

**MEMORANDUM OF UNDERSTANDING**  
**on the governance of the Canadian Judicial Council**  
Between  
The Canadian Judicial Council  
and  
the Minister of Justice and Attorney General of Canada

**Introduction and Purposes**

[1] The Canadian Judicial Council (the “CJC”) and the Minister of Justice (the “Minister”) are committed to protecting public confidence in the administration of justice. While the roles and responsibilities of the Minister and of Canada’s judiciary are constitutionally distinct, they are grounded in a common commitment to serving the public, upholding the Constitution, and advancing the rule of law. This requires a collaborative and productive relationship between the executive and judicial branches of government.

[2] Established by Parliament in 1971 to promote efficiency and uniformity, and to improve the quality of judicial services, in superior courts in Canada, the CJC is composed of the Chief Justice and any Senior Associate Chief Justice and Associate Chief Justice of each superior court or branch or division thereof, and the Chief Justice of the Court Martial Appeal Court. As the core of Canada’s third branch of government, the superior courts safeguard the Constitution and the rule of law by providing a forum through which Canadians can assert and defend their rights. In order to hear every person who appears before them impartially, the judiciary must be fully independent from the political branches of government and from any form of undue influence. The principle of judicial independence is a fundamental feature of Canada’s Constitution. This includes the independence of the CJC in fulfilling its mandate.

[3] The Minister has the superintendence of all matters connected with the administration of justice in Canada that are not within the jurisdiction of the governments of the provinces, and must see that the administration of public affairs is in accordance with the law. This includes upholding the Constitution and the rule of law, and respect for the independence of the courts.

[4] The purposes of this Memorandum of Understanding (“MOU”) are to (1) acknowledge the independence of the CJC, (2) describe the role of the CJC in the process leading to the appointment of a Commissioner for Federal Judicial Affairs, and (3) set out the roles of the Minister and the CJC in the decision-making process related to funding the operations of the CJC.

[5] This MOU reflects the intentions of the Minister and the CJC but is not intended to be a legally enforceable contract, nor to create any rights or obligations that are legally enforceable.

## **Independence of the CJC**

[6] The CJC and the Minister recognize the unique nature of the CJC as a key pillar of the judicial branch of government encompassing the leadership of Canada’s federally appointed judges. Both recognize the independence of the CJC to meet its objectives and fulfill its mandate.

## **Commissioner for Federal Judicial Affairs**

[7] The Office of the Commissioner for Federal Judicial Affairs (the “Office of the Commissioner”) was established by Parliament in 1978 to safeguard the independence of the judiciary and provide administrative services to federally appointed judges. It is headed by the Commissioner for Federal Judicial Affairs (the “Commissioner”), who is appointed by the Governor in Council after consultation by the Minister with the CJC or such committee thereof as the CJC may name for that purpose. The Commissioner has the rank and status of a deputy head of a department and is part of the federal public administration, separate from the Department of Justice. The duties and responsibilities of the Commissioner include (1) acting as the deputy of the Minister in performing all such duties and functions in relation to the administration of Part I of the *Judges Act* as fall, by law, within the responsibility of the Minister, (2) preparing budgetary submissions for the requirements of the CJC, (3) being responsible for any other administrative arrangements that are necessary to ensure that all reasonable requirements, including those for premises, equipment and other supplies and services and for officers, clerks and employees of the CJC for the carrying out of its operations, are provided for in accordance with the law, and (4) doing such other things as the Minister may require in connection with any matter or matters falling, by law, within the Minister’s responsibilities for the proper functioning of the judicial system in Canada. To carry out the Commissioner’s duties, the Commissioner may employ

officers, clerks and employees, who, although part of the federal public administration, are separate from the Department of Justice. Some of these employees are dedicated to supporting the day-to-day operations of the CJC, such as an Executive Director, directors and other employees working directly with the CJC (collectively referred to as the “Secretariat”).

[8] Considering both the independence of the CJC and the responsibility of the Office of the Commissioner to provide support and administrative services to the CJC in accordance with law, the Minister recognizes the authority of the Commissioner to sign an MOU with the CJC regarding their relationship with one another.

[9] Under the *Judges Act*, the Commissioner is appointed by the Governor in Council after consultation by the Minister with the CJC or such committee thereof as the CJC may name for that purpose. The Minister and the CJC recognize the importance of this consultation and the need for the CJC to have meaningful input into the nomination, tenure and removal of a Commissioner.

[10] Before the Minister makes a recommendation to the Governor in Council in respect of the appointment of a person to the position of Commissioner, a selection process is carried out which includes the following elements:

- a) a selection committee that includes the Chair of the CJC or his or her designate;
- b) selection criteria developed by the committee, respecting the requirements for the position;
- c) use of a notice of opportunity and other selection tools approved by the selection committee; and
- d) recommendation of qualified candidates to the Minister by the selection committee.

[11] In making his or her recommendation to the Governor in Council, the Minister does not recommend candidates who in the opinion of the CJC are unsuitable to the position.

[12] The Minister recommends a term of appointment for the Commissioner, taking into account the views of the CJC as to an appropriate duration for the appointment.

[13] Subject to the provisions of paragraphs 11 and 12, a person previously appointed as Commissioner may be recommended for reappointment.

[14] If the CJC forms the view that a person appointed to the position of Commissioner should be subject to involuntary removal prior to the end of their appointment term, the CJC advises the Minister of that view along with the reasons for it.

[15] Before the Minister makes a recommendation to the Governor in Council in respect of the involuntary removal of a person appointed Commissioner, the Minister consults with the CJC.

### **Responsibilities and Commitments Regarding the Funding of the CJC**

[16] The CJC and the Minister affirm the principle of ministerial accountability for the expenditure of public funds and the importance of sound stewardship of public resources. Accountability and transparency in these areas are essential to maintaining public trust. They also acknowledge the Minister's responsibilities arising by virtue of his or her membership in Cabinet.

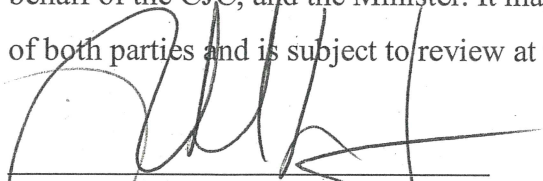
[17] Under the *Financial Administration Act*, the Minister is the appropriate Minister for the Office of the Commissioner. In light of the principle of ministerial responsibility to Parliament and the Minister's responsibility in relation to the administration of justice, the Minister sponsors all submissions to Cabinet (including the Treasury Board and the Minister of Finance) respecting the Office of the Commissioner, including those related to new and ongoing funding requests.

[18] Under the *Financial Administration Act*, the Commissioner is the accounting officer for the Office of the Commissioner. The Commissioner is accountable before appropriate parliamentary committees to answer questions regarding a specified range of responsibilities and duties relating to the management of the Office of the Commissioner, including the Secretariat. The Commissioner's responsibility as accounting officer arises within the framework of ministerial responsibility and accountability to Parliament.

[19] The CJC determines its incremental funding needs and works in consultation with the Office of the Commissioner to prepare the necessary submissions. The Minister accepts to submit these, on behalf of the CJC, to the Minister of Finance, without alteration.

**Review**

[20] This MOU takes effect on the date of signing by both the Chairperson of the CJC, on behalf of the CJC, and the Minister. It may be amended at any time with the agreement in writing of both parties and is subject to review at the request of either party.



The Right Honourable Richard Wagner, P.C.  
Chairperson of the Canadian Judicial Council  
Chief Justice of Canada

Date: Apr. 28, 2022



The Honourable David Lametti  
Minister of Justice and Attorney General of Canada

Date: Apr. 28, 2022

