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Legislative Summary

BILL S-5:
AN ACT TO AMEND THE JUDGES ACT

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Legislative Summary of Bill S-5
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL S-5: AN ACT TO AMEND THE JUDGES ACT

1 BACKGROUND

On 5 June 2021, Senator Marc Gold introduced Bill S-5, An Act to amend the Judges Act, in the Senate on behalf of the federal government.[1]

The bill did not pass second reading and died on the *Order Paper* when the Senate rose on 29 June 2021.

By replacing the existing complaints process regarding alleged misconduct with a new system, Bill S-5 changes how complaints against federally appointed judges[2] are handled. The existing process was established in 1971 under the *Judges Act*,[3] which defines the criteria for removing a judge from office and prescribes certain other requirements; procedural elements of the complaints process are largely set out in Canadian Judicial Council (CJC) policy documents and by-laws.[4]

The CJC is a federal body created under the *Judges Act* and empowered to investigate public complaints and referrals from the minister of justice of Canada or a provincial/territorial attorney general about the conduct of federally appointed judges. It does not review judges' decisions. After conducting an inquiry, the CJC may make recommendations to the minister, including the recommendation to remove a judge from office. The CJC's judicial conduct oversight role is part of its general mandate to help the judicial system remain efficient, uniform and accountable. Its 41 members include all chief justices and associate chief justices and certain senior judges from federal and provincial/territorial superior courts.[5]

Bill S-5 follows recent legislative changes to the *Judges Act* under Bill C-3, An Act to amend the Judges Act and the Criminal Code, concerning continuing education for judges on topics related to sexual assault law and social context,[6] and Bill C-30, An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures, which made changes including adjustments to the calculation of judicial annuities.[7]

1.1 PROCESS REFORM: CONTEXT AND CONSULTATIONS

Bill S-5 follows a 2016 federal government public consultation process on potential reforms to the federal judicial discipline process.[8] According to the consultation report, judicial discipline proceedings had been marked by significant increases in costs and delays, and reforms were necessary to ensure that the process was cost-effective, efficient and transparent and to preserve public confidence in the judicial system.[9]

Under the current system, CJC interim or final decisions can be challenged through three layers of judicial review: the Federal Court, the Federal Court of Appeal, and with leave, the Supreme Court of Canada. As a result, judicial conduct inquiries can be subject to multiple and drawn-out legal challenges that can take years to resolve.

Highlighting the potential for delays and associated costs under the current process, the judicial misconduct case *Girouard v. Canada (Attorney General)*, initiated in 2012, was not concluded until 2021, when the judge at issue resigned after exhausting appeal and judicial review options. The proceedings included 24 applications for judicial review before federal courts.[10] Commenting on *Girouard* in 2020 after the Federal Court of Appeal dismissed the appeal, the CJC stated:

> Specifically, over the past decade, we have all witnessed public inquiries that have taken far too long and have been far too expensive. We have witnessed countless applications for judicial review, covering every imaginable aspect of the process. These have been enormously time-consuming, expensive and taxing on our federal courts. Furthermore, all costs, including those incurred by the judge who is at the centre of the inquiry, are fully funded by the taxpayer. The judge at issue continues to receive full salary and pension benefits as time passes. This leaves the perception that the judge benefits from these delays. Highlighting this problem, we refer to a painfully obvious pattern, as opposed to any individual case: a pattern that is contrary to the public interest and access to justice.[11]

At the conclusion of the case in February 2021, the chairperson of the CJC again called for reforms to the process:

> I reiterate the need to adopt legislative reforms that Council has long called for in order to improve the judicial conduct review process, and thereby maintain public confidence in the administration of justice.[12]

2 DESCRIPTION AND ANALYSIS

Bill S-5 consists of 17 clauses. Key clauses and provisions are discussed in the following section, in which the term "judge" means a federally appointed judge subject to the *Judges Act*.

2.1 JUDICIAL CONDUCT REVIEW PROCESS (CLAUSES 1 TO 9 AND 11)

Clauses 1 to 8 of the bill make minor technical amendments to the *Judges Act* to incorporate the new conduct review process into the Act and to add gender-neutral language.

Clause 9 removes sections of the *Judges Act* that establish the current judicial complaints process.[13] It also amends section 62 to enable the CJC to hire legal counsel to assist the CJC in proceedings under the new process.

Clause 11 adds new Part IV to the *Judges Act* to establish a new judicial conduct review process. This is a lengthy clause containing 81 new sections that make up the bulk of Bill S-5.

Under the new process, a judge may be removed from office for the following reasons (new section 80):

- infirmity;
- misconduct;
- failure in the due execution of judicial office; or
- the judge is in a position that a reasonable, fair-minded and informed observer would consider to be incompatible with the due execution of judicial office.

These criteria are similar, although not identical, to the reasons warranting removal from office under the existing process, which includes age as a justification for removal. The existing process also does not use the reasonable person test to assess whether a judge is in a position that is incompatible with sitting on the bench. Bill S-5 specifies that these four reasons justify removal where a judge's continuation in office would undermine public confidence in the judge's impartiality, integrity or independence. It amends the current criteria, under which a judge may be removed if they are "incapacitated or disabled" from sitting as a judge due to one of the listed reasons.[14]

2.1.1 Complaints

Under both the existing and the new processes, anyone may submit a complaint about a judge's conduct to the CJC.

Under the new process, the CJC may make a complaint only where two of its members have reasonable grounds to believe that the conduct could undermine public confidence in the judge's impartiality, integrity or independence. An anonymous complaint faces the same threshold test as a complaint made by the CJC (new section 86).

2.1.2 Screening Officer

Under the existing process, the CJC's executive director screens complaints and may dismiss those that are clearly without merit, do not involve a judge's conduct or are not in the public interest.[15]

Under the new process, the CJC designates a screening officer, who may be a judge, to conduct an initial assessment (new section 88). Complaints may be dismissed if they are clearly without merit, are not related to one of the reasons listed in new section 80 or do not meet other screening criteria that may be established and published by the CJC (new section 90). It is to be noted that under Bill S-5, a complaint alleging sexual harassment or discrimination based one of the prohibited grounds listed in the *Canadian Human Rights Act* cannot be dismissed at the initial screening stage (new section 90). Complaints made by the CJC and anonymous complaints also bypass the initial screening stage (new section 89).

2.1.3 Reviewing Member

As in the existing system, the new process holds that complaints that are not dismissed after screening are reviewed by a member of the CJC (new section 91). The judge whose conduct is the subject of the complaint may make written submissions at this stage (new section 93). The reviewing member applies the same criteria as the screening officer to determine whether the complaint should be dismissed (new section 94). If the complaint is not dismissed, it is referred to a CJC review panel for consideration. The provisions of these new sections essentially codify existing CJC policies and procedures.[16]

Under the existing process, the complaint is only referred to a review panel if the judge's removal from office may be warranted. Less serious misconduct cases are currently dealt with informally; the CJC reviewing member may negotiate with the judge to identify an appropriate remedy, but the complaint does not proceed.[17] Under the new process, less serious complaints that do not warrant removal from the bench may still proceed to a review panel.

2.1.4 Review Panel

Under Bill S-5, a review panel is composed of a CJC member, a judge and a lay person who has never been a lawyer or paralegal in Canada (new sections 82 and 98). Currently, a review panel has two additional CJC members.[18] Under the new process, diversity and official-language proficiency are to be considered when adding both judges and lay persons to the roster of potential review panel members (new sections 83 and 84).

Multiple complaints involving the same judge may be grouped together for review by a single review panel if individual decisions have not yet been rendered (new sections 98, 110(2) and 117(3)).

A review panel may consider only the substance of the complaint, related documents and observations provided by the reviewing member (new section 97), written submissions provided by the judge at issue and that judge's chief justice (new

section 99) and any other relevant documents (new section 100). A review panel has three options when making its decision. It may:

- refer the complaint to a full hearing panel if removal from office could be justified (new section 101);
- dismiss the complaint; or
- impose alternative sanctions short of removal from office.

As alternative sanctions, the review panel may take one or more of the following actions (new section 102):

- issue a public or private expression of concern, warning or reprimand;
- order the judge to privately or publicly apologize or to take specific measures including attending counselling or continuing education;
- take any action the panel considers equivalent to the above options;
- with the judge's consent, take any other action that the panel considers appropriate.

Under the existing process, a review panel may refer the case to an inquiry committee for a hearing only if the matter may be serious enough to warrant removal.[19] Similarly, under the new process, the review panel sends the case to a full hearing panel if removal from office could be justified. However, Bill S-5 also empowers the review panel to impose mandatory remedies and sanctions other than removal from office, not merely negotiate or recommend them, when considering less serious misconduct cases. In theory, this allows the CJC to directly address all types of judicial misconduct and enables prompt resolution of less serious cases without a full hearing.

If the review panel opts to impose alternative sanctions, then the judge who is the subject of the complaint may, within 30 days of receiving notice of the decision, request that a reduced hearing panel be established to review the complaint (new section 104).

2.1.5 Hearing Panels

Under Bill S-5, hearing panels replace the existing role of inquiry committees. Hearing panels may recommend alternative sanctions against a judge instead of simply either dismissing the complaint or recommending removal from office.

An inquiry committee currently submits a report to the CJC, which, in turn, deliberates and issues a final report to the minister setting out its conclusions.[20] The new process eliminates this step; the CJC no longer needs to consider the hearing panel's report. This change could reduce procedural delays, costs and inefficiencies regarding the handling of complaints.

Like an inquiry committee,[21] a hearing panel has the same powers as a superior court, including the power to summon witnesses and documents and to compel evidence (new section 127). A hearing panel is not bound by a court's rules of evidence and may consider any evidence that it considers credible (new section 128).

Under the new process, a lawyer with at least 10 years' experience is designated to present the case against the judge at issue before the hearing panel (new section 106). This role of presenting counsel is similar to that of the prosecutor in criminal cases and does not formally exist in the current system. Presenting counsel prepares the statement of allegations and presents evidence (new section 107) under instructions from the CJC member who designated them (new section 108).

As in the existing system,[22] the new process allows a judge to be represented by legal counsel, who may introduce evidence and cross-examine witnesses during proceedings (new section 124). A judge must be given reasonable notice of the hearing and must also be provided with the statement of allegations against them (new section 125).

Either the judge or presenting counsel may appeal a hearing panel decision within 30 days of receiving notice of the decision (new sections 116 and 123). If appealed, the case is then sent to a CJC appeal panel (new section 130).

In a change that could increase transparency under the new system, full hearing panel and appeal panel hearings are public unless this would not be in the public interest (new sections 129 and 132). Similarly, panel decisions and reasons are made public unless the hearing was held in private or publication would not be in the public interest (new sections 115, 122 and 136). In contrast, an inquiry committee or investigation may currently be either public or private unless the minister requires it to be public (current section 63(6)).

Under the proposed system, there are two types of hearing panels: reduced hearing panels and full hearing panels.

2.1.5.1 Reduced Hearing Panel

A reduced hearing panel functions as an appeal mechanism in that it can confirm, vary or overturn alternative sanctions imposed by a review panel (new section 113). However, the reduced hearing panel reviews the complaint anew and does not consider the review panel's decision or reasons (new section 111). If removal from office could be justified, the reduced hearing panel refers the complaint to a full hearing panel (new section 112).

The reduced hearing panel has no equivalent in the existing system, under which there are no mandatory sanctions other than removal from office for a judge to appeal.

A reduced hearing panel is composed of a CJC member, a judge and a lawyer (new section 110).

2.1.5.2 Full Hearing Panel

A full hearing panel is established for cases where a judge's removal from office could be warranted. The panel bases its decision on a balance of probabilities (new section 119); in the existing *Judges Act* and CJC documents, the standard of proof for decisions is not specified.

If a full hearing panel determines that removal from office is not justified, it may dismiss the complaint or impose alternative sanctions as listed in new section 102. Like a reduced hearing panel, a full hearing panel conducts its own review of the complaint and does not consider the decisions or reasons of previous panels (new section 118). Under the existing system, the inquiry committee must consider the review panel's reasons and statement of issues.

Unlike an inquiry committee, a full hearing panel includes one lay person, in addition to a judge, a lawyer and two CJC members (new section 117).

2.1.6 Appeal Panel

Appeals of the decisions of reduced hearing or full hearing panels are sent to an appeal panel. An appeal panel has the same powers as a court of appeal and may reverse, vary or affirm a hearing panel decision and make any decision a hearing panel could have made (new section 131). The appeal panel relies on the same evidence and documents as the hearing panel in addition to written and oral submissions from the judge and presenting counsel (new sections 133 and 134). Additional evidence or testimony may be admitted only in exceptional circumstances. Like hearing panel proceedings, appeal panel proceedings are public, and appeal decisions and reasons are published unless this would not be in the public interest (new sections 132 and 136).

An appeal panel is composed of three CJC members and two roster judges (new section 130). This internal appeal mechanism has no equivalent under the current system. Appeal panels replace the current right to judicial review through the federal courts, where cases are subject to federal court procedures and rules as well as potentially greater delays and litigation costs.

2.1.7 Appeal to the Supreme Court of Canada

Under the new system, either the judge at issue or presenting counsel may seek leave to appeal an appeal panel decision to the Supreme Court of Canada (SCC) (new section 137). If leave is granted, the minister and a provincial/territorial attorney general may intervene on appeal (new section 138).

This is a party's only opportunity to appeal to the courts under the new process; Bill S-5 specifically bars legal challenges or judicial review of CJC decisions other than as provided in the bill (namely appeal to an internal CJC panel or to the SCC) (new section 158). This eliminates the possibility of multiple and drawn-out judicial review proceedings in the federal courts and helps to keep litigation costs down.

The existing system allows multiple opportunities for judicial review and appeal to the Federal Court, the Federal Court of Appeal and the SCC (with leave).

2.1.8 Report to Minister and Minister's Response

Under the new process, a full hearing panel must submit a report with its recommendation to the minister as soon as the parties' right to appeal the decision to an appeal panel or the SCC has expired, been waived or been exhausted. This report must include the decisions and reasons of the full hearing panel, the appeal panel and the SCC as applicable (new sections 139(1) and (2)). This mirrors a similar obligation in the current system.[23]

Copies of the hearing panel report are provided to the judge at issue, presenting counsel and the CJC. All or parts of the report may be published depending on whether the decisions and reasons discussed in it were published (new section 139).

Under the new process, the minister responds publicly to the report (new section 140).

The minister may ask Parliament to exercise its constitutional power to vote on removing the judge from office and to request that the Governor General remove the judge.[24]

2.1.9 Salaries

Before 29 June 2021 (the date of the coming into force of Bill C-30),[25] a judge's salary continued to be paid and pension continued to accrue until the day of the judge's retirement or dismissal by the Governor General.

Bill C-30 amended the *Judges Act* to remove a judge's ability to accrue salary increases and pensionable years of service while challenging a CJC removal recommendation in court. Therefore, the end date for salary and pension purposes is currently *the day that the CJC recommends to the minister* that a judge should be removed from office.

Bill S-5 echoes this idea but establishes a different end date.[26] Under the new system, *the day after a full hearing panel notifies a judge* of its decision to remove them from office is considered to be the judge's last day in office. This is the date used for determining the judge's salary and time in judicial office when calculating pension benefits (new section 126).

This new provision does not apply if:

- the full hearing panel's decision is overturned by the SCC or an appeal panel's final decision;
- the minister chooses not to remove the judge from office; or
- either house of Parliament votes not to remove the judge from office.

In these cases, the judge is not penalized and may make catch-up annuity payments for the lost contribution period.

2.1.10 General Provisions

As in the existing system, under the new process, a CJC member or judge cannot serve as a reviewing member or a panel member if they sit on the same court as the judge who is the subject of the complaint.[27] A CJC member also may not serve as a reviewing member or a panel member if they were responsible for a CJC complaint or an anonymous complaint proceeding under new section 86 (new section 141).

Screening officers, reviewing members and panel members have the same immunity as a superior court judge and cannot be sued for actions or decisions resulting from their role (new section 143).

Under the new process, in another change to increase transparency, the CJC submits an annual report to the minister indicating the number of complaints (new section 160):

- received;
- dismissed by screening officers or reviewing members;
- reviewed by review panels, hearing panels or appeal panels; and
- resulting in alternative sanctions.

Possibly as a reflection of the COVID-19 pandemic, Bill S-5 specifies that any conduct proceedings may take place virtually (new section 159).

2.1.11 Financial Provisions

Under Bill S-5, fees, allowances and expenses related to the complaints process are subject to government regulation (new section 144) and guidelines of the Commissioner for Federal Judicial Affairs. Subject to regulations, where CJC guidelines differ from Treasury Board directives, the Commissioner must justify the difference (new section 145).

These fees, allowances and expenses are paid from the Consolidated Revenue Fund (new section 146) and include:

- expenses of CJC members and roster judges incurred while carrying out duties under the complaints process;
- expenses and allowances of panel members other than judges;
- fees and expenses of presenting counsel;
- fees and expenses of lawyers representing judges who are the subject of a complaint;
- fees and expenses of lawyers and experts hired by panels; and
- expenses related to conducting meetings and hearings, such as room rentals, recording and transcription of proceedings, translation and security.

It is to be noted that eligible fees and expenses of judges' counsel are limited to proceedings that are part of the CJC complaints process and appeals to the SCC. While Bill S-5 already bars judicial review under the new process, to leave no doubt, it also specifically bars payments to a judge's counsel for judicial review of any decision under the complaints process (new section 146(2)).

Bill S-5 requires independent review of the financial provisions in new sections 144 to 146. An initial review is conducted within 18 months of the CJC's first annual report on the complaints process (see new section 160) and every five years thereafter. The review report must indicate whether financial provisions have been applied using best practices for financial controls. This report is made public with limited exceptions (new section 147).

2.1.12 Ministerial Requests Concerning Judges and Other Office Holders

Upon request from the minister or a provincial/territorial attorney general, the CJC must establish a full hearing panel to determine whether a judge or other Governor in Council appointee should be removed from office (new sections 148 and 151). This mirrors existing provisions requiring the CJC to conduct an inquiry upon request by the minister concerning judges or other appointees.[28]

Appointees include agents and officers of Parliament; ombudspersons; chairs, directors and chief executive officers of Crown corporations; chairs and members of administrative tribunals; and heads and members of agencies, boards and commissions. As provided in Bill S-5, an appointee may be removed from office for the same reasons as a judge: infirmity, misconduct, failure in the due execution of their office or being in a position incompatible with the due execution of their office (new section 151). If the CJC recommends the removal of an appointee (other than a judge), the minister may, in turn, recommend that the Governor in Council order the

appointee's removal (new section 155).[29] A copy of the removal order and accompanying report must be laid before the Senate and the House of Commons within 15 days after the order is made.

Under the new process, an appointee who is not a judge and whose removal from office is recommended due to infirmity may be granted a leave of absence with pay instead of permanent removal (new section 156). This option currently exists only for judges in the current version of the *Judges Act*, but is removed under Bill S-5.[30]

2.2 TRANSITIONAL PROVISIONS (CLAUSES 13 TO 15)

Clauses 13 and 14 provide that the existing version of the *Judges Act* continues to apply to inquiries or investigations already initiated, requested by the minister or a provincial/territorial attorney general, or stemming from a complaint received prior to the date on which Bill S-5 comes into force.

Under clause 15, if a report recommending a judge's removal has been submitted to the minister when Bill S-5 comes into force, the judge has 30 days to request leave to appeal to the SCC. The federal attorney general or a provincial/territorial attorney general has the right to intervene if leave to appeal is granted.

2.3 COORDINATING AMENDMENT (CLAUSE 16)

Clause 16 contains a coordinating amendment with Bill C-30 related to judges' annuity calculations. As Division 26 of Bill C-30 came into force on 29 June 2021, this clause is no longer relevant. The coming into force of Bill S-5 would simply repeal and replace the amendment to the *Judges Act* introduced under Bill C-30.

2.4 COMING INTO FORCE (CLAUSE 17)

Bill S-5 will come into force on a day or days to be fixed by Order in Council after Parliament has appropriated money to fund the purposes of Bill S-5 by approving a money bill originating in the House of Commons.

NOTES

1. Bill S-5, An Act to amend the Judges Act, 43rd Parliament, 2nd Session. See also Government of Canada, *Judicial conduct: Reforming the complaints process*; and Government of Canada, *Bill S-5: An Act to amend the Judges Act – Charter Statement*.
2. Federally appointed judges in Canada include judges of the superior courts of every province and territory, the courts of appeal, the Federal Court of Appeal, the Federal Court, the Tax Court of Canada and the Supreme Court of Canada. See *Judges Act*, R.S.C. 1985, c. J-1, ss. 9–22.

3. Ibid., ss. 63–71. For a description of the origins of the judicial conduct complaints process and past reforms, see Department of Justice Canada, *Possibilities for further reform of the Federal Judicial Discipline Process*, June 2016, pp. 4–6.

4. Canadian Judicial Council (CJC), *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, 29 July 2015; and CJC, *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*.

5. CJC, "Mandate and powers," *Our mandate*; CJC, *About the Canadian Judicial Council*; and *Judges Act*, R.S.C. 1985, c. J-1, s. 59(1).

6. Bill C-3, An Act to amend the Judges Act and the Criminal Code, 43rd Parliament, 2nd Session (S.C. 2021, c. 8).

7. Bill C-30, An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures, 43rd Parliament, 2nd Session (S.C. 2021, c. 23).

8. Department of Justice Canada, *Possibilities for further reform of the Federal Judicial Discipline Process*, June 2016.

9. Ibid., pp. 5–7.

10. The Canadian Press, "Michel Girouard resigns from Quebec Superior Court: Canadian Judicial Council," *CTV News*, 25 February 2021; *Girouard v. Canada (Attorney General)*, 2020 FCA 129, para. 3; *Canada (Judicial Council) v. Girouard*, 2019 FCA 148; *Girouard v. Canadian Judicial Council*, 2015 FC 307; *Girouard v. Canada (Attorney General)*, 2017 FC 449; *Girouard v. Canada (Attorney General)*, 2018 FC 865; and *Girouard v. Canada (Attorney General)*, 2020 FC 557.

11. CJC, *Open Letter to Canadians from the Canadian Judicial Council*, 31 July 2020.

12. CJC, *Statement by the Chairperson of the Canadian Judicial Council*, News release, 25 February 2021.

13. *Judges Act*, R.S.C. 1985, c. J-1, ss. 63–71.

14. Ibid., s. 65(2).

15. This procedural step, like many others, is set out in CJC policies, not the *Judges Act*. Bill S-5 codifies it and includes it in the *Judges Act*, bringing it under the legislative control of Parliament, not the CJC. See CJC, *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, 29 July 2015, para. 5.

16. Ibid., paras. 4.3 and 5–6.

17. Ibid., paras. 8.2(b) and 8.2(d).

18. *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203, s. 2(3).

19. Ibid., s. 2(4).

20. Ibid., ss. 8–12.

21. *Judges Act*, R.S.C. 1985, c. J-1, s. 63(4).

22. Ibid., s. 64.

23. Ibid., s. 65.

24. A judge may be removed only after both the House of Commons and the Senate vote in favour of removal and the Governor General acts on Parliament's request to remove the judge from the bench. Appointed judges are not easily removed. This is designed to protect judicial independence from interference by the government. See *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 99.

25. Bill C-30, An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures, 43rd Parliament, 2nd Session.

26. The coming into force of Bill S-5 would repeal and replace the amendment to the *Judges Act* introduced under Bill C-30.

27. *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203, s. 3(4).

28. *Judges Act*, R.S.C. 1985, c. J-1, ss. 63(1) and 69(1).

29. Appointments made by the Governor in Council are for a fixed term or an indeterminate period. Appointees hold office either “during pleasure,” where they may be removed at the discretion of the Governor in Council, or “during good behaviour,” where they may be removed only for cause. Bill S-5 would apply to the removal of appointees serving “during good behaviour” in addition to other legislation or statutory instruments that establish the position and authorize the appointment and the terms and conditions of the appointment.

30. *Judges Act*, R.S.C. 1985, c. J-1, s. 66(2). Judges are also eligible for a general leave of absence, with permission, under section 54.

APPENDIX

Table 1 – Managing Complaints of Misconduct Against Judges: Proposed Legislative Changes

Current Process	Bill S-5: Proposed Process
Canadian Judicial Council (CJC) executive director conducts initial screening.	CJC screening officer conducts initial screening.
A CJC member conducts initial review and either dismisses complaint or refers it to review panel if removal may be warranted. If misconduct is less serious, may negotiate with judge for appropriate remedy.	A CJC member conducts initial review and either dismisses complaint if wholly without merit or refers it to review panel.
Review panel: ▪ conducts investigation; and ▪ refers to inquiry committee if removal could be warranted.	Review panel: ▪ may dismiss complaint or impose sanctions short of removal; and ▪ must refer to full hearing panel if complaint might warrant removal.
Inquiry committee: may recommend removal but cannot recommend any other sanctions. Issues report to rest of CJC, which issues final report with recommendation on removal to minister of Justice.	Reduced hearing panel: ▪ Judge can appeal review panel's decision to the reduced hearing panel, which can affirm, vary or overturn sanctions or refer to full hearing panel if removal might be warranted. Full hearing panel (if removal is possible): ▪ may find that judge's removal is justified; and ▪ provides report and recommendation on removal of judge to minister of Justice consistent with decisions by appeal panel and Supreme Court of Canada (if any).
Judicial review of CJC's report to minister: Judge can appeal CJC's recommendation through as many as three consecutive levels of judicial review. Appeal process: ▪ Federal Court; ▪ Federal Court of Appeal; and ▪ Supreme Court of Canada (with leave).	Appeal panel: ▪ Any hearing panel decision can be appealed to appeal panel and from there to the Supreme Court of Canada (with leave).
Minister of Justice may initiate removal of judge. May respond publicly to report.	Minister of Justice may initiate removal of judge and must respond publicly to full hearing panel report.

Source: Table prepared by the Library of Parliament using data obtained from Government of Canada, *Infographic: Managing Complaints of Misconduct Against Judges – Proposed Changes to Legislation*.