



**Ministry of Attorney General**  
**Strategic Planning and Legislation Office**

**Consultation Paper:**  
**Retirement Age**  
**for Provincially-Appointed Judicial Officers**

**November 2007**

## **INTRODUCTION**

Amendments to the province's *Human Rights Code* will eliminate the ability to impose mandatory retirement at age 65, effective 1 January 2008. However, legislation governing provincially appointed judicial officers – Provincial Court Judges, Judicial Justices of the Peace, and Supreme Court Masters – will continue to operate notwithstanding these changes.

As part of these legislative initiatives, public consultation is sought on two broad discussion points, which are outlined in this paper.

### **COMMENTS**

**Comments should be submitted by  
7 December 2007**

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**This paper does not reflect a position or decision of government and is intended to generate discussion and feedback. The discussion paper is not intended to constitute legal advice.**

## Ministry of Attorney General

### CONSULTATION PAPER

## RETIREMENT AGE FOR PROVINCIALY-APPOINTED JUDICIAL OFFICERS

PROVINCIAL COURT JUDGES  
JUDICIAL JUSTICES OF THE PEACE  
SUPREME COURT MASTERS

### CONTEXT

In April 2007, the Government of British Columbia introduced legislation to revise the provincial [Human Rights Code](#). The amendments will extend prohibitions on age discrimination to people aged 65 and over, eliminating the ability to impose mandatory retirement at age 65. These amendments will take effect on 1 January 2008.

Across Canada, there has been a steady movement of provincial governments towards eliminating mandatory retirement. These legislative initiatives respond to changing demographics, as the percentage of Canadians above the age of 65 is projected to grow considerably. In addition, they respond to arguments made by older workers who believe they can continue to contribute valuable professional experience, skills and expertise to the workforce.<sup>i</sup> The changes to B.C.'s [Human Rights Code](#) reflect the recommendations made in the December 2006 report of the [Premier's Council on Aging and Seniors' Issues](#).<sup>ii</sup>

However, the amendments contain an important exception. Statutes that specify a fixed retirement age will continue to operate notwithstanding the changes.<sup>iii</sup> This exception currently applies to British Columbia's provincially-appointed judicial officers: provincial court judges, masters of the Supreme Court, and judicial justices of the peace. Under the [Provincial Court Act](#), provincial court judges hold office during good behaviour until the age of 70.<sup>iv</sup> Masters must also retire upon reaching the age of 70<sup>v</sup>, while judicial justices of the peace must retire at the age of 65.<sup>vi</sup>

This paper presents two issues for discussion. The first question is whether or not the mandatory retirement ages for provincially-appointed judicial officers should continue, be eliminated entirely, or be extended to a higher age limit of 75. The second involves the degree of oversight of the fitness of judicial officers to hold office, particularly if mandatory retirement ages for judicial officers were to be eliminated entirely.

## DISCUSSION POINT (1) – RETIREMENT AGES

### *Background*

Manitoba is the only province in Canada without mandatory retirement provisions in the statute governing its provincial court judges. As previously noted, in British Columbia, provincial court judges hold tenure during good behaviour until age 70. Similarly, provincial court judges in Quebec<sup>vii</sup>, Alberta<sup>viii</sup>, Nova Scotia<sup>ix</sup>, and Newfoundland and Labrador<sup>x</sup> must retire upon reaching the age of 70. In Ontario<sup>xi</sup>, Saskatchewan<sup>xii</sup> and Prince Edward Island<sup>xiii</sup> it is 65, while provincial judges may remain on the bench until the age of 75 in New Brunswick.<sup>xiv</sup> It should be noted that Alberta, Ontario and Saskatchewan have provisions allowing for the re-appointment of judges who have reached the retirement age for one-year terms until a maximum age fixed by statute, contingent upon the approval of the Chief Judge. The maximum age in Saskatchewan is 70, while it is 75 in Alberta and Ontario.

Each of these provinces has upheld the practice of mandatory retirement for judicial officers despite eliminating mandatory retirement for the broader workforce. For example, while Ontario eliminated mandatory retirement in late 2006, its [Human Rights Code](#) contains a section relating to judicial officers, which states that “a judge or master is required to retire or cease to continue in office on reaching a specified age under the [Courts of Justice Act](#).”<sup>xv</sup> There is a similar clause for justices of the peace.

At the federal level, the [Canadian Constitution](#) requires that all judges of Superior Courts retire at the age of 75.<sup>xvi</sup> This age limit applies to all judges who are appointed federally and who serve on provincial superior or appellate courts. Similarly, justices of the Supreme Court of Canada have mandatory retirement at age seventy-five.<sup>xvii</sup> In sum, other than in Manitoba, at both the federal level and in all other provinces the maximum age allowed in the tenure of judges is 75.

### *Issues*

Judicial officers fulfill a unique function among public office holders. The judiciary performs a key institutional role in government along with the executive and legislative branches. To safeguard their independence, judges are appointed and given tenure until retirement and they are not easily removed from office. In British Columbia, provincial judicial officers can only be appointed by the Lieutenant Governor-in-Council following a rigorous assessment of qualifications and an independent recommendation by the [Judicial Council](#) (in the case of provincial court judges and judicial justices) or on the recommendation of the Chief Justice (in the case of a master of the Supreme Court).<sup>xviii</sup>

The independence of the judiciary is central to the public interest, a principle which historically has been a cornerstone of the constitutional system of government. Section 11(d) of the *Charter of Rights and Freedoms* affirms:

11. Any person charged with an offence has the right
  - (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Moreover, the rule of law requires an impartial arbitrator that is separate from government. Judges must be able to decide cases on their merits without interference. The key elements of judicial independence are security of tenure, which ensures that judges cannot be fired for political or other reasons, such as displeasure with their decisions; financial security, which ensures that judges' salaries are set at a sufficient level to ensure that financial considerations will not influence the outcome of their decisions; and, institutional independence, which ensures the independent administration of the courts.<sup>xix</sup> Judges can only be removed from office after a thorough procedural review and only in exceptional circumstances.

Some argue that mandatory retirement for judicial officers is inconsistent with its elimination for others. Others argue that mandatory retirement ages for judicial officers continue to be necessary due to the limited controls on their performance that result from the unique nature of a judge's position, function, and independence.

Comments and input are invited on these issues and in particular, on the following options:

### *Options*

**A. Maintain the retirement age for provincial court judges and masters of the Supreme Court, raise the age of retirement for judicial justices of the peace from 65 to 70, and permit one year re-appointments (after age 70) of provincial court judges who resign or retire up to age 75.**

This option would be similar to practices in Alberta, Saskatchewan and Ontario. For example, in Alberta the Chief Judge may request that a judge who has reached the mandatory retirement age of 70 be reappointed by the Lieutenant Governor in Council for terms of one year, until the maximum age of 75. Such requests may be made if:

- a) the Chief Judge or the Judicial Council, as the case may be, determines that the reappointment will enhance the efficient and effective administration of the Court, and
- b) the request is made in accordance with and subject to the criteria established by the Chief Judge and approved by the Judicial Council.<sup>xx</sup>

Providing for reappointments to be approved by the Judicial Council would help to mitigate any perception or misperception that the Chief Judge's role in the re-appointment decision could compromise the independence of judicial officers.

**B. Raise the retirement age of all provincial judicial officers to 75.**

By raising the retirement age for all provincial judicial officers to the age of 75, British Columbia would enact similar measures to certain other Canadian provinces and that governing federally appointed judges. Moreover, extending the retirement age by five years would allow the province to keep productive, skilled, and experienced judges on the bench.

**C. No fixed retirement age for provincial judicial officers.**

Removing fixed retirement ages for the judiciary would be consistent with the recommendations of the Premier's Council on Aging, the amendments to the province's [\*Human Rights Code\*](#), and with changing ideas about the contribution of older workers to the workforce, including the use of age as a criterion in employment.

However, life tenure for judges in Canada is atypical: while federally appointed judges used to have life tenure, constitutional [amendments in 1961](#) instituted a mandatory retirement age of 75. It is also fairly rare internationally other than in certain U.S. states and in the prominent case of the Supreme Court of the United States. Also, since there are no performance reviews of judicial officers, life tenure for judges could potentially raise public concerns over decline in performance or the risk that a judicial officer may continue in office past a reasonable point of fitness.

## DISCUSSION POINT (2) –CAPACITY ISSUES

A second discussion point is the potential to allow for greater monitoring of judicial officers for issues related to capacity.

The greatest concern that arises from this question is whether any performance management system could coexist with the principles of judicial independence.

The removal or suspension of a judicial officer can occur only in response to a serious allegation, and such an action involves significant procedural safeguards. Thus, determining which body could perform capacity reviews, the processes and standards that such evaluations could involve, and when they would be triggered, are all complex questions.

There is no body in British Columbia or in any other jurisdiction in Canada that regularly reviews and assesses the capacity of judicial officers to carry out their duties.

In British Columbia, the *Provincial Court Act* enables the Chief Judge or the Attorney General to order inquiries respecting the “the fitness of a judge or justice to perform his or her duties.” Under the *Act*, complaints respecting judicial officers are directed to the Chief Judge who is responsible for examinations of such matters and for conducting investigations if he or she deems it necessary. After completing such an investigation, the Chief Judge is empowered to:

- (a) take any corrective action that the chief judge considers necessary using the powers given the chief judge under this Act, or
- (b) order that an inquiry be held respecting the fitness of the judge or justice to perform his or her duties.<sup>xxi</sup>

Thus, if a matter is not resolved at the examination stage, it may trigger an investigation, and then possibly an inquiry.

If a judge or justice is notified that an inquiry has been ordered, the judge or justice must elect either the Judicial Council or a judge of the Supreme Court to act as tribunal in conducting the inquiry. The Judicial Council includes the Chief Judge as presiding member, the Associate Chief Judge as alternate presiding member, the President of the Law Society of British Columbia (or a person nominated by the president), the President of the British Columbia Branch of the Canadian Bar Association (or a person nominated by the president), and a judge and up to four other persons appointed by the Lieutenant Governor in Council for three year terms. One of the Judicial Council’s statutory objectives is to conduct inquiries respecting judges or justices.<sup>xxii</sup>

In 2002 and 2003, two investigations were conducted, both of which were resolved without progressing to the inquiry stage. Full inquiries are rare and conducted only in response to serious complaints or allegations of misconduct.<sup>xxiii</sup> Such procedural safeguards are required to protect the independence of the judiciary and public confidence in that independence.

Some would argue, however, that there is an equal need to ensure the fitness of judges to hold office, since judges perform such important and unique duties for society and are provided with tenure. From this point of view, security of tenure should not override the need to assure that judges are continuing to perform at a superior level.

In New York State, the Chief Judge and Chief Administrative Judge appointed a [Task Force](#) to study the legislation governing mandatory retirement of judges in that state. Overall, the Task Force's 1999 report argued for extending the retirement age of state judges. It also noted, however, that: "Any system that prolongs judicial service beyond the current retirement age must provide for the periodic evaluation of judges. One of the advantages of a mandatory retirement age is that it draws a bright line and thereby avoids the tedious, expensive and potentially unpleasant process of determining which judges are physically and mentally fit to serve and which must be removed for reasons of failing competence."<sup>xxiv</sup> On the other hand, the recent report issued in British Columbia by the [Premier's Council on Aging and Seniors' Issues](#) argued strongly that age should not be used to determine functional and intellectual abilities.

In Canada, and in other jurisdictions, there are three broad practices for addressing capacity issues. Certain Canadian provinces, including British Columbia, rely on the self-regulation of members of the judiciary and the management of the Chief Judge. Cases involving serious allegations, where a formal inquiry is deemed necessary, can be adjudicated by a body such as the provincial Judicial Council (in British Columbia, a judicial officer can elect either the Judicial Council or a Judge of the Supreme Court to act as the tribunal governing their inquiry). Other jurisdictions have more explicit reference to capacity in the statutory provisions of their judicial council or equivalent body. Finally, select jurisdictions have adopted a practice of certifying or approving judicial officers for their fitness to continue in office upon reaching a specified age (an extension in term beyond the age of mandatory retirement). These latter two examples will be discussed in greater detail.

In Manitoba, which is the only Canadian province that does not impose mandatory retirement on its provincial court judges, the [Provincial Court Act](#) provides multiple steps for addressing complaints against judicial officers.<sup>xxv</sup> Complaints may be submitted by any person to the Chief Judge or the Chief Judge "may, on his or her own initiative, investigate any matter respecting misconduct by a judge or the incapacity of a judge that comes to his or her attention [...]". The Chief Judge may then resolve or dismiss the complaint or refer it the Judicial Inquiry Board. Following an investigation, the Board may dismiss or resolve the complaint, or "formulate a charge of misconduct or incapacity against the judge, stating the grounds for the charge," referring the charge to the Judicial Council. After reviewing a charge, "If the council finds that a judge is incapacitated, it may recommend to the minister that the judge be retired from office."<sup>xxvi</sup> No member of the Judicial Council is eligible to be a member of the Judicial Inquiry Board.

At the federal level, the Canadian Judicial Council has the power to make inquiries and investigate complaints respecting judges of superior courts:

65 (2). Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of

(a) age or infirmity, [.]<sup>xxvii</sup>

among a list of other determinants including misconduct, the Council may recommend that the judge be removed from office. It is important to note that the investigative functions of the Council are invoked rarely and are used in response to serious complaints over the conduct of federal judges. Most complaints are dealt with or dismissed before triggering the formal involvement of an inquiry committee of the Council. The Council is not a regular capacity evaluation body.

Internationally, Australia, a common law country which does not generally permit mandatory retirement, requires judicial officers to retire upon reaching the age of 72. Nonetheless, Australia's legislation contains more expansive measures for reviewing the capacity of judicial officers. The [\*Judicial Officers Act\*](#) establishes a Judicial Commission as a statutory corporation with three broad purposes, one of which is to examine complaints against judicial officers and to establish relevant guidelines for that process.<sup>xxviii</sup> In 2006, the Act was amended to provide a process for investigating the suspected impairment of judicial officers, to be governed by formal guidelines.

A head of jurisdiction may request an investigation by the Commission "if of the opinion that a judicial officer may have an impairment that affects his or her performance of judicial or official duties," a request which is distinct from a "complaint."<sup>xxix</sup> In the course of its ensuing preliminary examination, the Commission may require the judicial officer to undergo a medical or psychological examination.<sup>xxx</sup> If it is determined that the judicial officer has an impairment that affects the performance of his or her duties, the Commission may refer the matter to the Conduct Division, or back to the head of jurisdiction with recommendations together with the results of the examination. The request can also be summarily dismissed. If following its own examination the Conduct Division concludes that the complaint is wholly or partly substantiated, the Division can forward its report and conclusions to the relevant head of jurisdiction outlining its recommendations, or if deemed necessary, refer the matter to the Governor, setting out its opinion that the matter could justify parliamentary consideration of removal. In 2005/06, less than 5% of complaints submitted to the Commission related to "impairment".<sup>xxxi</sup>

In New York, all state judges other than Justices of the Supreme Court and the Court of Appeals are required to retire upon reaching the age of 70. The latter may extend their time on the bench as justices of the Supreme Court by applying for certification for additional two year periods, until the maximum age of 76.

The certification process determines whether justices "are necessary to expedite the business of the court and that he or she is mentally and physically able and competent to perform the full duties of such office."<sup>xxxii</sup> Decisions are made by the Administrative

Board, which is comprised of the Chief Judge and the Presiding Justices of the Appellate Divisions, and the process is managed by the Office of Court Administration. In the course of the application procedure, “if a candidate’s application is in jeopardy due to medical or other reasons, he or she will be informed of that fact and will typically withdraw the application. It is therefore unusual for the process to reach the stage of actual rejection.”<sup>xxxiii</sup> In 2007, the New York State Bar Association Task Force on the Mandatory Retirement of Judges recommended that all state judges be allowed to sit until the age of 76, subject to the two-year certification process currently in place for Supreme Court Justices.<sup>xxxiv</sup>

## *Options*

### **A. Maintain the Current System.**

In British Columbia, judicial officers are subject to a rigorous application procedure, requiring the independent approval of the Judicial Council before being selected for appointment by the Lieutenant Governor in Council. In addition, the British Columbia [\*Provincial Court Act\*](#) allows for an inquiry of a judicial officer to be conducted, in which all matters may be considered “relevant to the fitness of the judge or justices to perform his or her duties including the following:

- (a) mental or physical disability;
- (b) misconduct;
- (c) failure in the execution of his or her office;
- (d) conduct incompatible with the due execution of his or her office.<sup>xxxv</sup>

It has been argued that judges self-monitor their profession, and that this, coupled with the ongoing management powers of the Chief Judge and the inquiry process contained in the [\*Provincial Court Act\*](#), are sufficient to address issues related to capacity

However, in practice, there is no mechanism between the management and examination powers of the Chief Judge, and the much more formal and infrequent “inquiries” that are conducted by the judicial council (or other tribunal) in response to serious allegations of misconduct.

### **B. Expand the statutory powers and responsibilities of the provincial Judicial Council or new body to deal with capacity issues.**

Another option is to provide a more explicit mechanism for addressing capacity issues. One approach would be to broaden the mandate and powers of the Provincial Judicial Council to deal with capacity issues. These changes would include provisions in the [\*Provincial Court Act\*](#) for the Council to assess the possible incapacity of judicial officers, such as through the use of preliminary examinations.

Alternatively, an additional Board or Committee could be established and empowered to deal with any capacity issues that arise, referring serious matters to the Judicial Council

for final review. This would allow for the management of these issues to be separated from the more severe allegations of misconduct that are adjudicated by the Judicial Council, and could allow many inquiries to be dealt with in a less formal and more flexible manner. This option would increase the transparency and visibility of the oversight of judicial officers, and could also address potential conflicts by providing different membership compositions for the new body and the council.

Any new body would have to include sufficient procedural safeguards to guard against any perceptions of interference with judicial independence. As with existing inquiries, it would be anticipated that the expansion of the mandate of the provincial Judicial Council or other body to inquire into capacity-related issues would be used sparingly. It could, however, provide important safeguards.

**C. Allow for extensions of office beyond the age of mandatory retirement, subject to an approval or certification process.**

A certification or approval process for judicial officers that is triggered automatically at a set age could alleviate concerns that capacity evaluations were being conducted for subjective reasons. Such a process would begin only if a judicial officer applied voluntarily to continue on the bench past the age of mandatory retirement, and would apply equally to all judicial officers. It could also allow for a standardization of the processes and guidelines involved in reappointment.

As stated previously, empowering the Chief Judge alone to make recommendations for judges to continue on the bench is problematic from the perspective of judicial independence. Therefore an approval process administered by the Judicial Council and governed by formal guidelines could be preferable. For example, in Saskatchewan, a judge's time on the bench may be extended from the age of 65 for one year periods to the maximum age of 70. Under section 13.5 of the [Provincial Court Act](#), the "chief judge shall:

(a) in consultation with the association [Saskatchewan Provincial Court Judges' Association], develop criteria, to be submitted for the approval of the council [Judicial Council], to govern decisions by the chief judge in granting or refusing to grant an approval pursuant to subsection (3); and

(b) use the criteria approved by the council in granting or refusing to grant that approval.<sup>xxxvi</sup>

However, it should be noted that federally-appointed judges in Canada may continue in office until the age of 75 and are not subject to any reviews or approval process before reaching that age. Finally, the use of age as a "bright line" for either review or retirement may be inconsistent with the recent findings, conclusions and recommendations of the Premier's Task Force on Aging and Seniors' Issues.

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- <sup>i</sup> The issues surrounding mandatory retirement are discussed, for example, in M.J. (Peggy) O'Brien and Deborah Cushing, "Mandatory Retirement," Lawson Lundell LLP, August 2005, <http://www.lawsonlundell.com/resources/MandatoryRetirement.pdf>
- <sup>ii</sup> Government of British Columbia, *Aging Well in British Columbia*, Report of the Premier's Council on Aging and Senior's Issues, November 2006, [http://www.cserv.gov.bc.ca/seniors/council/docs/Aging\\_Well\\_in\\_BC.pdf](http://www.cserv.gov.bc.ca/seniors/council/docs/Aging_Well_in_BC.pdf)
- <sup>iii</sup> Bill 31 Human Rights Code (Mandatory Retirement Elimination) Amendment Act, 2007. Section 41 states that "Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation."
- <sup>iv</sup> *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, section 17.
- <sup>v</sup> *Supreme Court Act*, R.S.B.C. 1996, Chapter 443, section 11(6).
- <sup>vi</sup> *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, section 33. However, under Section 33(2) of the Act, "On recommendation of the council, the Lieutenant Governor in Council may, by order, authorize a person who has been appointed under section 30 to continue in office or be reinstated in office beyond age 65." In this case, a justice ceases to hold office on reaching 70 years of age.
- <sup>vii</sup> *Courts of Justice Act*, R.S.Q., c. T-16, Section 92.1. "However, if the Government deems that it serves the interests of justice, it may authorize a judge to continue, for the period it determines, to hold office after having reached that age." <http://www2.publicationsduquebec.gouv.qc.ca/home.php#>
- <sup>viii</sup> *Provincial Court Act*, R.S.A. 2000, c. P-31, Section 9.22, [http://www.qp.gov.ab.ca/documents/Acts/P31.cfm?frm\\_isbn=0779716418](http://www.qp.gov.ab.ca/documents/Acts/P31.cfm?frm_isbn=0779716418) However, upon reaching the age of 70, "the Chief Judge may request that the Lieutenant Governor in Council reappoint that person as a judge for a term of one year," to the maximum age of 75.
- <sup>ix</sup> *Provincial Court Act*, R.S.N.S. 1989, c. 238, section 6(2), <http://www.gov.ns.ca/legislature/legc/>
- <sup>x</sup> *Provincial Court Act*, 1991, S.N.L. 1991, c. 15, section 12(1), <http://www.hoa.gov.nl.ca/hoa/statutes/p1591.htm#12>
- <sup>xi</sup> *Courts of Justice Act*, R.S.O. 1990, c.43, section 47, [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c43\\_e.htm#BK53](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c43_e.htm#BK53) Upon reaching this retirement age, a judge may, subject to the approval of the Chief Justice, continue in office for one-year terms until the age of seventy-five.
- <sup>xii</sup> *The Provincial Court Act*, 1998, R.S.S. 1998, c.P-30.11, section 13, <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P30-11.pdf> With the approval of the Chief Judge, provincial court judges may continue in office for one-year terms until reaching the age of seventy.
- <sup>xiii</sup> *Provincial Court Act*, R.S.P.E.I. 1988, c. P-25, section 7(1), <http://www.gov.pe.ca/law/statutes/pdf/p-25.pdf>
- <sup>xiv</sup> *Provincial Court Act*, R.S.N.B. 1973, c. P-21, section 4.2, <http://www.gnb.ca/0062/PDF-acts/p-21.pdf>
- <sup>xv</sup> *Human Rights Code*, R.S.O. 1990, Chapter H.19, section 24 (1e), [http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19\\_e.htm#BK27](http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90h19_e.htm#BK27)
- <sup>xvi</sup> *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c.3, section 99(2)
- <sup>xvii</sup> *Supreme Court Act*, R.S.C. 1985, c. S-26, section 9(2)
- <sup>xviii</sup> *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, section 6.
- <sup>xix</sup> The key Supreme Court cases articulating these elements of judicial independence are *Valente v. The Queen* [1985] 2 S.C.R. 673; and, *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 S.C.R. 3.
- <sup>xx</sup> *Provincial Court Act*, R.S.A. 2000, c. P-31, Section 9.23.
- <sup>xxi</sup> *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, section 11 (4). Under section 11 of the Act, when completing an investigation, the chief judge must submit to the Attorney General a written report setting out the nature of the investigation, relevant facts, the findings and any corrective action taken. If the chief judge orders an inquiry under subsection (4) (b), the chief judge must give written notice together with a copy of the report prepared under subsection (4) to the judge or justice.
- <sup>xxii</sup> British Columbia, *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, sections 21, 22, 23, and 24.
- <sup>xxiii</sup> Judicial Council of British Columbia, *Annual Report 2002, 2003*, <http://www.provincialcourt.bc.ca/downloads/pdf/judicialcouncilannualreport2002,2003.pdf>. Summaries of the two investigations can be found in this report.

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<sup>xxiv</sup> New York, Office of Court Administration, *Report of the Task Force on Mandatory Retirement of Judges*, June 1999, p. 18, [http://www.courts.state.ny.us/press/old\\_keep/manretrep.pdf](http://www.courts.state.ny.us/press/old_keep/manretrep.pdf)

<sup>xxv</sup> Chief Judge of the Provincial Court of Manitoba, Judicial Inquiry Board of Manitoba, Manitoba Judicial Council, *Annual Report Concerning Complaints About Judicial Conduct of Judges of the Provincial Court of Manitoba*, 2005, p. 4. On page 3 the report notes that in 1997, amendments to the *Provincial Court Act* removed “incapacity” of a judge from the definition of “misconduct,” distinguishing the two issues.

<sup>xxvi</sup> Manitoba, *Provincial Court Act*, C.C.S.M., c. 275, sections 28, 30, 31, 32, 35, 37 and 39.

<http://web2.gov.mb.ca/laws/statutes/ccsm/c275e.php> Section 27 of this Act defines incapacity as “the inability of a judge to perform his or her duties as a result of a physical or mental condition or disorder.”

<sup>xxvii</sup> *Judges Act*, R.S.C. 1985, c. J-1, section 65(2).

<sup>xxviii</sup> Australia, *Judicial Officers Act 1986*, No. 100,

<http://www.legislation.nsw.gov.au/viewtop/inforce/act+100+1986+FIRST+0+N/T> See also, Australia, Judicial Commission of New South Wales, *Annual Report 2005-2006*, October 2006,

<http://www.judcom.nsw.gov.au/AnnRep06/ar06.pdf>

<sup>xxix</sup> Australia, *Judicial Officers Act*, section 39B.

<sup>xxx</sup> *Ibid*, section 39C and 39D.

<sup>xxxi</sup> *Ibid*, sections 39E, 39F, 39G. See also, Judicial Commission of NSW, *Annual Report 2005/06*.

<sup>xxxii</sup> New York, Constitution, Article VI, §25(b); N.Y. Judiciary Law §115.

<sup>xxxiii</sup> *Report and Recommendations of the New York State Bar Association Task Force on the Mandatory Retirement of Judges*, March 2007, Appendix p. 14. The legislation and process relating to certification are also explained on pages 2, 6, 7, 11, and 17 of the Task Force report.

<sup>xxxiv</sup> *Ibid*, p. 2.

<sup>xxxv</sup> *Provincial Court Act*, R.S.B.C. 1996, Chapter 379, section 26.

<sup>xxxvi</sup> *The Provincial Court Act*, 1998, R.S.S. 1998, c.P-30.11, section 13.