

**2022 Questionnaire of the 1st Study Commission
of the International Association of Judges**

“Disciplinary proceedings and judicial independence”

1) What type of allegation can justify a disciplinary procedure against judges in your country: the behaviour of a person only in the workplace or also in their private life? Please provide a few examples. Can the content of the decisions made by judges also give rise to disciplinary proceedings? Can judges be criminally indicted for the content of their judicial decisions under any circumstances?

Federally appointed judges may remain in office for good behaviour until the mandatory retirement age of 75. They may be subject to a disciplinary process. Complaints against them may relate to their conduct or to the manner in which they rendered certain judicial services. The complaint may be about the judge’s conduct while in office, but also about his or her conduct outside of court.

For example, the judge’s rudeness or inappropriate comments, the length of a deliberation, the commission of a criminal act, the non-disclosure of a wrongdoing committed prior to appointment, or extrajudicial conduct after appointment that is perceived to compromise the duties or prestige of the judicial office, may all be considered in the context of a complaint.

Unlike the conduct of a judge, the content of his or her decisions cannot be the subject of a disciplinary or criminal process. Immunity, and more broadly judicial independence, requires that judges not be held accountable in the performance of their duties. In order to speak the law freely, they must not be worried about being brought to justice.

2) Which body is responsible for disciplinary proceedings against judges in your country? Is the body that carries out the disciplinary procedure the same as the one that imposes the sanctions? What is the composition of the body responsible for disciplinary proceedings (as well as that of the one that has to apply sanctions to judges, if it is not the same)? Is it composed only of judges, does it have a mixed composition, or is it composed only of professionals outside the judicial branch? Please describe the composition of this body (or bodies).

Federally appointed judges are subject to the disciplinary authority of the Canadian Judicial Council (the “Council”). The Council derives its powers from the *Judges Act*, R.S.C. 1985, c. J-1.

The Council has 41 members who are exclusively and solely judges. It is chaired by the Chief Justice of Canada and consists of the chief justices and associate chief justices of the provincial and federal superior courts.

The Council has the power to inquire into and investigate complaints about the conduct of judges and to recommend sanctions. It may propose certain measures to restore public confidence in the judiciary. The Council does not have the power to remove a judge from

office. That power rests with the legislative branch of government in Canada. Section 99 of the *Constitution Act, 1867* provides that a judge may be removed “by the Governor General on address of the Senate and House of Commons.” Thus, when such action is required, the Council asks the Minister of Justice to submit the recommendation for removal to the Federal Parliament.

3) What are the disciplinary sanctions that can be imposed on judges in your country? Is the disciplinary sanction of removal from office among them? Can a judicial conviction for a crime result in a sentence of removal from office?

In cases of judicial misconduct, the case may be closed when the judge acknowledges that his or her conduct was inappropriate and the Council is of the opinion that no further action is required. The Council may then issue an *expression of concern*. This is a constructive message from the Council to the judge. In other cases, the Council may, with the consent of the judge concerned, attach remedial measures to its decision, including education, coaching, counselling, or another type of intervention.

In more serious cases, the Council may recommend to the Minister of Justice that the judge be removed from office. A judicial conviction for a crime can theoretically lead to removal. In the history of Canada, no judge has ever been formally removed from office, and in the rare cases where a recommendation for removal has been made, the judge has resigned.

4) In the disciplinary process against judges in your country, is a fair trial granted? Is there an appeal against the decision to impose a disciplinary sanction on judges? During the disciplinary proceedings, can the judge be suspended from his or her duties? Does the judge suspended during disciplinary proceedings continue to receive a salary or suffer any reduction in income?

The rules of procedural fairness and natural justice are applicable to disciplinary proceedings. The judge concerned has the opportunity to make his or her case, present evidence and consider the evidence against him or her. He or she is also entitled to the services of a lawyer.

The judge may apply to the Federal Court for judicial review, but not appeal, of the Council’s recommendation report.

During the disciplinary process, and depending on the nature or seriousness of the allegations, the judge may be suspended with pay.

5) Have there been any recent changes in disciplinary procedures that may be considered a violation of judicial independence in your country? If so, have these changes been introduced through changes in legislation, or have existing laws been applied differently? Please specify.

No. The procedure for disciplining judges has not been changed recently, except for the accumulation of years of service and contributions to a judge's pension, which are suspended from the date of the Council's recommendation for removal from office. More generally, the judicial process is not considered to be in violation of judicial independence in Canada.