

JURISPRUDENCE OF JUDICIAL INTEGRITY: AN EXHAUSTIVE ANALYSIS OF FAILURE IN DUE EXECUTION AND INCOMPATIBILITY WITH JUDICIAL OFFICE

Executive Summary

The tenure of superior court judges in common law jurisdictions is anchored in the constitutional principle of security of tenure, historically guaranteed *quamdiu se bene gesserit*—during good behaviour. This protection serves as a bulwark against executive interference, ensuring judicial independence. However, this security is not absolute; it is counterbalanced by the necessity of accountability. When a judge's conduct erodes public confidence to a degree that renders the administration of justice in disrepute, the mechanisms of removal are engaged.

In the Canadian context, these mechanisms are codified in the *Judges Act*, specifically under the grounds for removal which include "(c) failure in the due execution of judicial office" and "(d) 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 provisions, while statutory, reflect deep common law roots shared by the United Kingdom, Australia, and New Zealand.

This report provides a comprehensive, expert-level analysis of the jurisprudence surrounding these specific legal thresholds. It examines the "failure in due execution" not merely as a metric of competence but as a functional abdication of the judicial role—whether through incompetence (*Cosgrove*), sloth (*Dugré*), or defiance of the rule of law (*Ruffo*). Simultaneously, it explores the "incompatible position" test, a relational standard that measures the rupture of the bond of trust between the judge and the public, often triggered by bias (*Camp*), dishonesty (*Girouard*, *Einfeld*), or compromised independence (*Matlow*, *Wilson*).

Drawing on inquiry reports, legislative debates (Bill C-9), and comparative case law, this document synthesizes the global judicial understanding of the point at which a judge ceases to be "fit" for office. It argues that while "misconduct" is the broad genus of judicial error, "failure in due execution" and "incompatibility" are the specific species that justify the ultimate sanction of removal.

1. The Statutory and Constitutional Architecture of Judicial Removal

To understand the jurisprudence of "failure in due execution," one must first map the statutory terrain. The specific language cited in the query—subsections (c) and (d) of the Canadian *Judges Act*—represents a legislative refinement of the ancient common law standard of "misbehaviour." This section analyzes how these terms have been codified and interpreted across jurisdictions, establishing the legal framework for the case studies that follow.

1.1 Canada: The Evolution of the *Judges Act*

The removal of federally appointed judges in Canada is constitutionally governed by Section 99 of the *Constitution Act, 1867*, which provides that judges of the superior courts shall hold office during good behaviour but shall be removable by the Governor General on address of the Senate and House of Commons. The *Judges Act* provides the statutory mechanism for the Canadian Judicial Council (CJC) to investigate and recommend such removal.

The Statutory Grounds (Section 80)

Recent amendments under Bill C-9 have restructured the conduct review process, yet the substantive grounds for removal remain anchored in the historic criteria. Section 80 (formerly discussed in the context of Section 65) articulates the justifications for removal. It states that removal is justified only if the judge's continuation in office would undermine public confidence in the impartiality, integrity, or independence of the judge or their office to such an extent that it would render the judge incapable of executing the functions of judicial office.¹

The specific grounds are:

- **(a) Infirmary:** Physical or mental incapacity.
- **(b) Misconduct:** A broad category covering ethical breaches.
- **(c) Failure in the due execution of judicial office:** This ground specifically addresses the functional performance of the judge. It implies a nexus between the conduct and the actual discharge of duties (e.g., presiding, writing judgments).
- **(d) 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:** This catch-all provision codifies the "reasonable apprehension of bias" test and covers situations where the judge's status—rather than a specific act of misconduct—renders them untenable.¹

The Impact of Bill C-9

The introduction of Bill C-9 was driven by the need to streamline a process that had become bogged down in procedural delays (as seen in the *Girouard* and *Cosgrove* affairs). The Bill replaces the old inquiry committee structure with a new "hearing panel" system but retains the core definitions of removal-worthy conduct.⁵ Critically, the legislation explicitly incorporates the "reasonable, fair-minded and informed observer" into the text of subsection (d), cementing the objective standard of public confidence as the touchstone for removal.³

1.2 The "Marshall Test" and Common Law Origins

Before these statutory grounds were so explicitly parsed in recent amendments, Canadian jurisprudence relied on the "Marshall Test," derived from the CJC inquiry into the judges involved in the wrongful conviction of Donald Marshall Jr. This common law test asks:

"Is the conduct alleged so manifest and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office?"⁸ This test serves as the interpretive lens for subsections (c) and (d). It clarifies that "failure in due execution" is not about a single reversible error, but about a "manifest and total" departure from the standards of the office.⁸

1.3 Comparative Frameworks: UK, Australia, and New Zealand

The concept of "due execution" transcends Canadian borders, finding expression in the legal architectures of other Commonwealth nations.

United Kingdom

The *Constitutional Reform Act 2005* and related regulations for judicial discipline use language nearly identical to the Canadian statute. A judge may be removed for "failure in the due execution of office" or for "having been placed, by personal conduct or otherwise, in a position incompatible with the due execution of office".¹⁰ The UK system emphasizes that removal is a measure of last resort, balanced against the need to protect judges from political removal. The "due execution" clause here is often linked to the judicial oath, where the judge swears to "well and truly serve".¹³

Australia

The Australian Constitution (Section 72) restricts removal to "proved misbehaviour or incapacity." While the phrase "due execution" is not explicit in the constitutional text, it is implicit in the definition of misbehaviour. As seen in the *Vasta* and *Einfeld* cases, "misbehaviour" encompasses conduct that renders the judge unfit to execute the functions of the office.¹⁴ The Parliamentary Commission of Inquiry acts as the fact-finding body, analogous to the CJC.¹⁶

New Zealand

New Zealand's *Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004* provides the mechanism for removal. The focus is on conduct that justifies removal, which jurisprudence (like the *Wilson* case) interprets as conduct incompatible with the judicial role.¹⁷

2. The Paradigm of "Failure in the Due Execution of Judicial Office"

This section analyzes jurisprudence where the primary finding was a "failure in due execution" (Section 65(2)(c) / Section 80(c)). This category typically captures failures of **competence**, **diligence**, or **procedural integrity**. It addresses the judge who, while physically present, has functionally abdicated the responsibilities of the office.

2.1 Justice Paul Cosgrove: The Threshold of Incompetence

The inquiry into Justice Paul Cosgrove of the Ontario Superior Court stands as the seminal case defining when "incompetence" crosses the line from an appellate issue to a disciplinary "failure in due execution."

The Factual Matrix: *R. v. Elliott*

Justice Cosgrove presided over the murder trial of *R. v. Elliott*. In a controversial decision in 1999, he stayed the charges against the accused, citing over 150 violations of the *Charter of Rights and Freedoms* by the Crown and police. He awarded legal costs against the Crown. The Ontario Court of Appeal subsequently overturned his decision in a scathing judgment, describing his findings as "ill-founded," "unwarranted," "obsessive," and "completely without foundation".¹⁹

The Inquiry Findings: Global Incompetence

The CJC Inquiry Committee, led by Chief Justice Cullen, was tasked with determining if these legal errors constituted grounds for removal. The Committee distinguished between ordinary legal error (correctable on appeal) and "failure in due execution." They found:

1. **Failure to Control the Trial:** Cosgrove allowed defense counsel to hijack the proceedings, making "inflammatory and rambling submissions" that went virtually unchecked. The judge's failure to maintain order was a "global" incompetence.¹⁹
2. **Baseless Findings:** The Committee noted that in most of the 150 cited Charter breaches, Cosgrove failed to cite specific sections of the Charter or refer to any evidence. This demonstrated a "profound lack of knowledge" or a "suspicious attitude" toward state agents that amounted to an abuse of his judicial power.¹⁹
3. **Statutory Application:** The Committee concluded that this conduct fell squarely under s. 65(2)(c) of the *Judges Act*. By failing to conduct a trial in accordance with the basic rules of evidence and procedure, Cosgrove had "failed in the due execution of judicial office".¹⁹

Insight: The "Independence" Defense Rejected

Cosgrove argued that disciplining a judge for legal findings infringed on judicial independence. The Committee rejected this, establishing that while independence protects good-faith decision-making, it does not immunize a judge from accountability for gross competence failures that deny a fair trial. The "due execution" of the office *requires* competence.¹⁹ Cosgrove resigned prior to the final parliamentary vote.

2.2 Justice Gérard Dugré: The Failure of Diligence

While *Cosgrove* dealt with *bad* decisions, the case of Justice Gérard Dugré (Quebec Superior Court) dealt with *no* decisions. This case illustrates that "due execution" encompasses the duty of diligence.

The Factual Matrix: Chronic Delay and Aggression

Justice Dugré faced a litany of allegations centered on two themes: chronic delays in rendering judgments and an aggressive, undignified temperament in court. Evidence showed he had delayed judgments for years, leaving litigants in limbo. Additionally, he was accused of mocking parties and treating counsel with hostility.²⁰

The Inquiry Findings: Abdication of Duty

The Inquiry Committee found that the office of a judge imposes a positive duty to decide cases.

1. **Delay as Failure:** A judge who hears a case but fails to render a judgment within a reasonable time has failed to execute the primary function of the office. The Committee found Dugré's delays were not merely administrative lapses but a "failure in the due execution of judicial office".²⁰
2. **Misconduct via Temperament:** His aggressive behavior was classified as misconduct.
3. **Cumulative Effect:** The Committee combined these findings, recommending removal. They noted that Dugré had difficulties with timely judgments from the "early stages of his judicial career," suggesting a fundamental incompatibility with the demands of the office.²⁰

Insight: The "Consumer" Perspective

The *Dugré* report is notable for its focus on the litigant's perspective. A "reasonable, fair-minded observer" expects a decision. When a judge fails to deliver that product, the due execution of the office has ceased. Dugré resigned following the recommendation for removal.²⁰

2.3 Justice Andrée Ruffo: Procedural Lawlessness as Failure

Justice Andrée Ruffo of the Court of Quebec provides a stark example of "failure in due execution" stemming from judicial activism that disregards the rule of law.

The Factual Matrix: The "Social Worker" Judge

Justice Ruffo was a family court judge known for her deep empathy for children but also for her disregard for procedural rules. She frequently conducted her own investigations, contacted parties outside of court, and ignored rules of evidence to achieve what she felt was the "right" outcome for the child. This led to numerous complaints from the appellate courts and the bar.²⁰

The Findings: Incompatibility with the Judicial Role

The Supreme Court of Canada, reviewing the recommendation for her removal, affirmed that "judicial independence" is not a license to ignore the law.

1. **Rejection of the Adversarial Model:** Ruffo's conduct fundamentally altered the nature of the judicial office from a neutral arbiter to an active participant. This was a "failure in the due execution" of the office *as defined by law*.²¹
2. **Ethical Breaches:** Her repeated violations of the code of ethics (regarding impartiality and duty to follow the law) constituted misconduct.
3. **Conclusion:** The Court upheld the finding that she was in a position "incompatible" with the office. A judge who refuses to be bound by the constraints of the office cannot validly execute that office.²⁰

3. The Paradigm of "Incompatible with the Due Execution of Judicial Office"

This section analyzes jurisprudence where the primary finding was that the judge was in a position "incompatible" with the office (Section 65(2)(d) / Section 80(d)). This ground is **relational**; it concerns the breakdown of trust between the judge and the community. Even if a judge is technically competent (unlike Cosgrove or Dugré), they may be removed if their presence on the bench offends the "reasonable, fair-minded and informed observer."

3.1 Justice Robin Camp: Bias and the Reasonable Observer

The case of Justice Robin Camp is the definitive modern precedent for the "incompatibility" standard involving social context and bias.

The Factual Matrix: The "Knees Together" Comment

In the 2014 sexual assault trial of *R. v. Wagar*, Justice Camp (then a Provincial Court judge in Alberta, later appointed to the Federal Court) made a series of comments to the 19-year-old Indigenous complainant. He asked, "Why couldn't you just keep your knees together?" and "Why didn't you just sink

your bottom down into the basin so he couldn't penetrate you?" He also referred to the complainant as "the accused" and made comments disparaging sexual assault laws as being too skewed against men.⁹

The Inquiry Analysis: Defining the Ground for Removal

The Inquiry Committee's deliberation on *which* ground to apply is highly instructive for this report.

1. **Rejection of "Failure in Due Execution" (c):** Counsel argued that Camp's conduct was a failure in due execution (similar to Cosgrove). The Committee *disagreed*. They reasoned that "failure in due execution" typically refers to the technical discharge of duties (incompetence, delay). Camp, they noted, presided over the trial and rendered a judgment; his failure was one of *mindset*, not *execution*.⁹
2. **Adoption of "Incompatible Position" (d):** The Committee found that the appropriate ground was subsection (d). His reliance on discredited rape myths and gender stereotypes placed him in a position "incompatible with the due execution of judicial office."
3. **The Reasonable Observer:** The Committee applied the test of the "reasonable, fair-minded and informed observer." They concluded that such an observer, aware of the history of sexual assault law and the vulnerability of complainants, would view Camp's continuation in office as "manifestly and profoundly destructive" to public confidence.⁹

The "Remediation" Argument

Camp argued that his conduct was a result of ignorance, not malice, and that he had undergone extensive education and counseling (the "remediable" defense). The Committee rejected this, finding that the bias demonstrated was so deep-seated that it rendered him "incapacitated" from performing the judicial function of impartial adjudication. The loss of confidence was irretrievable.²⁵ Camp resigned.

3.2 Justice Michel Girouard: Integrity and the "Fatal Compromise"

Justice Michel Girouard's case illustrates that "incompatibility" can arise from conduct *during* the disciplinary process itself.

The Factual Matrix: The Drug Video

Justice Girouard (Quebec Superior Court) was investigated regarding a video that appeared to show him purchasing illicit drugs from a client (he was a lawyer at the time of the alleged incident). The video was soundless and arguably inconclusive. However, during the inquiry, Girouard testified that he had never used or purchased drugs.²⁷

The Inquiry Findings: The Lie as the Removal Ground

The Inquiry Committee was unable to definitively prove the drug transaction due to the quality of the video. However, they found his testimony regarding his drug use to be false.

1. **The "Collateral" Misconduct:** The Committee found that by lying to the Council, Girouard committed a new act of misconduct.
2. **Statutory Application:** The report explicitly stated: "Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*)".²⁸
3. **Fatal Compromise:** The Committee concluded that a judge who lies to the body charged with overseeing judicial integrity has "fatally compromised" his integrity. He was placed in a position "incompatible" with the office because the public cannot trust a judge who is a proven liar.³⁰

Insight: The Self-Inflicted Wound

Girouard might have survived the initial allegation (due to weak evidence), but his lack of candor created a new, irrefutable ground for removal. This affirms that the "due execution" of office includes the duty of transparency and honesty when under scrutiny.

3.3 Justice Theodore Matlow: Political Activity and the "Citizen-Judge"

The case of Justice Matlow (Ontario Superior Court) explores the boundaries of a judge's private life and political rights.

The Factual Matrix: The Thelma Road Dispute

Justice Matlow became involved in a local zoning dispute regarding a development project (Thelma Road) near his home. He spearheaded a community opposition group, met with municipal politicians, and contacted the media (The Globe and Mail) to garner support. Crucially, he later presided over a divisional court panel hearing a case involving the City of Toronto (the "SOS Application") without disclosing his prior adversarial relationship with the City or his ongoing lobbying efforts.³²

The Inquiry Findings: Improper Activism

The Inquiry Committee found his conduct highly problematic:

1. **Acting as Legal Advisor:** Matlow drafted legal documents for the community group. The Committee found he "improperly acted as legal advisor," which was a "failure in the due execution of the office of judge" (prohibited by the *Judges Act*).³⁴
2. **Incompatible Position:** By lobbying the government and then sitting in judgment of it, he placed himself in a position "incompatible with the due execution of the office".³⁴ The "reasonable observer" would perceive a reasonable apprehension of bias.

The Consequence: Sanction vs. Removal

Unlike *Camp* or *Girouard*, Matlow was **not** removed. The CJC (sitting as a whole) accepted the findings of misconduct and incompatibility but diverged on the remedy. They reasoned that Matlow's conduct, while serious, was motivated by a misguided sense of civic duty rather than malice or corruption. They believed public confidence could be restored through a severe reprimand, an apology, and mentorship. This highlights that a finding of "incompatibility" is the *threshold* for removal, but the Council retains discretion if it believes the judge can be rehabilitated.³³

3.4 Justice Lori Douglas: The Intersection of Private Life and Public Office

The inquiry into Associate Chief Justice Lori Douglas (Manitoba Court of Queen's Bench) dealt with the "incompatibility" arising from the dissemination of intimate images.

The Factual Matrix

Explicit photos of Justice Douglas were posted online by her husband (a lawyer) without her consent (though this was a matter of factual dispute regarding her knowledge). The photos were linked to a solicitation for sexual partners involving a client of her husband. The investigation focused on whether the existence of these photos in the public domain rendered her position untenable.³⁶

The Inquiry Issues: "Image" and Incompatibility

The inquiry panel had to grapple with whether a judge could be removed for being the *subject* of a scandal, even if she was a victim of non-consensual distribution.

1. **The Argument:** Inquiry counsel argued that the sheer public availability of the images placed her in a position "incompatible with the due execution of judicial office" because it eroded the dignity of the court.³⁸
2. **Outcome:** The inquiry was bogged down in procedural challenges. Ultimately, Justice Douglas agreed to retire early, and the inquiry was stayed. However, the proceedings highlighted that "incompatibility" can technically be triggered by external factors that destroy the judge's moral authority, irrespective of "misconduct".⁴⁰

4. International Jurisprudence: Comparative "Due Execution"

The Canadian experience is mirrored in other Commonwealth jurisdictions, where functional equivalents of "due execution" and "incompatibility" are used to remove judges.

4.1 Australia: "Proved Misbehaviour" as Functional Incompatibility

Australia uses the constitutional standard of "proved misbehaviour" (Section 72). Jurisprudence confirms this effectively covers the same ground as the Canadian "incompatibility" and "failure in execution."

Justice Angelo Vasta (Queensland)

Justice Vasta is the only superior court judge removed in Australia in modern history.

- **The Conduct:** Vasta was found to have given false evidence at a defamation hearing, made false allegations against the Chief Justice, and engaged in sham tax transactions.¹⁶
- **The Finding:** The Parliamentary Commission of Inquiry concluded that while no single act might have warranted removal, the *cumulative* effect was that he was not a "fit and proper person." The Commission stated his behavior "warranted his removal from office," effectively declaring him incapable of the due execution of his duties. This mirrors the "global failure" seen in *Cosgrove*.¹⁶

Justice Marcus Einfeld (Federal Court)

- **The Conduct:** Justice Einfeld lied to avoid a \$77 speeding ticket, claiming a deceased friend was driving. He perjured himself in court to maintain the lie.
- **The Finding:** Einfeld resigned before formal removal, but he was subsequently convicted of perjury and imprisoned. His case is the archetype of "incompatibility": a judge who breaks the law cannot uphold it. The breach of the "due execution" of his office (integrity) was absolute.⁴³

Justice Tim Carmody (Queensland)

- **The Conduct:** As Chief Justice, Carmody became isolated from his colleagues. He was recorded referring to other judges as "scum" and was perceived as being too close to the executive branch.
- **The Finding:** Carmody resigned after a short, tumultuous tenure. The legal debate centered on whether his lack of support from the bench rendered him "incompatible" with the office of Chief Justice. The consensus was that "due execution" of the leadership role requires the confidence of the court, which he had lost.⁴⁶

4.2 New Zealand: Justice Wilson and Financial Conflict

- **The Conduct:** Supreme Court Justice Bill Wilson sat on a Court of Appeal panel deciding a case involving a lawyer to whom he owed a substantial debt. He failed to disclose the full extent of this financial relationship.
- **The Finding:** The Judicial Conduct Commissioner recommended a panel be convened, finding the non-disclosure raised questions about his integrity that could warrant removal.
- **The Argument:** Wilson challenged the legality of the panel, arguing his conduct wasn't "serious enough." The High Court rejected this, affirming that integrity and disclosure go to the heart of "due execution." He resigned to avoid the full inquiry.¹⁷

5. Provincial Tribunals: The Ontario and Quebec Experience

Provincial judicial councils in Canada (governing provincial court judges and justices of the peace) operate under statutes that closely mirror the federal *Judges Act*. These tribunals have generated significant case law on "due execution."

5.1 Ontario: *Courts of Justice Act*

Section 51.4 of the Ontario *Courts of Justice Act* allows for removal if a judge is "incapacitated or disabled from the due execution of his or her office by reason of... conduct that is incompatible with the due execution of his or her office".⁵⁰

Justice Lesley Baldwin

- **Context:** A former Crown Attorney appointed as a judge, Baldwin wrote a letter to the Attorney General on judicial letterhead advocating for policy changes regarding domestic violence.
- **Analysis:** The complaint alleged this was "incompatible with the due execution" of her duties (blurring executive/judicial lines). The OJC found that while ill-advised, it did not warrant removal because she had received permission from her Chief Justice to sit on a related committee, creating ambiguity about her role.⁵³

Justice of the Peace Anna Mae Gibbon

- **Context:** Gibbon was removed in 2023 for misconduct including incredible testimony during a prior conduct hearing.
- **Analysis:** The panel found she had "become incapacitated or disabled from the due execution of her office by reason of conduct that is incompatible with the due execution of her office." Her refusal to acknowledge her errors and her lack of candor rendered her unfit.⁵⁵

Justice of the Peace Jorge Barroilhet

- **Context:** Barroilhet faced complaints regarding his conduct.
- **Analysis:** The Review Council explicitly linked the test for removal to the federal standard, citing *Ruffo* and establishing that "public confidence" is the heart of the inquiry into "due execution".⁵⁶

5.2 Quebec: Courts of Justice Act

The Quebec *Courts of Justice Act* (Section 95 and related sections) governs the *Conseil de la magistrature*.

- **Integrity as the Standard:** As seen in *Ruffo* and *Therrien*, the Quebec courts have rigorously applied the "incompatible position" test. In *Therrien*, the Quebec Court of Appeal (affirmed by SCC) held that a judge with a hidden criminal past is structurally incompatible with the office, regardless of their current behavior. The "due execution" of the office requires a biography that can withstand public scrutiny.²¹

6. Synthesis: Determining the Thresholds for Removal

Based on the exhaustive review of the jurisprudence, clear definitions for the statutory terms emerge. Table 1 synthesizes the operational definitions of the two primary grounds.

Table 1: Operational Definitions of Removal Grounds

Statutory Ground	Focus	Key Question	Leading Case Examples
Failure in Due Execution (s. 80(c))	Functional Performance	<i>Is the judge doing the job effectively and legally?</i>	Cosgrove: Incompetence/Loss of Control Dugré: Chronic Delay/Refusal to Decide Ruffo: Procedural Lawlessness
Incompatible Position (s. 80(d))	Relational Trust	<i>Does the public trust the judge to be impartial and honest?</i>	Camp: Manifest Bias (Sexual Assault) Girouard: Dishonesty/Lack of Candor Matlow: Political Activism/Bias

Statutory Ground	Focus	Key Question	Leading Case Examples
			Therrien: Hidden Criminal Past

6.1 The Role of Remediation

A critical insight from the *Matlow* and *Camp* comparisons is the role of remediation.

- Matlow** survived because the Council believed his "incompatibility" (political activism) could be cured by a reprimand and instruction. He had not lost the *capacity* to be fair, he had just strayed from the path.
- Camp** was removed (recommended) because the Council believed his "incompatibility" (gender bias) was intrinsic to his worldview. No amount of "sensitivity training" could assure the "reasonable observer" that he would not revert to those views in the privacy of his deliberation room.

6.2 The "Fatal Compromise" of Dishonesty

The cases of *Girouard*, *Einfeld*, and *Gibbon* establish a hard line: **Dishonesty is fatal**. A judge may survive incompetence (if not gross), delay (if corrected), or even bias (if minor), but a judge who lies to the disciplinary body commits a fresh act of "failure in due execution" that is instant grounds for removal. The judicial office is built entirely on the currency of truth; a judge who counterfeits that currency is instantly "incompatible."

7. Conclusion

The jurisprudence surrounding "failure in the due execution of judicial office" reveals a high but distinct bar for removal. It is not a tool for punishing unpopular decisions or minor lapses in decorum. Rather, it is the statutory emergency brake used when the judge has effectively abdicated the role.

- "Failure in Due Execution"** captures the judge who *cannot* or *will not* perform the functions of the office. This includes the incompetence of *Cosgrove*, the sloth of *Dugré*, and the lawlessness of *Ruffo*.
- "Incompatibility"** captures the judge who has lost the moral authority to sit. This includes the biased observer in *Camp*, the deceitful witness in *Girouard*, and the political actor in *Matlow*.

As statutory frameworks modernize (e.g., Bill C-9), the language of "incompatibility" and the "reasonable observer" is becoming the dominant standard, reflecting a shift towards viewing judicial legitimacy through the eyes of the public. The "due execution" of the judicial office, ultimately, is not just about writing judgments—it is about embodying the impartiality and integrity that gives those judgments weight.

Table of Cases Cited

Case Name	Jurisdiction	Key Statutory Ground Cited	Outcome
<i>Cosgrove</i>	Canada (Fed)	Failure in due execution (Incompetence)	Resigned (Rec. Removal)
<i>Camp</i>	Canada (Fed)	Incompatible position (Bias)	Resigned (Rec. Removal)
<i>Girouard</i>	Canada (Fed)	Failure in due execution (Lying)	Rec. Removal

Case Name	Jurisdiction	Key Statutory Ground Cited	Outcome
<i>Dugré</i>	Canada (Fed)	Failure in due execution (Delay)	Resigned (Rec. Removal)
<i>Matlow</i>	Canada (Fed)	Incompatible position (Politicization)	Sanctioned (Not Removed)
<i>Douglas</i>	Canada (Fed)	Incompatible position (Image/Photos)	Resigned (Stayed)
<i>Ruffo</i>	Quebec	Incompatible position (Disregard for law)	Removed
<i>Therrien</i>	Quebec	Incompatible position (Criminal record)	Removed
<i>Baldwin</i>	Ontario	Incompatible position (Exec. relations)	Complaint Dismissed
<i>Gibbon</i>	Ontario (JP)	Incompatible position (Dishonesty)	Removed
<i>Vasta</i>	Australia (Qld)	Misbehaviour (False evidence)	Removed
<i>Einfeld</i>	Australia (Fed)	Misbehaviour (Perjury)	Resigned/Convicted
<i>Wilson</i>	New Zealand	Misconduct (Non-disclosure)	Resigned

To the public and for the public



Mr. Kevin A. McLean (BA, JD, CIM)