



February 17, 2022

Via email: just@parl.gc.ca

Randeep Sarai, M.P.
Chair, Justice and Human Rights Committee
House of Commons
Sixth Floor, 131 Queen Street
Ottawa, ON K1A 0A6

Dear Mr. Sarai:

Re: Bill C-9, *Judges Act* amendments

I am writing on behalf of the Canadian Bar Association's Judicial Issues Subcommittee (CBA Subcommittee) in support of Bill C-9, *An Act to amend the Judges Act*, which was introduced on December 16, 2021. By replacing the existing complaints process regarding alleged misconduct with a new process, Bill C-9 changes how complaints against federally appointed judges are handled.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. Our comments were prepared by the CBA Subcommittee.

The *Judges Act* establishes a discipline process for federally appointed judges in response to complaints filed about their conduct. Recent government consultations underscored the length of time required to investigate these complaints and the consequent costs of investigation, including the potential cost of a member of the Bench being unable to fulfill their duties while defending a complaint for misconduct.

The CBA commented on the state of the judicial discipline process in its 2014 submission to the Canadian Judicial Council (CJC).¹ On the subject of judicial discipline proceedings, our 16 recommendations were to ensure that the objectives of balancing the independence of the judiciary and the public's confidence in the administration of justice were respected in the process.² The CJC and Justice Canada responded with their own reports which culminated in the present amendments to the *Judges Act* proposed by the Minister of Justice.

The CJC is a federal body accountable for managing the judicial discipline process established in the *Judges Act*. It is empowered to investigate public complaints and referrals from the Minister of Justice or

¹ [Review of Judicial Conduct Process of the Canadian Judicial Council](#) (CBA: Ottawa, 2014)

² *Ibid* at pages 2-3

a provincial or territorial attorney general about the conduct of federally appointed judges. In response to concerns about the process and its accountability, it issued a 2014 background paper with options for potential reform.³ The CJC stated the following on the need for reform:

[a] key aspect of ensuring access to justice for Canadians is the confidence that they have in their judges and in the justice system ... [t]he Chief Justice and the Council have been calling for the past few years for reforms to be brought to the judicial conduct process, in order to make it more efficient and transparent, and we are hopeful that these reforms will be enacted soon.⁴

Justice Canada examined how to address questions surrounding judicial misconduct in its 2016 white paper⁵ and online consultation. Bill C-9 follows its public consultation on potential reforms and its report which highlighted significant increases in costs and delays and the need for reforms to ensure the process was cost effective. Underscoring the potential for delays and associated costs of the current process is the judicial misconduct case of *Girouard v. Canada (Attorney General)*⁶ initiated in 2012 and concluded in 2021 following exhaustive appeal and judicial review proceedings.

Bill C-9 amends the process through which the conduct of federally appointed judges is reviewed by the CJC in three significant ways:

- it creates a process for reviewing allegations not serious enough to warrant removal from office;
- it improves the process by which recommendations on removal are made to the Minister; and
- it ensures that the determination of pensionable service for judges ultimately removed from office reflects the actual time of service and does not include the time of review.

The process for screening complaints that may not be serious enough to warrant removal from office is a positive development. Bill C-9 imposes mandatory sanctions such as counselling, continuing education and reprimands in these cases. This process saves the CJC time, ensures that judicial resources are well-managed, and minimizes the amount of time a judge might potentially spend defending a frivolous complaint.

Improving the process by which recommendations can be made to the Minister of Justice will ensure that meritorious claims are moved forward, ensuring efficient use of Department resources. Judges who face removal would have access to an appeal panel comprised of three CJC members and two judges and finally to the Supreme Court of Canada (SCC), if that Court agrees to hear the appeal. This streamlines the current process for court review of CJC decisions, which involves judicial review by two additional levels of court (the Federal Court and Federal Court of Appeal) before a judge can ask the SCC to hear their case.

It is critical that judges are able defend their conduct through a fair process⁷ and be satisfied that, if they are ultimately exonerated, their pensionable service will be protected. However, it is equally important that time spent during that process does not contribute to pensionable service if the complaint results in removal of the judge from office.

³ Review of the Judicial Conduct Process of the Canadian Judicial Council, [online](#).

⁴ See Canadian Lawyer, Canada introduces legislation to change complaints process under Judges Act, [online](#).

⁵ See Possibilities for Further Reform of the Federal Judicial Discipline Process, [online](#).

⁶ SCC 39379, application for leave to appeal dismissed on February 25, 2021.

⁷ For an excellent discussion of the duty of procedural fairness in the investigative context, see the CJC Discussion Paper at pages 12-17.

Judicial independence and judicial accountability are at the foundation of Bill C-9 and ensure the integrity of the administration of justice. If our judiciary is to be respected and trusted, the public must be satisfied that judges are both independent of external influences and accountable for their conduct on the Bench.

When he reintroduced the bill, Minister of Justice David Lametti said:

Canadians need to know that the judicial system is fair to all Canadian society is changing and so are our expectations of judicial behaviour and accountability. While rare, complaints against judges that could result in removal from the bench should be dealt with in a more timely, cost-effective and fair manner ... This bill aims to accomplish that.⁸

In the view of the CBA Subcommittee, Bill C-9 strikes a fair balance between the right to procedural fairness and public confidence in the integrity of the justice system with the discipline of judges who form the core of that system. The proposed amendments enhance the accountability of judges, builds transparency, and creates cost-efficiencies in the process for handling complaints against members of the Bench.

We encourage you to adopt Bill C-9.

Yours truly,

(original letter signed by Julie Terrien for Indra Maharaj)

Indra Maharaj
Chair, Judicial Issues Subcommittee

⁸ See Press Release, Canada introduces legislation to change complaints process under Judges Act, [online](#)