieu thereof "health".

(3) Subsection 118 (5) of the said Act is amended by striking out "medical" in the second line and inserting in lieu thereof "health".

19. Subsections 120 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A proceeding in the Small Claims Court shall not be transferred under clause (1) (d) to the Ontario Court (General Division) without the consent of the plaintiff in the proceeding in the Small Claims Court.

(2a) 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 Ontario Court (General Division) without the consent of the plaintiff in the proceeding in the Small Claims Court.

(3) The motion shall be made to a judge of the Ontario Court (General Division).

20.—(1) Subsection 121 (1) of the said Act is amended by striking out "a Supreme Court or District Court" in the first line and inserting in lieu thereof "an Ontario Court (General Division)".

(2) Subsection 121 (2) of the said Act is amended by striking out "Actions in which a claim is made for any of the following kinds of relief shall be heard without a jury:" in the first and second lines and inserting in lieu thereof "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:".

(3) Paragraph 3 of the said subsection 121 (2) is amended by striking out "Family Law Reform Act" in the first and second lines and inserting in lieu thereof "Family Law Act, 1986".

21. Subsection 122 (2) of the said Act is

amended by striking out "Rules of Civil Procedure" in the second line and inserting in lieu thereof "rules of court".

22. Subsection 124 (2) of the said Act is repealed and the following substituted therefor:

(2) Mutual debts may be set off against each other even if they are of a different nature.

23. Clause 129 (b) of the said Act is amended by striking out "Family Law Reform Act" in the first line and inserting in lieu thereof "Family Law Act, 1986".

24.—(1) Clause 133 (1) (a) of the said Act is amended by striking out "the" in the first line and inserting in lieu thereof "a".

(2) Clause 133 (1) (b) of the said Act is amended by striking out "local judge or".

25.—(1) Subsection 136 (6) of the said Act is amended by striking out "Provincial Court (Family Division) or the Provincial Court (Civil Division)" in the second and third lines and inserting in lieu thereof "Ontario Court (Provincial Division) or the Small Claims Court".

(2) Subsection 136 (7) of the said Act is amended by striking out "in the Provincial Offences Court where it is" in the second and third lines and inserting in lieu thereof "under the *Provincial Offences Act* in".

26. Subsection 137 (2) of the said Act is amended by striking out "the Registrar of the Supreme Court" in the first and second lines and inserting in lieu thereof "a person designated by the Deputy Attorney General".

27.—(1) Subsection 150 (1) of the said Act is amended by striking out "Supreme Court" in the first line and in the last line and inserting in lieu thereof in each instance "Ontario Court (General Division)".

(2) Subsection 150 (3) of the said Act is amended by striking out "Supreme Court" in the fourth line and inserting in lieu thereof "Ontario Court (General Division)".

28. The said Act is further amended by adding thereto the following sections:

150a.—(1) Unless an Act provides otherwise, orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to the sheriff for enforcement.

(2) A sheriff who believes that the execution of an order may give rise to a breach of the

101a.—(1) Money paid into the Ontario Court (General Division) shall be paid to the Accountant of the Ontario Court and such money and securities in which the money is invested are vested in the Accountant.

(2) Mortgages and other securities taken under an order of the Ontario Court (General Division) and instruments taken as security in respect of a proceeding in the Ontario Court (General Division) shall be taken in the name of the Accountant and shall be deposited in his or her office, except where an order provides otherwise.

(3) The Accountant has no duty or obligation in respect of the instruments deposited under subsection (2) except as custodian of the instruments, unless an order of the court provides otherwise.

(4) The Provincial Auditor shall examine and report on the accounts and financial transactions of the Accountant. 1984, c. 11, s. 22, *amended*.

101b.—(1) The finance committee is continued and shall be composed of three persons appointed by the Lieutenant Governor in Council.

(2) the finance committee has control and management of the money in the Ontario Court (General Division), the investment of the money and the securities in which it is invested.

(3) Money that is available for investment shall be invested in investments in which the Treasurer of Ontario may invest public money under section 3 of the *Financial Administration Act*.

(4) The finance committee may employ a trust company to make investments or act as custodian of the securities purchased as investments.

(5) The finance committee may provide for the payment of interest on money paid into the General Division and may fix the rate of interest so paid.

(6) The finance committee may establish such reserve funds as it considers necessary. 1984, c. 11, s. 23, *amended*.

11. Subsection 102 (3) of the said Act is amended by striking out “Rules of Civil Procedure” in the third line and inserting in lieu thereof “rules of court”.

12. Section 103 of the said Act is repealed and the following substituted therefor:

103.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint assessment officers.

(2) Every master is an assessment officer.

(3) Every assessment officer has jurisdiction to assess costs in a proceeding in any court.

(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 Ontario Court (General Division) 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.

13.—(1) Subsection 104 (1) of the said Act is repealed.

(2) Subsection 104 (2) of the said Act is amended by striking out “additional” in the second line.

14.—(1) Subsection 108 (2) of the said Act is amended by striking out “and” where it occurs the second time in the third line and by inserting after “hearing)” in the fourth line “and 153a (where procedures not provided)”.

(2) Subsection 108 (3) of the said Act is amended by striking out “and” in the second line, by inserting after “hearings)” in the third line “and 153a (where procedures not provided)” and by striking out “Offences Court” in the sixth and seventh lines and inserting in lieu thereof “Division”.

15. Subsection 109 (3) of the said Act is repealed and the following substituted therefor:

(3) Only the Court of Appeal, the Unified Family Court and the Ontario Court (General Division), excluding the Small Claims Court, may grant equitable relief, unless otherwise provided.

16. Section 110 of the said Act is amended by striking out “Supreme Court, the District Court and the Unified Family Court” in the first and second lines and inserting in lieu thereof “Court of Appeal, the Unified Family Court and the Ontario Court (General Division), excluding the Small Claims Court”.

17. Subsection 114 (1) of the said Act is amended by striking out “Supreme Court, the District Court or the Unified Family Court” in the first and second lines and inserting in lieu thereof “Unified Family Court or the Ontario Court (General Division), excluding the Small Claims Court”.

the two or more different courts. I am heartened by the success of the Unified Family Court initiative that has been in existence in Hamilton for 12 years.

The third principle of the vision is efficient and cooperative management of the system, the personnel and the resources assigned to it. Management of a court system is a particularly difficult and complex undertaking requiring the co-operation of administrators, judges, Crown attorneys and the Bar. In our system each has an independent role to play which cannot be ceded to the others. For example, some elements of administrative decision making are reserved to the judges alone in order to assure the maintenance of their constitutionally entrenched independence from the executive or legislative branches. On the other hand, only popularly elected assemblies can provide the necessary resources and assign them to the system. And finally, Crown attorneys and the Bar each have an independent role upon which neither the judges nor the administration can encroach.

I believe that the key to efficient and cooperative management of the system depends not only on the existence of a single trial court but on its organization on a regional basis. A regional senior judge located in each of the eight regions will be responsible for the management of judicial resources in the region subject to the authority of the Chief Judge of Ontario. It is expected that he will work closely with the regional administrator of court services, the regional Crown attorney and representatives of the regional Bar.

Under our Constitution structural reform of the courts requires the co-operation of both federal and provincial governments. Ontario has the authority to enact legislation establishing a structure but judges of the Superior and District Courts must under our Constitution be appointed by the Government at Ottawa. For this reason changes to structure require co-operation at both levels of government. I have already been to Ottawa for discussions with the Attorney General of Canada with a view to implementing proposals set out in this statement and the vision it sets for the future. I well recognize that the challenge represented by the vision will require detailed discussion with the Attorney General and my Provincial colleagues. I am confident that they will be prepared to consider the proposals with an open mind.

I will be introducing legislation late today that will mark the first phase toward implementation of the goal I have set out. I hope to have this phase completed by the end of 1990.

This legislation, the first phase of change, will establish a court called the *Ontario Court of*

Justice. The court will be divided into two divisions, the Ontario Court (General Division) and the Ontario Court (Provincial Division).

The General Division will unite the existing High Court, District Court and Surrogate Courts.

The merger of these courts will provide a substantial pool of federally appointed judges assigned to each region of the province. This will mean significant improvements in the level of service provided to litigants throughout Ontario who, in some cases, must wait for a judge of the proper jurisdiction to arrive before proceeding.

The other division of the Ontario Court will be the Provincial Division. This court will consist of provincial judges, who will continue their existing jurisdiction in the new court.

Jurisdiction over young offenders, which is now divided between the Criminal and Family Divisions of the existing Provincial Court, will be consolidated in the new Ontario Court (Provincial Division). It is my intention that this jurisdiction will, over a period of time, be exercised primarily by judges who concentrate on family law.

In addition, Mr. Speaker, I am pleased to announce that the Small Claims Court limit will be increased from \$1,000 to \$5,000. These claims will now be the responsibility of the Ontario Court (General Division). This represents a dramatic increase in access to small claims procedures, especially outside Toronto. I will also be asking the Ontario Rules Committee to consider devising new rules to expedite the hearing of cases up to \$15,000.

Mr. Speaker, I believe that the legislation we are introducing today and the discussions we will be having with the Government of Canada represent historic steps in the evolution of Ontario's court system. In total, the vision contemplated represents the most significant change in the administration of justice in province in over a century. Those who have been consulted and worked with us, the judges, the Crown attorneys, the lawyers and members of the public, recognize clearly our goal: the creation of a structure which would facilitate the administration of justice in the province not only in this decade but well into the next century. As I have said, these fundamental changes are a precondition to a simpler, more efficient, less expensive, and co-operatively managed system in which all citizens of our province will continue to have confidence and pride.

I know that for some, not excluding this Attorney General, the disappearance of the old ways, the old traditions and the old distinctions will be a difficult and wrenching experience but

with the introduction of this legislation and as we move into this process, I am heartened and encouraged by the virtual unanimous recognition on all sides and in all parts of the province that, where necessary, old systems must give

way to new systems if the administration of justice in the province is to continue in the next century to serve the needs and meet the aspirations of our people.

Thank you Mr. Speaker

Bill 2

Government Bill

2nd SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

Bill 2

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General

EXPLANATORY NOTES

The Bill substantially changes the structure of the Ontario courts.

The present structure of the courts is as follows:

1. The Supreme Court of Ontario has two branches, the Court of Appeal and the High Court of Justice. The Supreme Court is a superior court with civil and criminal jurisdiction whose judges are appointed by the federal government.
2. The District Court of Ontario has both civil and criminal jurisdiction but is not a superior court. Its civil jurisdiction is limited by the *Courts of Justice Act, 1984* to claims of less than \$25,000 unless both parties agree to let it hear a claim for a greater amount. Its judges are appointed by the federal government.
3. The Divisional Court is a division of the High Court that hears specified appeals assigned to it by statute and applications for judicial review of a decision of a board or agency. The judges of the High Court are the judges of the Divisional Court.
4. There are four courts presided over by provincial judges, the Provincial Court (Civil Division), the Provincial Court (Family Division), the Provincial Court (Criminal Division) and the Provincial Offences Court. The Provincial Offences Court is usually presided over by justices of the peace and the Provincial Court (Civil Division) is often presided over by part-time deputy judges.
5. The Unified Family Court is a specialized court for family law proceedings in The Regional Municipality of Hamilton-Wentworth. Its judges are appointed by the federal government and are also given the power of provincial judges for their work in the court.

The structure of the Ontario courts proposed by the Bill is as follows:

1. The Court of Appeal will be continued as the final court of appeal for the Province and will be separated from the High Court.
2. There will be a new court, to be called the Ontario Court of Justice, composed of two divisions, the General Division and the Provincial Division.
3. The Ontario Court (General Division) will combine the jurisdiction now exercised by the High Court, the District Court and the surrogate courts. The existing judges of those courts will all become judges of the Ontario Court (General Division). The General Division will be a superior court.
4. The Divisional Court will be continued with no change in its jurisdiction as a branch of the Ontario Court (General Division). All of the judges of the General Division will be judges of the Divisional Court.
5. The Small Claims Court will also be a branch of the Ontario Court (General Division). The monetary limit of the Small Claims Court will be prescribed by regulation. All of the judges of the General Division will be judges of the Small Claims Court. In addition, provincial judges who were formerly in the Provincial Court (Civil Division) will preside over matters in the Small Claims Court and deputy judges will be appointed for three-year renewable terms to preside over matters in the Small Claims Court that do not exceed a prescribed amount.
6. The Ontario Court (Provincial Division) combines the jurisdiction now exercised by the Provincial Court (Criminal Division), the Provincial Court (Family Division) and the Provincial Offences Court. The existing judges of those courts will all become judges of the Ontario Court (Provincial Division).
7. The Unified Family Court is established as a superior court but is otherwise not changed.

A judge of the General Division will be appointed as Chief Judge of the Ontario Court to

including judicial and other personnel, in the public interest.

(4) The Committee shall meet at least four times each year. *New.*

93. The powers and duties of a judge who has authority to supervise and direct the sittings and the assignment of the judicial duties of his or her court include the following:

1. Assigning cases to individual judges.
2. Determining the sitting schedules for individual judges.
3. Determining the places of sittings for individual judges.
4. Determining the total annual, monthly and weekly workload of individual judges.
5. Preparing trial lists and assigning courtrooms, to the extent necessary to control the determination of who is assigned to hear particular cases. 1984, c. 11, s. 93, *amended.*

4. Section 94 of the said Act is amended by adding thereto the following subsections:

(2) A power or duty given to a registrar, sheriff, court clerk, assessment officer 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 person designated by the Deputy Attorney General.

(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.

5. The said Act is amended by adding thereto the following section:

95a. Documents and other material 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 Ontario Court of Justice, the Chief Judge of the Ontario Court of Justice;
- (c) in the Unified Family Court, the Senior Judge for the Unified Family Court. 1984, c. 11, s. 101 (4), *amended.*

6. Section 98 of the said Act is repealed and the following substituted therefor.

98. Every judge of a court in Ontario and every master has the same immunity from liability as a judge of the Ontario Court (General Division).

7. Section 99 of the said Act is repealed and the following substituted therefor:

99. Every judge who was a judge of the Supreme Court or of the District Court before this section comes into force shall be paid out of the Consolidated Revenue fund the annual sum of \$3,000, payable quarterly, as compensation for the services the judge is called on to render by any Act of the Legislature in addition to his or her ordinary duties.

8. Subsection 100 (1) of the said Act is amended by striking out "Supreme Court or the District Court" in the first and second lines and inserting in lieu thereof "Court of Appeal or the Ontario Court (General Division)".

9. The said Act is further amended by adding thereto the following sections:

100a. The Lieutenant Governor in Council may make regulations respecting the form of the gown to be worn in court by all judges appointed after this section comes into force.

100b.—(1) Every judge of the Ontario Court of Justice and the Unified Family Court may be addressed as "Your Honour" or as "Judge (naming the judge)".

(2) A judge appointed to the High Court of Justice before this section comes into force may elect to be addressed according to the practice in existence before this section comes into force.

10. Section 101 of the said Act is repealed and the following substituted therefor;

101.—(1) Every person who was a master of the Supreme Court before this section comes into force is a master of the Ontario Court (General Division). *New.*

2. Every master has the jurisdiction conferred by the rules of court in proceedings in the General Division. 1984, c. 11, s. 20 (3).

(3) Sections 42 to 49 apply with necessary modifications to masters in the same manner as to provincial judges. 1984, c. 11, s. 20 (11), *amended.*

bers appointed under clause (1) (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.

(5) A majority of the members of the Criminal Rules Committee constitutes a quorum. *New.*

70.—(1) Subject to the approval of the Lieutenant Governor in Council, the Criminal Rules Committee may prepare rules for the purposes of section 482 of the *Criminal Code* (Canada) for consideration by the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division).

(2) Subject to the approval of the Lieutenant Governor in Council, the Criminal Rules Committee may make rules for the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division) in relation to the practice and procedure of those courts in proceedings under the *Provincial Offences Act*. *New.*

(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;

(d) prescribing and regulating the procedures under any Act that confers jurisdiction under the *Provincial Offences Act* on the Ontario Court (Provincial Division) 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. 1984, c. 11, s. 73 (3), *amended.*

3. Sections 92 and 93 of the said Act are repealed and the following substituted therefor:

92.(1) There shall be a committee, known as the Ontario Courts Management Committee, composed of,

(a) the Chief Justice of Ontario;

(b) the Associate Chief Justice of Ontario;

(c) the Chief Judge of the Ontario Court;

(d) the Chief Judge of the Ontario Court

(Provincial Division);

(e) the Attorney General;

(f) the Deputy Attorney General; and

(g) such other persons as are appointed by the Attorney General after consultation with the persons mentioned in clauses (a) to (d).

(2) The Chief Justice of Ontario, the Chief Judge of the Ontario Court and the Attorney General or his or her designate shall, by rotation, preside over meetings of the Committee.

(3) The function of the Committee is to consider and recommend policies and procedures to promote the better administration of justice and the effective use of resources, including judicial and other personnel, in the public interest. *New.*

92a.—(1) For judicial purposes, Ontario is divided into the regions prescribed under subsection (2).

(2) The Lieutenant Governor in Council may make regulations prescribing regions for the purpose of this Act. *New.*

92b.—(1) There shall be a committee in each region, known as the Regional Courts Management Committee, composed of,

(a) the regional senior judge of the Ontario Court (General Division);

(b) the regional senior judge of the Ontario Court (Provincial Division);

(c) the regional director of courts administration for the Ministry of the Attorney General;

(d) the regional director of Crown attorneys;

(e) a barrister and solicitor who practices law in the region, to be appointed by the Attorney General; and

(f) such other persons as are appointed by the Attorney General after consultation with the persons mentioned in clauses (a) and (b).

(2) The persons mentioned in clauses (1) (a) to (d) shall, by rotation, preside over meetings of the Committee.

(3) The function of the Committee is to consider and recommend policies and procedures for the region to promote the better administration of justice and the effective use of resources,

manage judicial resources for the General Division of the Ontario Court of Justice. A provincial judge will be appointed as Chief Judge of the Ontario Court (Provincial Division) to manage judicial resources for the Provincial Division.

The Province will be divided into regions for judicial purposes, with the number and area of the regions to be prescribed by regulation. A judge of the General Division will be appointed as regional senior judge of the General Division for each region to manage judicial resources for the General Division in the region, subject to the authority of the Chief Judge of the Ontario Court. A provincial judge will be appointed as regional senior judge of the Provincial Division for each region to manage judicial resources for the Provincial Division in the region, subject to the authority of the Chief Judge of the Ontario Court (Provincial Division).

The Chief Judge of the Ontario Court (Provincial Division) and the regional senior judges of the Provincial Division will be appointed to their administrative positions for five-year terms, after which they will return to being provincial judges.

The Ontario Courts Advisory Council will be replaced by the Ontario Courts Management Committee. In addition, each region will have a Regional Courts Management Committee consisting of the regional senior judges, the regional director of courts administration, the regional director of Crown attorneys and representatives of the regional bar and the public.

The Bill will also restructure rule-making for the courts. Part V of the existing Act establishes the Rules Committee of the Supreme and District Courts and provides for the making of rules of practice and procedure for civil proceedings in those courts. The Bill will establish three separate rules committees, the Civil Rules Committee, the Family Rules Committee and the Criminal Rules Committee, each to make rules in their respective areas.

Some of the other changes to the Act are as follows:

1. The number of judges of the Court of Appeal will be fixed by regulation rather than by statute.

2. Every judge of the General Division must be assigned to a particular region and there must be at least one judge of the General Division assigned to each county or district.

3. The judges of the Ontario Court of Justice are required to meet at least once each year and the judges of the Ontario Court in each region are required to meet at least once in

each year to consider the Act, the rules and the administration of justice.

4. A limit on costs in the Small Claims Court is set at 15 per cent of the amount claimed unless the court considers it necessary in the interests of justice to penalize a person for unreasonable behaviour in the proceeding.

5. The Act now provides the Province will pay \$3,000 each year to federally appointed judges. Although these payments will continue for judges appointed before the bill comes into force, no payments will be made to future appointees.

6. There is no provision for the appointment of new masters.

7. The Lieutenant Governor in Council will be permitted to prescribe the form of the gown worn in court by all judges appointed after the Bill comes into force.

8. All Ontario Court and Unified Family Court judges may be addressed as "Your Honour", subject to the right of former High Court judges to elect to be addressed according to the old practice.

9. Errors in the Act are corrected with respect to jury trials (section 121) and setting off mutual debts (section 124). The medical examination provision of the Act (section 118) is amended to permit a court to order an examination by a registered psychologist.

10. The salaries of former Chief Judges, Associate Chief Judges and senior judges of the provincial courts and of the Senior Master are protected and they are permitted to retain their titles.

11. The transitional provisions and complementary amendments in the Act are amended to ensure the continuation of existing court proceedings in the new courts and to deem references in courts in other statutes to be references to the new courts.

The Bill is accompanied by the *Court Reform Statute Law Amendment Act, 1989*, which repeals the *Sheriffs Act* and makes consequential amendments to 52 other statutes.

BILL 2 1989 An Act to amend the Courts of Justice, Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

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;

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

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

“hearing” includes a trial;

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

“order” includes a judgment or decree;

“plaintiff” means a person who commences an action;

“region” means a region prescribed under section 92a. 1984, c. 11, s. 1, *amended*.

2. Parts I and II, Part III, as amended by the Statutes of Ontario, 1984, chapter 55, section 213, 1984, chapter 64, section 1, 1985, chapter 1, section 4, 1986, chapter 7, section 15 and 1987, chapter 1, sections 1, 2 and 3, Part IV, as amended by the Statutes of Ontario, 1984, chapter 55, section 213, 1984, chapter 64, sections 2, 3, 4 and 5 and 1987, chapter 1, sections 4, 5 and 6 and Part V, as amended by the Statutes of Ontario, 1984, chapter 64, sections 6 and 7, of the said Act are repealed and the following substituted therefor:

PART I

COURT APPEAL FOR ONTARIO

2.—(1) The branch of the Supreme Court of Ontario named the Court of Appeal for Ontario

is continued as a superior court of record named the Court of Appeal for Ontario.

(2) In exercising its jurisdiction, the Court of Appeal has all the power and authority historically exercised by courts of common law and equity in England and Ontario. 1984, c. 11, s. 2, *amended*.

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) such number of other judges as is fixed under subsection (2), to be called justices of appeal. 1984, c. 11, s. 3 (1), *amended*.

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

(3) A reduction in the number of judges does not affect appointments existing at the time of the reduction. *New*.

(4) 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. 1984, c. 11, s. 6 (1), *amended*.

4.(1) The Chief Justice of Ontario, with the concurrence of the Chief Judge of the Ontario Court, may assign a judge of the Ontario Court (General Division) to perform the work of a judge of the Court of Appeal. 1984, c. 11, s. 9 (2), *amended*.

(2) A judge of the General Division 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. 1984, c. 11, s. 8, *amended*.

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. 1984, c. 11, s. 18 (5).

(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.

(3) If the Chief Justice of Ontario and the Associate Chief Justice of Ontario are both absent

- (i) four barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;
- (j) two barristers and solicitors, who shall be appointed by the Chief Judge of the Ontario Court; and
- (k) two barristers and solicitors, who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division).

(2) 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.

(3) Each of the members of the Family Rules Committee appointed under clauses (1) (c), (d), (e), (g), (h), (i), (j) and (k) shall hold office for a period of three years and is eligible for reappointment.

(4) Where a vacancy occurs among the members appointed under clause (1) (c), (d), (e), (g), (h), (i), (j) or (k), a new member similarly qualified may be appointed for the remainder of the unexpired term.

(5) A majority of the members of the Family Rules Committee constitutes a quorum. *New*.

68.—(1) Subject to the approval of the Lieutenant Governor in Council, the Family Rules Committee may make rules for the Court of Appeal, the Ontario Court (General Division) and the Ontario Court (Provincial Division) in relation to the practice and procedure of those courts in proceedings under statutory provisions set out in the Schedule to Part III (Unified Family Court), except proceedings under the *Young Offenders Act* (Canada).

(2) Subsections 66 (2) and (3) apply with necessary modifications to the Family Rules Committee making rules for the courts described in subsection (1).

(3) The rules made by the Family Rules Committee may adopt, modify or exclude the rules made by the Civil Rules Committee.

(4) Subject to the approval of the Lieutenant Governor in Council, the Family Rules Committee may prepare rules for the purpose of section 68 of the *Young Offenders Act* (Canada) for consideration by the Ontario Court (Provincial Division). *New*.

69.—(1) The Criminal Rules Committee is established and shall be composed of,

- (a) the Chief Justice of Ontario, the Associate

Chief Justice of Ontario, the Chief Judge of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);

(b) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;

(c) three judges of the Ontario Court (General Division), who shall be appointed by the Chief Judge of the Ontario Court;

(d) four judges of the Ontario Court (Provincial Division), who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division);

(e) one justice of the peace, who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division);

(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) three Crown attorneys, deputy Crown attorneys or assistant Crown attorneys, who shall be appointed by the Attorney General;

(i) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;

(j) two barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;

(k) one barrister and solicitor, who shall be appointed by the Chief Justice of Ontario;

(l) one barrister and solicitor, who shall be appointed by the Chief Judge of the Ontario Court; and

(m) one barrister and solicitor, who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division).

(2) 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.

(3) Each of the members of the Criminal Rules Committee appointed under clauses (1) (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.

(4) Where a vacancy occurs among the mem-

for the courts described in 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 by solicitors 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 Ontario Court (General Division);
- (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, including the conferral on masters of any jurisdiction of the Ontario Court (General Division), 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 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 a solicitor'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) any matter that is referred to in an Act as provided for by rules of court.
- (3) Nothing in subsection (1) or (2) authorizes the making of rules that conflict with an Act, but rules may be made under subsections (1) and (2) supplementing the provisions of an Act in respect of practice and procedure. 1984, c. 11, s. 90, *amended*.
- 67.—(1)** The Family Rules Committee is established and shall be composed of,
- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Judge of the Ontario Court and the Chief Judge of the Ontario Court (Provincial Division);
 - (b) the senior judge for the Unified Family Court;
 - (c) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;
 - (d) three judges of the Ontario Court (General Division), who shall be appointed by the Chief Judge of the Ontario Court;
 - (e) four judges of the Ontario Court (Provincial Division), who shall be appointed by the Chief Judge of the Ontario Court (Provincial Division);
 - (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) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;

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. 1984, c. 11, s. 3 (2), *amended*.

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 as provided in the rules of court;
- (b) a final order of a judge of the Ontario Court (General Division), except an order referred to in clause 18(1) (a);
- (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. 1984, c. 11, s. 17 (1), *amended*.

(2) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Ontario Court (General Division) if an appeal in the same proceeding lies to and is taken to the Court of Appeal.

(3) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Ontario Court (General Division) to the Court of Appeal for the purpose of subsection (2). 1984, c. 11, s. 17 (2), *amended*.

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. 1984, c. 11, s. 18 (1), *amended*.

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

(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.

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

(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. 1984, c. 11, s. 18 (3), *amended*.

8.—(1) The Lieutenant Governor in Council may refer any question to the Court of Appeal

for hearing and consideration.

(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.

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court.

(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.

(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.

(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 Treasurer of Ontario.

(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. 1984, c. 11, s. 19.

PART II

ONTARIO COURT OF JUSTICE

9.—(1) The Ontario Court of Justice is established.

(2) The Ontario Court shall consist of two divisions, the General Division and the Provincial Division. *New*.

ONTARIO COURT (GENERAL DIVISION)

10.—(1) The branch of the Supreme Court of Ontario named the High Court of Justice for Ontario, the District Court of Ontario and the surrogate courts are amalgamated and continued as a superior court of record named the Ontario Court (General Division).

(2) The General Division has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario. 1984, c. 11, s. 2 (1), *amended*.

11.—(1) The General Division shall consist of,

- (a) the Chief Judge of the Ontario Court, who shall be president of the Ontario Court;
- (b) a regional senior judge of the General Division for each region;
- (c) a senior judge of the General Division for the Unified Family Court; and
- (d) such number of judges of the General Division as is fixed under clause 53 (1) (a). 1984, c. 11, s. 4 (1), *amended*.

(2) There shall be such additional offices of judge of the General Division as are from time to time required, to be held by Chief Judges of the Ontario Court and regional senior judges of the General Division who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Ontario Court. 1984, c. 11, s. 6 (1), *amended*.

(3) There shall be such additional offices of supernumerary judge of the General Division as are from time to time required, to be held by judges of the General Division who have elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of that division. 1984, c. 11, s. 6 (3), *amended*.

12.—(1) The Chief Justice of Ontario, with the concurrence of the Chief Judge of the Ontario Court, may assign a judge of the Court of Appeal to perform the work of a judge of the General Division. 1984, c. 11, s. 9 (1), *amended*.

(2) A judge of the Court of Appeal is, by virtue of his or her office, a judge of the General Division and has all the jurisdiction, power and authority of a judge of the General Division. 1984, c. 11, s. 8, *amended*.

13.—(1) The Chief Judge of the Ontario Court shall direct and supervise the sittings of the Ontario Court (General Division) and the assignment of its judicial duties.

(2) A regional senior judge of the General Division shall, subject to the authority of the Chief Judge of the Ontario Court, exercise the powers and perform the duties of the Chief Judge in respect to the General Division in his or her region.

(3) A regional senior judge of the General Division may delegate to a judge of the General Division in his or her region the authority to exercise specified functions. *New*.

(4) If the Chief Judge of the Ontario Court is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by a regional senior judge of the General Division designated by the Chief

Judge of the Ontario Court. 1984, c. 11, s. 4 (3), *amended*.

(5) The powers and duties of a regional senior judge of the General Division who is absent from Ontario or is for any reason unable to act shall be exercised and performed by a judge of the General Division designated by the Chief Judge of the Ontario Court. *New*.

14.—(1) The Chief Judge of the Ontario Court shall assign every judge of the General Division to a region.

(2) There shall be at least one judge of the General Division assigned to each county or district.

(3) No judge of the General division who was a judge of the High Court of Justice or the District Court of Ontario before this section comes into force shall be assigned without his or her consent to a region other than the region in which he or she resided immediately before this section comes into force.

(4) Subsections (1) to (3) do not prevent the temporary assignment of a judge to a location anywhere in Ontario. *New*.

15. A proceeding in the General Division shall be heard and determined by one judge of the General Division. c. 11, s. 14 (1), *amended*.

16. An appeal lies to the General Division from,

- (a) an interlocutory order of a master;
- (b) a certificate of assessment of costs issued in a proceeding in the General Division, on an issue in respect of which an objection was served under the rules of court. 1984, c. 11, s. 13 (2), *amended*.

DIVISIONAL COURT

17.—(1) There shall be a branch of the General Division to be known as the Divisional Court consisting of the Chief Judge of the Ontario Court who shall be president of the court and such other judges of the General Division as the Chief Judge designates from time to time.

(2) Every judge of the General Division is also a judge of the Divisional Court. 1984, c. 11, s. 5, *amended*.

18.—(1) An appeal lies to the Divisional Court from,

- (a) a final order of a judge of the General Division,

- (h) costs of proceedings;
- (i) enforcement of orders and process;
- (j) payment into and out of court;
- (k) any matter that is referred to in an Act as provided for by rules of court.

(2) Nothing in subsection (1) 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.

(3) The rules of court made under Part V do not apply to proceedings in the Unified Family Court. 1984, c. 11, s. 51, *amended*.

SCHEDULE

Jurisdiction under the following statutory provisions:

Statutes	Provisions
1. Annulment of Marriages Act (Ontario) (Canada)	All
2. Change of Name Act, 1986	All
3. Child and Family Services Act, 1984	Parts III, VI and VII
4. Children's Law Reform Act	All, except sections 60 and 61
5. Divorce Act, 1985 (Canada)	All
6. Education Act	Sections 29 and 30
7. Family Law Act, 1986	All, except Part V
8. Marriage Act	Sections 6 and 9
9. Minors' Protection Act	Section 2
10. Reciprocal Enforcement of Maintenance Orders Act, 1982	All
11. Support and Custody Orders Enforcement Act, 1985	All
12. Young Offenders Act (Canada)	All

PART IV RULES OF COURT

65.—(1) The Civil Rules Committee is established and shall be composed of,

- (a) the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Judge of the Ontario Court and the Chief

Judge of the Ontario Court (Provincial Division);

(b) one judge of the Court of Appeal, who shall be appointed by the Chief Justice of Ontario;

(c) nine judges of the Ontario Court (General Division), who shall be appointed by the Chief Judges of the Ontario Court;

(d) the Attorney General or a person designated by the Attorney General;

(e) one law officer of the Crown, who shall be appointed by the Attorney General;

(f) two persons employed in the administration of the courts, who shall be appointed by the Attorney General;

(g) four barristers and solicitors, who shall be appointed by the Benchers of The Law Society of Upper Canada in convocation;

(h) one barrister and solicitor, who shall be appointed by the Chief Justice of Ontario; and

(i) four barristers and solicitors, who shall be appointed by the Chief Judge of the Ontario Court.

(2) 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.

(3) Each of the members of the Civil Rules Committee appointed under clauses (1) (b), (c), (e), (f), (g), (h) and (i) shall hold office for a period of three years and is eligible for reappointment.

(4) Where a vacancy occurs among the members appointed under clause (1) (b), (c), (e), (f), (g), (h) or (i), a new member similarly qualified may be appointed for the remainder of the unexpired term.

(5) A majority of the members of the Civil Rules Committee constitute a quorum. 1984, c. 11, s. 89, *amended*.

66.—(1) Subject to the approval of the Lieutenant Governor in Council, the Civil Rules Committee may make rules for the Court of Appeal and the Ontario Court (General Division) in relation to the practice and procedure of those courts in all civil proceedings, including family law proceedings.

(2) The Civil Rules Committee may make rules

a place where there is no Unified Family Court if, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court. 1984, c. 11, s. 44 (3).

(4) A judge of a court having jurisdiction in a proceeding under a statutory provision set out in the Schedule to this Part in an area other than The Regional Municipality of Hamilton-Wentworth may, on motion, order that the proceeding be transferred to the Unified Family Court if, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by that court. 1984, c. 11, s. 44 (4), *amended*.

(5) A judge making an order under subsection (3) or (4) may give such directions for the transfer as are considered just. 1984, c. 11, s. 44 (5).

60. An order of a judge presiding over the Unified Family Court made in the exercise of his or her jurisdiction as a judge of the Ontario Court (General Division) is an order of the General Division for all purposes. 1984, c. 11, s. 45, *amended*.

61.—(1) Subject to subsection (2), a provision for the appeal from an order made under the statutory provisions set out in the Schedule to this Part applies to an order when made in the exercise of the jurisdiction by a judge presiding over the Unified Family Court.

(2) Where an order made by the Unified Family Court under a statutory provision set out in the Schedule to this Part is within the jurisdiction of the Ontario Court (General Division) outside The Regional Municipality of Hamilton-Wentworth, the order shall, for the purposes of an appeal, be deemed to have been made by a judge of the General Division. 1984, c. 11, s. 46 (1, 2), *amended*.

(3) Where no provision is made for an appeal from an order of a judge presiding over the Unified Family Court, an appeal lies,

(a) to the Court of Appeal from a final order, except an order referred to in clause (b);

(b) to the Divisional Court from a final order,

(i) for a single payment of not more than \$25,000 exclusive of costs,

(ii) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order,

(iii) dismissing a claim for an amount that is not more than the amount set

out in subclause (i) or (ii), or

(iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii) or

(c) to the Divisional Court from an interlocutory order, with leave as provided in the rules of court. 1984, c. 11, s. 46 (4), *amended*.

62.—(1) A judge presiding over the Unified Family Court has all the powers of a judge sitting in the Ontario Court (Provincial Division) for the purposes of proceedings under the *Criminal Code* (Canada).

(2) The Unified Family Court shall be deemed to be and shall sit as the Provincial Division for the purpose of prosecutions under the *Family Law Act, 1986*, the *Children's Law Reform Act*, the *Minors' Protection Act* and Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*.

(3) The Unified Family Court is a youth court for the purpose of the *Young Offenders Act* (Canada). 1984, c. 11, s. 47, *amended*.

63. A conciliation service may be established, maintained and operated as part of the Unified Family Court. 1984, c. 11, s. 49.

64.—(1) The Lieutenant Governor in Council may make rules for the Unified Family Court in relation to the practice and procedure of the court and may make rules for the court, even though they alter or conform to the substantive law, in relation to,

(a) conduct of proceedings in the court;

(b) joinder of claims and parties, and representation of parties;

(c) commencement of proceedings and service of process in or outside Ontario;

(d) discovery and other forms of disclosure before hearing, including their scope and their admissibility and use in a proceeding;

(e) examination of witnesses in or out of court;

(f) duties of clerks and other officers;

(g) references of proceedings or issues in a proceeding and the powers of a person conducting a reference;

(i) for a single payment of not more than \$25,000, exclusive of costs,

(ii) for periodic payments that amount to not more than \$25,000 exclusive of costs, in the twelve months commencing on the date the first payment is due under the order.

(iii) dismissing a claim for an amount that is not more than the amount set out in subclause (i) or (ii), or

(iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii);

(b) an interlocutory order of a judge of the General Division, with leave as provided in the rules of court;

(c) a final order of a master. 1984, c. 11, s. 15 (1), *amended*.

(2) The Divisional Court has jurisdiction to hear and determine an appeal that lies to the General Division if an appeal in the same proceeding lies to and is taken to the Divisional Court.

(3) The Divisional Court may, on motion, transfer an appeal that has already been commenced in the General Division to the Divisional Court for the purpose of subsection (2). 1984, c. 11, s. 15 (2), *amended*.

(4) No appeal lies for an interlocutory order of a judge of the General Division made on an appeal for an interlocutory order of the Provincial Division. 1984, c. 11, s. 36 (4), *amended*.

19.—(1) An appeal to the Divisional Court shall be heard in the region in which the order appealed from was made, unless the parties agree otherwise.

(2) Any other proceeding in the Divisional Court may be brought in any region. *New*.

20.—(1) A proceeding in the Divisional Court shall be heard and determined by three judges sitting together.

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

(a) is an appeal under clause 18 (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 a matter that the Chief Judge of the Ontario Court or a judge designated by the Chief Judge 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.

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

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

(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. 1984, c. 11, s. 16, *amended*.

SMALL CLAIMS COURT

21. The Provincial Court (Civil Division) is continued as a branch of the General Division to be known as the Small Claims Court. *New*.

22.—(1) The Small Claims Court shall consist of,

(a) every judge of the General Division;

(b) every provincial judge who was assigned to the Provincial Court (Civil Division) before this section comes into force; and

(c) the deputy judges appointed under subsection (2).

(2) A regional senior judge of the General Division may, with the approval of the Attorney General, appoint a barrister and solicitor to act as a deputy judge of the Small Claims Court for a term of three years.

(3) A regional senior judge of the General Division may renew the appointment of a deputy judge for one or more three-year terms. 1984, c. 11, s. 77 (2, 3), *amended*.

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. 1984, c.

11, s. 78(1), *amended*.

(2) An action in the General Division may be transferred to the Small Claims Court by the local registrar of the General Division 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.

(3) An action transferred to the Small Claims Court shall be titled and continued as if it had been commenced in that court. 1984, c. 11, s. 84, *amended*.

24.—(1) A proceeding in the Small Claims Court shall be heard and determined by one judge or deputy judge.

(2) A deputy judge shall not preside over the court in 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. 1984, c. 11, s. 77 (2, 3), *amended*.

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. 1984, c. 11, s. 78 (3), *amended*.

26. A party may be represented in a proceeding in the Small Claims Court by counsel or an agent but the court may exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a 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. 1984, c. 11, s. 79, *amended*.

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.

(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.

(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.

(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.

(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. 1984, c. 11, s. 80, *amended*.

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. 1984, c. 11, s. 81, *amended*.

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, counsel or agent for unreasonable behaviour in the proceeding. *New*.

30. Orders of the Small Claims Court shall be directed to a bailiff appointed under subsection 32 (1) for enforcement, unless otherwise provided by the rules of court. 1984, c. 11, s. 82, *amended*.

31. An appeal lies to the Divisional Court for 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. 1984, c. 11, s. 83, *amended*.

32.—(1) There shall be a clerk and one or more bailiffs for each division of the Small Claims Court who shall be appointed by the Lieutenant Governor in Council.

(2) With the approval of the Deputy Attorney General or the person designated by the Deputy Attorney General, every clerk and bailiff of the Small Claims Court in a division that is not designated under clause 53 (1) (g) may appoint in writing a deputy who may exercise and perform all the powers and duties of the clerk or bailiff.

(h) prescribing for each region the minimum number of judges of the General Division and of the Provincial Division who are to be assigned to that region. 1984, c. 11, s. 4 (2), s. 20 (4), s. 87 (1), *amended*.

(2) A reduction in the number of judges of the General Division under clause (1) (a) does not affect appointments existing at the time of the reduction. 1984, c. 11, s. 4 (2), *amended*.

(3) Regulations made under clause (1) (c) may require judges and masters to contribute from their salaries part of the costs of benefits and may fix the amount of the contributions.

(4) A regulation made under clause (1) (c) may modify or exclude the application of the *Public Service Superannuation Act*.

(5) A regulation made under subsection (1) may be general or particular in its application. 1984, c. 11, s. 20 (5-7), s. 87 (2-4), *amended*.

PART III

UNIFIED FAMILY COURT

54. The Unified Family Court is continued as a superior court of record in and for The Regional Municipality of Hamilton-Wentworth. 1984, c. 11, s. 38, *amended*.

55.—(1) The Unified Family Court shall be presided over by,

- (a) a judge of the Ontario Court (General Division) appointed as senior judge for the Unified Family Court; or
- (b) a judge of the Ontario Court (General Division),

who is authorized under subsection (4) to exercise the jurisdiction of a judge of the Ontario Court (Provincial Division).

(2) The senior judge for the Unified Family Court shall supervise and direct the sittings and the assignment of the judicial duties of the Unified Family Court.

(3) The Lieutenant Governor in Council may authorize a judge of the General Division to exercise the jurisdiction of a judge of the Provincial Division.

(4) A judge who may preside over the Unified Family Court shall exercise his or her jurisdiction as a judge of the General Division or a judge of the Provincial Division in the matters in which the General Division or the Provincial Division or a judge of one of them has jurisdiction under the statutory provisions set out in the Schedule

to this Part. 1984, c. 11, s. 39; 1987, c. 1, s. 1, *amended*.

56.—(1) Proceedings taken in a court in The Regional Municipality of Hamilton-Wentworth under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, shall be commenced and titled in the Unified Family Court and the jurisdiction of the court shall be exercised in the Unified Family Court.

(2) A motion for interim relief under the *Divorce Act, 1985* (Canada), the *Family Law Act, 1986* or the *Children's Law Reform Act* in a proceeding in the General Division shall be heard in the Unified Family Court if it is required or permitted to be heard in The Regional Municipality of Hamilton-Wentworth by the rules of court or an order of the court, c. 11, s. 40 (1, 2) *amended*.

(3) All proceedings in or transferred to the Unified Family Court shall be heard and determined without a jury. 1984, c. 11, s. 40 (4), *amended*.

57. Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the judge but respecting which jurisdiction may not be exercised in the Unified Family Court, the court may, with leave of the judge, hear and determine the combined matters. 1984, c. 11, s. 41, *amended*.

58.—(1) The Unified 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) of the Judicial District of Hamilton-Wentworth.

(2) The Unified Family Court may enforce orders made by the Provincial Court (Family Division) of the Judicial District of Hamilton-Wentworth. 1984, c. 11, s. 42, *amended*.

59.—(1) Subject to subsection (2), proceedings referred to in subsection 56 (1) may be commenced in the Unified Family Court where the applicant or the respondent resides in the Regional Municipality of Hamilton-Wentworth. 1984, c. 11, s. 44 (1), *amended*.

(2) An application under Part III of the *Children's Law Reform Act* in respect of a child who ordinarily resides in The Regional Municipality of Hamilton-Wentworth may be commenced in the Unified Family Court. 1984, c. 11, s. 44 (2), *amended*.

(3) A judge who may preside over the Unified Family Court may, on motion, order that a proceeding commenced in the Unified Family Court be transferred to the appropriate court in

49.—(1) The Lieutenant Governor in Council may appoint a judge of the General Division to inquire into the question whether a provincial judge should be removed from office.

(2) The *Public Inquiries Act* applies to an inquiry under subsection (1).

(3) The report of the inquiry may recommend,

(a) that the judge be removed from office;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry.

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session. 1984, c. 11, s. 60, *amended*.

50. Every provincial judge is a justice of the peace and commissioner for taking affidavits. 1984, c. 11, s. 61.

51.—(1) The committee known as the Ontario Provincial Courts Committee is continued as the Provincial Judges Remuneration Commission.

(2) The Commission shall be composed 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 bodies referred to in paragraphs 1 and 2.

(3) The function of the Provincial Judges Remuneration Commission is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 53 (1) (b) and (c).

(4) The Commission shall make an annual report of its activities to the Lieutenant Governor in Council.

(5) Recommendations of the Commission and its annual report shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next session. 1984, c. 11, s. 88, *amended*.

MISCELLANEOUS

52.—(1) The judges of the Ontario Court of

Justice shall meet at least once in each year, on a day fixed by the Chief Judge of the Ontario Court, in order to consider this Act, the rules of court and the administration of justice generally.

(2) The judges shall report their recommendations to the Attorney General. 1984, c. 11, s. 10, *amended*.

(3) The judges of the Ontario Court of Justice in each region shall meet at least once in each year, on a day fixed by the regional senior judge of the General Division, in order to consider this Act, the rules of court and the administration of justice in the region generally.

(4) The judges shall report their recommendations to the Attorney General. *New*.

53.—(1) The Lieutenant Governor in Council may make regulations,

(a) fixing the number of judges of the General Division who are in addition to the Chief Judge, the regional senior judges and the Senior Judge for the Unified Family Court;

(b) fixing the remuneration of provincial judges and masters;

(c) providing for the benefits to which provincial judges and masters are entitled, including,

(i) leave of absence and vacations,

(ii) sick leave credits and payments in respect of those credits,

(iii) pension benefits for provincial judges, masters and their surviving spouses and children;

(d) prescribing territorial divisions for the Small Claims Court and the place within each division where the court office shall be located;

(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 (1);

(g) providing for the retention of fees by clerks, bailiffs and referees of the Small Claims Court who are not civil servants under the *Public Service Act* and designated divisions where clerks, bailiffs and referees of the Small Claims Court may be appointed to a position as a civil servant under that Act;

(3) The Lieutenant Governor in Council may appoint a referee for a division of the Small Claims Court. 1984, c. 11, s. 86 (4, 5), *amended*.

PROVINCIAL DIVISION

33. The Provincial Court (Criminal Division), the Provincial Court (Family Division) and the Provincial Offences Court are amalgamated and continued as a court of record named the Ontario Court (Provincial Division.) *New*.

34. The Provincial Division shall consist of,

(a) the Chief Judge of the Provincial Division appointed under subsection 41 (3), who shall be president of the Provincial Division;

(b) a regional senior judge of the Provincial Division appointed under subsection 41 (4) for each region; and

(c) such provincial judges as are appointed under subsection 41 (1). *New*.

35.—(1) The Chief Judge of the Provincial Division shall direct and supervise the sittings of the Provincial Division and the assignment of its judicial duties. 1984, c. 11, s. 63 (5), *amended*.

(2) A regional senior judge of the Provincial Division shall, subject to the authority of the Chief Judge of the Provincial Division, exercise the powers and perform the duties of the Chief Judge of the Provincial Division in his or her region.

(3) A regional senior judge of the Provincial Division may delegate to a judge of the Provincial Division in his or her region the authority to exercise specified functions. *New*.

(4) If the Chief Judge of the Provincial Division is absent from Ontario or is for any reason unable to act, his or her powers and duties shall be exercised and performed by a regional senior judge of the Provincial Division designated by the Chief Judge of the Provincial Division. 1984, c. 11, s. 63 (7), *amended*.

(5) The powers and duties of a regional senior judge of the Provincial Division who is absent from Ontario or is for any reason unable to act shall be exercised and performed by a judge of the Provincial Division designated by the Chief Judge of the Provincial Division. *New*.

36.—(1) The Chief Judge of the Ontario Court (Provincial Division) shall assign every provincial judge to a region.

(2) Subsection (1) does not prevent the temporary assignment of a provincial judge to a lo-

cation anywhere in Ontario. *New*.

37.—(1) A provincial judge has the power and authority of two or more justices of the peace when sitting in the Provincial Division 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 Provincial Division. 1984, c. 11, s. 67 (1), *amended*.

(2) The Provincial Division shall perform any function assigned to it by or under the *Provincial Offences Act*, the *Family Law Act, 1986*, the *Children's Law Reform Act*, the *Child and Family Services Act, 1984* or any other Act. 1984, c. 11, s. 69, s. 75 (1) (a), (k), *amended*.

(3) The Provincial Division is a youth court for the purposes of the *Young Offenders Act* (Canada). 1984, c. 11, s. 67 (2), s. 75 (1) (b), *amended*.

38.—(1) A proceeding in the Provincial Division shall be heard and determined by one judge of the Provincial Division. 1984, c. 11, s. 66 (2), s. 74 (2), *amended*.

(2) A justice of the peace may preside over the Provincial Division in a proceeding under the *Provincial Offences Act*. 1984, c. 11, s. 68 (2), *amended*.

39.—(1) If no provision is made concerning an appeal from an order of the Provincial Division, an appeal lies to the General Division.

(2) Subsection (1) does not apply to a proceeding under the *Criminal Code* (Canada) or the *Provincial Offences Act*. 1987, c. 1, s. 6, *amended*.

40. Any person who knowingly disturbs or interferes with a proceeding in the Provincial Division 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. 1984, c. 11, s. 72, *amended*.

PROVINCIAL JUDGES

41.—(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary.

(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. 1984, c. 11, s. 52.

(3) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the

Provincial Division. 1984, c. 11, s. 63 (1), *amended*.

(4) The Lieutenant Governor in Council may appoint a provincial judge to be the regional senior judge of the Provincial Division for each region.

(5) The Chief Judge of the Provincial Division and the regional senior judges of the Provincial Division shall hold office for five years.

(6) If a successor is not appointed within five years, the Chief Judge or a regional senior judge shall continue in office until the successor is appointed, but in no case shall the Chief Judge or regional senior judge hold office for more than seven years.

(7) A Chief Judge or a regional senior judge whose term of office expires under subsection (5) or (6) shall continue to hold the office of provincial judge and is entitled to an annual salary equal to the greater of,

- (a) the current annual salary of a provincial judge; or
- (b) the annual salary he or she received immediately before ceasing to be Chief Judge or regional senior judge.

(8) A Chief Judge or regional senior judge whose term of office expires under subsection (5) or (6) shall not be reappointed to the same position. *New*.

42.—(1) A provincial judge shall devote his or her whole time to the performance of his or her duties as a judge, except as authorized by the Lieutenant Governor in Council.

(2) Despite subsection (1), a provincial judge who, before the 1st day of January, 1985, had the consent of the Attorney General to act as an arbitrator or conciliator may continue to so act. 1984, c. 11, s. 53, *amended*.

43.—(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

(2) Despite subsection (1), a provincial judge appointed as a full-time magistrate, judge or a juvenile and family court or master before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years.

(3) A judge who has attained the age of sixty-five years may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in office as a full-time or part-time judge until he or she attains the age of seventy years.

(4) A judge who has attained the age of

seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years.

(5) A regional senior judge of the Provincial Division who is in office upon attaining the age of sixty-five years may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in that office until he or she has attained the age of seventy years.

(6) A regional senior judge of the Provincial Division who is in office upon attaining the age of seventy years may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years.

(7) If the Chief Judge of the Provincial Division is in office upon attaining the age for retirement under subsection (1) or (2), he or she may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. 1984, c. 11, s. 54, *amended*.

44.—(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.

(2) A Chief Judge or a regional senior judge may, before the expiry of his or her term of office under subsection 41 (5) or (6), elect to hold the office of a provincial judge only, by delivering a signed letter to that effect to the Attorney General.

(3) 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. 1984, c. 11, s. 55, s. 65, *amended*.

45.—(1) A provincial judge may be removed from office before attaining retirement age only if,

- (a) a complaint regarding the judge has been made to the Judicial Council; and
- (b) the removal is recommended by an inquiry held under section 49 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity,
 - (ii) conduct that is incompatible with the execution of his or her office, or,
 - (iii) having failed to perform the duties

of his or her office.

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. 1984, c. 11, s. 56, *amended*.

46.—(1) The Judicial Council for Provincial Judges is continued as the Ontario Judicial Council and shall be composed of,

- (a) the Chief Justice of Ontario, who shall preside over the Ontario Judicial Council;
- (b) the Associate Chief Justice of Ontario;
- (c) the Chief Judge of the Ontario Court;
- (d) the Chief Judge of the Ontario Court (Provincial Division);
- (e) the Treasurer of The Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council.

(2) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.

(3) Such officers and employees of the Judicial Council as are considered necessary may be appointed under the *Public Service Act*.

(4) The Judicial Council may engage persons, including counsel, to assist it in its investigations. 1984, c. 11, s. 57, *amended*.

(5) An investigation commenced by the Judicial Council before this section comes into force shall be continued by the Judicial Council as it was constituted before this section comes into force. *New*.

47.—(1) The functions of the Judicial Council are,

- (a) to consider all proposed appointments of provincial judges and make a report on them to the Attorney General;
- (b) to receive and investigate complaints against provincial judges.

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer of it or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty.

48.—(1) Where the Judicial Council receives

a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable.

(2) The Judicial Council may transmit those complaints it considers appropriate,

- (a) concerning provincial judges to the Chief Judge of the Provincial Division; and
- (b) concerning masters to the Chief Judge of the Ontario Court.

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken.

(4) The Judicial Council may order the information or documents relating to its proceedings not be published or disclosed except as required by law.

(5) The Judicial Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

(6) When the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform the following persons of its disposition of the complaint:

1. The person who made the complaint.
2. If the complaint was brought to the attention of the judge, the judge.

(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend,

- (a) that an inquiry be held under section 49;
- (b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation.

(8) A copy of a report made under subsection (7) shall be given to the judge.

(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf.

(10) When the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. 1984, c. 11, s. 59, *amended*.