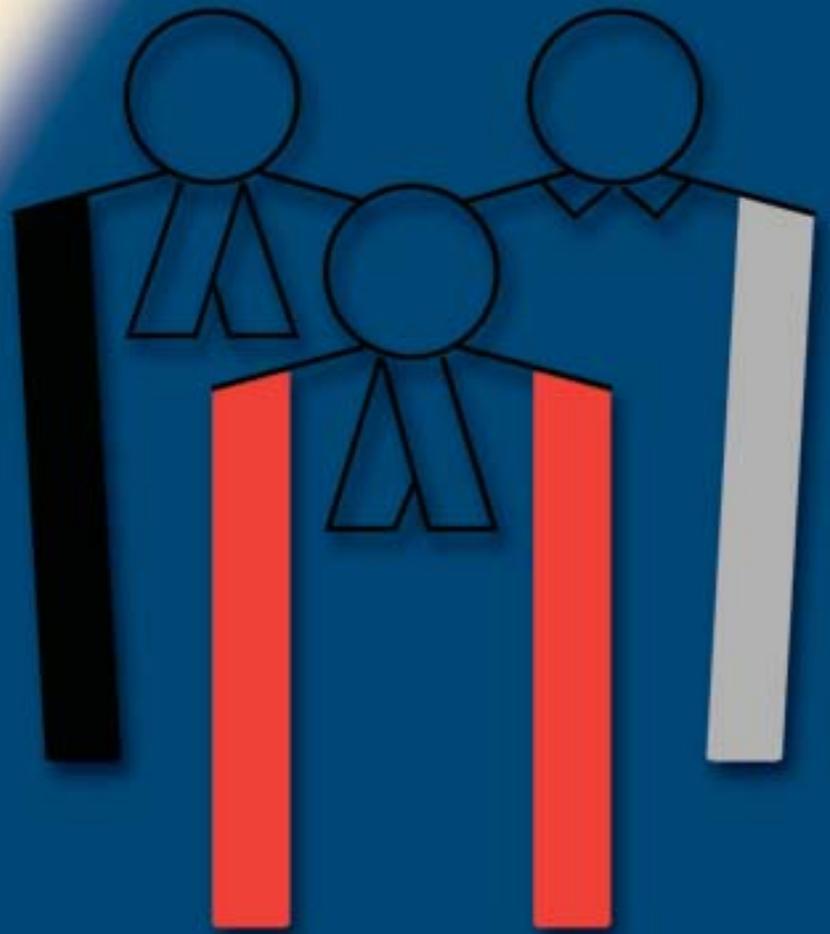


2001•2002

Activity Report



Conseil de
la magistrature
du Québec

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2001•2002

Activity Report

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Legal Deposit — Bibliothèque nationale du Québec, 2002

ISBN 2-550-39526-3



Message from the President

The Conseil de la magistrature is pleased to table its activity report for the 2001-2002 budgetary year. This report presents the main activities pursued by the Conseil to ensure that judicial ethics are respected and that judges have the appropriate tools to maintain and develop their skills.

The Conseil's main role is to ensure compliance with judicial ethics. In carrying out this responsibility, the Conseil helps, in its own way, to maintain public trust in the judiciary and in the administration of justice.

In fact, the Conseil's examination of complaints regarding judges' conduct is one way of reinforcing the principle of judicial independence, which guarantees citizens that they will be heard by impartial judges who are free from any and all influence. Our legal system is based on the rule of law and it is important for the public to have trust in the judiciary and in the way that justice is rendered.

In this regard, judicial ethics and judicial independence share the same goal. This trust that must be sought requires that judges behave in an exemplary manner, with dignity and serenity.

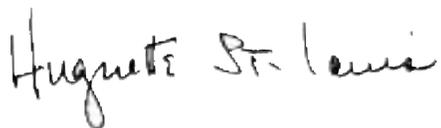
We should bear in mind that an institution is legitimate only if it enjoys public trust. While not being its sole embodiment, the judiciary is nevertheless the pillar of the administration of justice. Whenever judgment is passed on the credibility of the administration of justice, it reflects on the judiciary.

It is in this context that the Conseil intervenes. Composed primarily of judges (eleven judges plus two persons from the Barreau du Québec and two others from the public), the Conseil is the body to which citizens can file complaints about judges' conduct.

When the Conseil is called upon to intervene, it does so taking into account the basic goal of judicial ethics, which is to ensure that citizens have trust in the judicial system.

I can assure you that the members of the Conseil make every effort to help maintain public trust in judicial institutions, and hence in the administration of justice as a whole. The members also strive to handle complaints seriously and thoroughly, in keeping with judges' procedural rights.

In closing, I would like to mention, once again, how proud I am to be a member of the judiciary and to be working with a group of competent people who consider the quality of justice to be the ultimate goal.

A handwritten signature in black ink that reads "Huguette St-Louis". The signature is written in a cursive style with a large initial 'H'.

Huguette St-Louis
Chief Judge of the Court of Québec
President of the Conseil de la magistrature

Québec City, November 2002

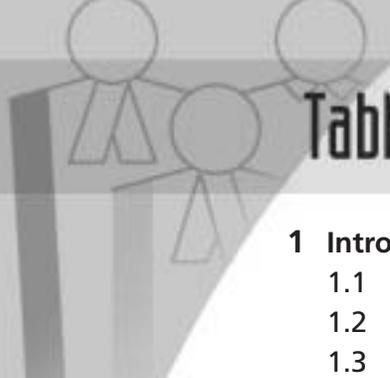
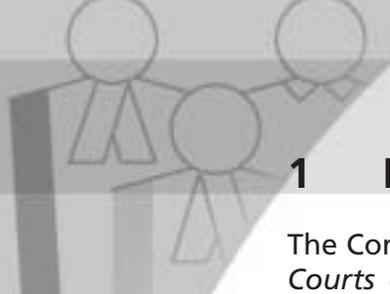


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1 Introduction of the Conseil de la magistrature

The Conseil de la magistrature du Québec was created in 1978 under the *Act to amend the Courts of Justice Act and the Code of Civil Procedure and instituting the Conseil de la magistrature* (Chapter T-16 of the Revised Statutes of 1977).

The Act instituting the Conseil de la magistrature was proclaimed on July 19, 1978. As at March 31, 2002, the Act stipulated that the Conseil shall consist of 15 members, plus a lawyer who acts as Secretary. Three additional employees assist the Conseil in its functions. The list of Conseil members and staff is presented in Appendix I.

The head office of the Conseil is located at the Palais de justice in Québec City, with other offices at the Palais de justice in Montréal.

1.1 Jurisdiction

The Conseil's jurisdiction is granted under the *Courts of Justice Act*. The pertinent sections are listed in Appendix II.

The Conseil's functions are as follows:

- to organize continuing education programs for judges;
- to adopt a judicial code of ethics;
- to receive and examine any complaint lodged against a judge;
- to conduct an inquiry when requested by the Minister of Justice, with the goal of determining the permanent incapacity of a judge or the end of such incapacity;
- to confirm or annul the recommendation of the Chief Judge of the Court of Québec concerning the modification of a judge's appointment regarding his place of residence or the decision to transfer the judge to another division;
- to promote the efficiency and standardization of procedure before the courts;
- to receive suggestions, recommendations and requests regarding the administration of justice, to study them and to make the appropriate recommendations to the Minister of Justice;
- to cooperate with any body pursuing similar purposes outside Québec.

With respect to continuing education and ethics, the Conseil has jurisdiction over all provincially appointed judges, namely, the judges of the Court of Québec, the Human Rights Tribunal, the Professions Tribunal, the Labour Court and the Municipal Courts. As at March 31, 2002, about 400 judges were under the jurisdiction of the Conseil.

As for Justices of the Peace with expanded judicial powers, the Conseil has jurisdiction over ethical matters only. However, the government provides the Conseil with the necessary funds for the purchase of their legal documentation.



1.2 Composition of the Conseil and Appointment of Members¹

As at March 31, 2002, the Conseil was composed of the following 15 members:

- the Chief Judge of the Court of Québec;
- the Senior Associate Chief Judge of the Court of Québec;
- the three Associate Chief Judges of the Court of Québec;
- one of the Chief Judges of the Municipal Courts of the cities of Laval, Montréal or Québec;
- one judge chosen among persons exercising the functions of Chief Judge of the Labour Court, President of the Human Rights Tribunal, or President of the Professions Tribunal;
- the Chief Judge of the Municipal Courts of Québec, other than those of the cities of Laval, Montréal or Québec;
- two judges chosen among the judges of the Court of Québec or the Municipal Courts of the cities of Laval, Montréal or Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- one judge chosen among the judges of the Municipal Courts other than those of the cities of Laval, Montréal or Québec City and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
- two lawyers appointed upon the recommendation of the Barreau du Québec;
- two persons who are neither judges nor lawyers.

The Chief Judge, the Senior Associate Chief Judge, the three Associate Chief Judges of the Court of Québec and the Chief Judge of the Municipal Courts of Québec are all ex-officio members of the Conseil. The other members are appointed by the Government of Québec for a term of no more than three years. At the end of their mandate, these members remain in office until they are replaced or re-appointed.

As stipulated in the *Courts of Justice Act*, the Chief Judge of the Court of Québec is the President of the Conseil and the Vice-President of the Conseil is elected by the Conseil among its members.

Finally, the members of the Conseil who are not judges receive a remuneration as determined by the government. Nevertheless, all members have the right to be reimbursed for expenses incurred in the performance of their duties.

1.3 Operating Structure

The members of the Conseil de la magistrature do not act on a full-time basis. They meet approximately once every five weeks, upon notification by the President. During their meetings, the members examine complaints and any other matters brought to their attention. The quorum of the Conseil is eight members, including either the President or the

1. Section 48 of the *Act to amend the act respecting municipal courts, the Courts of Justice Act and other legislative provisions* (2002 c. 21) came into effect on July 1, 2002. This section amends section 248 of the *Courts of Justice Act* concerning the composition of the Conseil. This issue will be addressed in section 5.1 of this report.



Vice-President. The Conseil can hold its meetings in camera anywhere in Québec. During the 2001-2002 budgetary year, the members of the Conseil met eleven times.

The Conseil may adopt bylaws to facilitate its internal governance or to create committees and determine their functions. The Conseil has adopted an internal bylaw that generally governs the administration and operation of the Conseil. The internal bylaw is reproduced in Appendix III.

This bylaw notably call for the creation of an Executive Committee composed of five members of the Conseil, including the President and the Vice-President of the Conseil. The other members are designated by the Conseil for a term that it determines. The list of Executive Committee members is reproduced in Appendix IV.

The Executive Committee has the following mandate:

- examine the matters and execute the mandates which are entrusted to it by the Conseil and then report to the Conseil;
- examine, at the request of the President of the Conseil, certain matters in order to make recommendations;
- examine and make decisions on administrative matters between meetings of the Conseil, and to submit its decisions for approval at the next meeting of the Conseil.

The quorum of the Executive Committee is three members, including the President or the Vice-President. The Secretary of the Conseil also acts as the Secretary of the Executive Committee. He prepares the notice of meeting and writes up and signs the minutes of the meetings, which are then tabled at the meetings of the Conseil. During the 2001-2002 budgetary year, the Executive Committee met once.

The minutes of the meetings of the Conseil or any of its committees are deemed official once they have been approved by the members of the Conseil or by the Executive Committee, as the case may be. The same applies to any documents or copies that are issued by the Conseil or are part of its archives, provided they are certified by the President or the Secretary.

The President appoints the Secretary for a five-year term, from among lawyers who have been a member of the Order of Advocates for no less than ten years, and from members of the public service.

The government determines the salary, benefits and other working conditions of the Secretary. From the time of his appointment, the Secretary ceases to be subject to the *Public Service Act*; he remains on leave without pay for the duration of the mandate, in order to carry out the duties of his office.

The Secretary exercises his functions on an exclusive basis, under the authority of the President. At the end of the term, he remains in office until he is replaced or re-appointed.

The Secretary attends meetings of the Conseil, writes up the minutes, follows up on the different files, and ensures that the Conseil is running smoothly.

Finally, the staff members of the Conseil, other than the Secretary, are appointed and receive a remuneration in accordance with the *Public Service Act*.



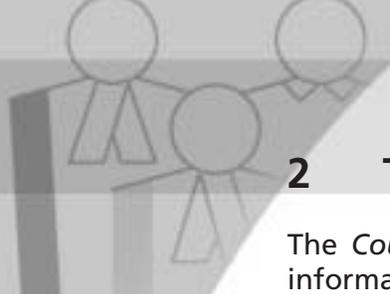
1.4 Financing Method

According to the *Courts of Justice Act*, the funds required for the Conseil to accomplish its mission are taken from the consolidated revenue fund.

In its operating activities and those related to judicial ethics, the Conseil therefore enjoys total financial independence. Consequently, it cannot be influenced by budgetary constraints in its decision-making.

However, the government determines the minimum amounts, which must be approved by the Minister of Justice for the Conseil to be able to incur an expense pertaining to the continuing education of judges.

During the 2001-2002 budgetary year, the training and continuing education budget was established at \$1,087,300.



2 Training and Continuing Education

The *Courts of Justice Act* gives the Conseil de la magistrature the mandate to establish information, training, continuing education and retraining programs for judges from the courts and tribunals under the legislative authority of Québec and appointed by the government. Moreover, section 3 of the codes of ethics for full-time judges and part-time municipal court judges states that a judge is obligated to maintain his professional competency.

The budget set aside for training and continuing education programs is meant to meet the judges' needs with respect to legal documentation and training activities. A portion of this budget is allocated for the purchasing of legal documentation needed by judges. A second portion of the budget is used by the courts and tribunals to organize their training activities, while the last portion is designated for activities offered to all judges of the courts and tribunals.

2.1 Legal Documentation

The funding policy regarding legal documentation recognizes that specific needs may exist for certain regions and jurisdictions exercised by judges. According to this policy, chief judges and presidents of tribunals receive an overall budget based on amounts determined by the Conseil, taking into consideration the various matters to be handled by the judges.

In 2001-2002, the Conseil allocated slightly more than \$600,000. for the purchase of legal documentation, representing more than half of its training and continuing education budget.

2.2 Training and Continuing Education Activities Organized by the Courts and Tribunals

The Conseil de la magistrature entrusts the organization of training and continuing education activities to the courts and tribunals. It allocates a budget to a court or tribunal, prorated according to its number of judges. An additional sum is allocated to judges who exercise their jurisdiction concurrently in the Court of Québec and in a specialized tribunal. The courts and tribunals manage these budgets, except for those allocated for second language courses and the training session for newly appointed judges in criminal matters organized by the Canadian Association of Provincial Court Judges. These budgets are administered by the Conseil.

The funds for the participation of judges in symposiums and conferences not organized by the courts and tribunals themselves are paid to each court or tribunal. The Conseil has established a rule that no more than ten percent of the budget which has been so allocated to a court or tribunal can be used for such external training.

In order to allow for more flexibility in budgetary allocations, the Conseil has decided to create a reserve fund to enable it to respond to certain requests or to resolve specific situations at the start of or during the budgetary year. This reserve fund allows the Conseil to take into account the situation of courts or tribunals with fewer judges.

With respect to Québec municipal court judges, the budget for training and continuing education covers both legal documentation and training activities.

The following sections present the various training and continuing education programs



implemented during the 2001-2002 budgetary year.

It should be noted that the programs set up by the courts and tribunals were made possible not only with the help of the budget allocated to the Conseil, but also with the considerable and immeasurable support of many judges who agreed to offer a portion of their time and expertise to help develop and disseminate educational programs.

2.2.1 Court of Québec

2.2.1.1 Jurisdiction

The Court of Québec consists of different divisions: the Civil and Administrative Division – which includes the Small Claims Division – the Criminal and Penal Division, and the Youth Division.

The Court of Québec, which is composed of no more than 270 judges, is under the supervision of a Chief Judge, assisted by a Senior Associate Chief Judge and three Associate Chief Judges responsible for each division. Ten coordinating judges and eight associate coordinating judges advise and assist the Chief Judge in the functions pertaining to the distribution of cases and the scheduling of Court sessions, as well as the assignment of judges according to the regions under their responsibility.

Judges appointed to the Human Rights Tribunal, the Professions Tribunal and the Labour Court are selected from the Court of Québec.

As at March 31, 2002, the Court of Québec was composed of 255 judges.

2.2.1.2 Training and Continuing Education

To carry out the Court's training activities, the Chief Judge of the Court of Québec designates one judge responsible for training. The judge holds this position on a full-time basis and has a three-year mandate. Other than distributing the relevant training information to the members of the Court, the judge in charge of training is also responsible for developing the annual training program, determining its implementation costs, developing and organizing activities to meet expressed needs, recruiting the human resources required to carry out these activities, and preparing an annual report. In the case of regional activities, he works in conjunction with the coordinating judges.

In addition, the Chief Judge has created an advisory committee that counsels the Chief Judge on matters involving training. This committee is composed of ten members: the judge responsible for training, who chairs the committee, the three associate chief judges, and six other judges who deal with different subjects (two for civil matters, two for youth affairs, and two for criminal and penal issues). This committee advises the Chief Judge on all matters concerning training and assists the judge responsible for training in carrying out his functions.

During the 2001-2002 budgetary year, the Court of Québec organized numerous training activities, including:

- two seminars on conducting a trial
- two seminars on judgments;
- a seminar on retirement planning;
- a seminar on tax law;
- a training session on criminal law;



- a training session on youth law;
- a training session for instructors;
- a training session on judicial conciliation;
- two initial training sessions for newly appointed judges;
- thirteen periodic training sessions given on a regional basis.

The periodic training sessions concentrated on the following areas:

- appeal criteria the decisions of administrative tribunals;
- appraisal of testimony;
- breach of security pertaining to the contractor and his property in civil liability;
- computer crimes;
- expert qualification and assessment of expert report;
- organized crimes legislation;
- presumption of innocence and reasonable doubt;
- real estate brokerage;
- reconciliation of the parties by the judge;
- right to privacy;
- witness credibility: psychological aspects.

2.2.2 Human Rights Tribunal

2.2.2.1 Jurisdiction

The Human Rights Tribunal is a specialized judicial tribunal. It has jurisdiction over matters concerning discrimination, exploitation of the elderly and people with disabilities, and affirmative action programs.

The Commission des droits de la personne et des droits de la jeunesse can go before the tribunal to defend a victim of discrimination or exploitation. It is therefore the Commission that pleads the case and pays the legal fees.

The Human Rights Tribunal is composed of at least seven members, including the President and the assessors, who are all appointed by the government. The President is chosen, after consultation with the Chief Judge of the Court of Québec, from the judges of this Court who have experience, expertise, sensitivity, and an ardent interest in matters concerning human rights and freedoms.

As at March 31, 2002, not including the President, the Tribunal was composed of two judges, who perform their duties concurrently with the Court of Québec, and ten assessors, who were selected according to a procedure established by government regulation.

2.2.2.2 Training and Continuing Education

During the 2001-2002 budgetary year, the Human Rights Tribunal held two summits that addressed the following topics:

- inclusion of same-sex spouses in the definition of marriage;
- discrimination against women;
- protection of employee privacy at time of hiring and in the course of employment;



- protection of personal information;
- right to equal treatment at the workplace;
- women in the labour market.

2.2.3 Professions Tribunal

2.2.3.1 Jurisdiction

The Professions Tribunal principally hears appeals of decisions rendered by the disciplinary committees of the various professional corporations.

The Professions Tribunal consists of eleven judges from the Court of Québec designated by the Chief Judge of the Court of Québec. The Chief Judge appoints a President and a Vice-President from amongst them.

As at March 31, 2002, excluding the President, this Tribunal was composed of ten judges, including a Vice-President, who perform their duties concurrently with the Court of Québec.

2.2.3.2 Training and Continuing Education

During the 2001-2002 budgetary year, the Professions Tribunal held three days of training where the following subjects were discussed:

- implicit or extended confidentiality of professional secrecy;
- jurisdiction of the disciplinary committee;
- payment of disbursements: sanction?;
- withdrawal of complaint or guilty plea;
- witness credibility in appeal cases.

2.2.4 Labour Court

2.2.4.1 Jurisdiction

The Labour Court has jurisdiction in administrative and penal matters. In administrative matters, the Court has exclusive jurisdiction and serves primarily as the appeal board of last resort for the final decisions of the labour commissioners, notably in matters of union accreditation, labour standards, dismissal and other disciplinary measures. The Court also has direct jurisdiction over applications under the *Pay Equity Act* and appeals of decisions made by the Commission de l'équité salariale (Commission for Pay Equity) and the President of the Commission de la construction (Building Commission), in accordance with the *Act respecting labour relations in the construction industry*.

Furthermore, the Labour Court is the court of first instance in cases stipulated in the *Labour Code*. In particular, the Court can authorize an employee, upon dismissal or a disciplinary sanction, to submit a claim for arbitration when his union refuses to do so for reasons those are unjustified according to the Code.

In penal matters, the Court has exclusive jurisdiction, in the first instance, to rule on cases concerning violations of the *Labour Code*, the *Act respecting occupational health and safety* and the *Act respecting industrial accidents and occupational diseases*.



Section 4 of the Act to amend the Labour Code and instituting the Commission des relations du travail and to amend other legislative provisions (2001, c. 49) stipulates that, beginning on January 1, 2002, the Chief Judge of the Court of Québec shall also preside over the Labour Court until it ceases to perform its assigned duties.

Section 16 of the *Act to amend the Court of Justice Act, the Act respecting municipal courts and other legislative provisions* (2002, c. 32) stipulates that the chief judge of the Court of Québec may, in ensuring the smooth running of the affairs of the Labour Court, assign judges from the Court of Québec for a period he shall determine. This provision came into force on June 14, 2002.

As at March 31, 2002, the Labour Court was composed of five judges, including an Associate Chief Judge.

2.2.5 Municipal Court of Laval City

2.2.5.1 Jurisdiction

The Municipal Court of Laval City has jurisdiction in penal matters over statutory violations of municipal bylaws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction in accordance with section XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000. with the exception of residential properties.

Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Laval City.

As at March 31, 2002, the Municipal Court of Laval City was composed of three judges; the position of Chief Judge is vacant.

2.2.5.2 Training and Continuing Education

In 2001-2002, the judges of the Municipal Court of Laval City participated in periodic training sessions for judges of the Criminal and Penal Division of the Court of Québec. These sessions dealt notably with suspended imprisonment, proceeds from crime and communication of evidence.

2.2.6 Municipal Court of Montréal City

2.2.6.1 Jurisdiction

The Municipal Court of Montréal City has jurisdiction in penal matters over statutory violations of municipal bylaws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction under section 469 of parts XIV and XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000. with the exception of residential properties.



Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Montréal City.

As at March 31, 2002, the Municipal Court of Montréal City was composed of 15 judges, including an Associate Chief Judge; the position of Chief Judge is vacant.

2.2.6.2 Training and Continuing Education

In 2001-2002, the judges of the Municipal Court of Montréal City participated in periodic training sessions for judges of the Criminal and Penal Division of the Court of Québec. These sessions dealt notably with neighbour-related problems, therapy centers and witness credibility.

2.2.7 Municipal Court of Québec City

2.2.7.1 Jurisdiction

The Municipal Court of Québec City has jurisdiction in penal matters over statutory violations of municipal bylaws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction under section 469 of parts XIV and XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000. with the exception of residential properties.

Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Québec City.

As at March 31, 2002, the Municipal Court of Québec City was composed of the Chief Judge and part-time judges; there is one vacancy for a judge.

2.2.7.2 Training and Continuing Education

In 2001-2002, one judge from the Municipal Court of Québec City participated in a periodic training session for judges of the municipal courts of Québec. These sessions dealt notably with drivers' obligations in case of accident, and suspended imprisonment.

2.2.8 Municipal Courts of Québec

2.2.8.1 Jurisdiction

The Municipal Courts of Québec, other than those of the cities of Laval, Montréal and Québec City, are governed by the *Act respecting municipal courts*. They have jurisdiction in penal matters over statutory violations of municipal bylaws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. These courts also exercise their jurisdiction in accordance with section XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the courts have jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000. with the exception of residential properties.



As at March 31, 2002, there were 87 of these courts across Québec, composed of 90 judges, including a Chief Judge.

2.2.8.2 Training and Continuing Education

In 2001-2002, the Municipal Courts held several training activities that included the following:

- five regional seminars;
- four computer training courses;
- two symposiums;
- a day's retreat on ethics and trial proceedings;
- a seminar on criminal law;
- a seminar on the writing of judgments;
- a training session for newly appointed judges.

These activities addressed the following issues:

- decision-making process;
- drivers' obligations in case of accident;
- limits of power of arrest and detention;
- means of defence in penal matters;
- right to remain silent and right to a lawyer;
- sentencing;
- suspended imprisonment;
- unrepresented parties in the judicial system.

2.3 Other Training and Continuing Education Activities

2.3.1 Specialized Training in Criminal Matters for Newly Appointed Judges

Each year, the Canadian Association of Provincial Court Judges, in conjunction with the provinces, organizes a specialized training session on criminal matters for newly appointed judges.

During the 2001-2002 budgetary year, the training session was held in Québec City, from April 20 to April 27, 2001. During this activity, in which 12 judges of the Court of Québec and one judge from the Municipal Court of Québec City participated, the following topics were discussed:

- "Under the influence" violations;
- discovery of facts and credibility theory;
- exclusion of evidence;
- insanity of an accused;
- means of defence in criminal and regulatory law;
- operation of the breathalyser;
- practical aspects of post-verdict decisions;



- racial and social discrimination and the courts;
- rights guaranteed by the Charter of Rights and Freedoms;
- rules of evidence;
- verbal and written judgment;
- Young Offenders Act.

2.3.2 Second Language Courses

The Conseil de la magistrature also oversees second language training for judges. In 1997, it entered into an agreement with the Office of the Commissioner for Federal Judicial Affairs which is responsible for organizing private or semi-private second language courses.

During the 2001-2002 budgetary year, the Conseil adopted a new training program focused more on the performance of judicial functions and on facilitating the continuous improvement of judges. The purpose of this program is to ensure that judges are able to understand and express themselves orally in English, in order to preside over inquiries and court cases. It is also intended to help them in writing decisions in English.

It is up to chief judges and presidents of courts and tribunals to recommend to the Conseil the names of judges to be included in the program. This recommendation must take into account the regular use of the English language in the performance of judicial functions.

The Conseil has approved the candidacy of 40 judges and the new courses will begin in September 2002.

2.3.3 Participation in External Symposiums

In addition to the training provided by the courts and tribunals, the judges participate in training programs offered by various organizations. The costs of these activities are assumed by the courts and tribunals from their allocated budgets.

The Conseil establishes the criteria for selecting the judges for such activities. These criteria can be found in Appendix V.

During the 2001-2002 budgetary year, 33 judges participated in the following activities:

- Symposium organized by the Barreau du Québec, entitled “Symposium on Recent Developments in Ethics, Professional and Disciplinary Law”, Montréal, April 2001 (one judge);
- Symposium organized by the Société de criminologie du Québec, entitled “Does the Face of Crime Change?”, Sainte-Adèle, May 2001 (two judges);
- Symposium organized by the National Judicial Institute, entitled “Genetics, Ethics and Law”, Montréal, June 2001 (two judges);
- Symposium organized by the International Academy of Law and Mental Health, entitled “26th International Conference on Law and Mental Health”, Montreal, July 2001 (three judges);
- Symposium organized by the Federation of Law Societies of Canada, entitled “National Criminal Law Program”, Charlottetown, July 2001 (three judges);



- Symposium organized by the National Judicial Institute, entitled “Hearing and Ruling on Charter-Based Cases”, Montebello, August 2001 (two judges);
- Symposium organized by the Canadian Institute for the Administration of Justice, entitled “Citizenship and Participation in the Administration of Justice”, Halifax, October 2001 (one judge);
- Symposium organized by the Canadian Bar Association – Alberta Branch, entitled “Negotiating the Future”, Calgary, November 2001 (two judges);
- Symposium organized by the Institut québécois de la déficience intellectuelle, entitled “Intellectual Deficiency: Reception and Treatment Within the Judicial System”, Montréal, November 2001 (three judges);
- Symposium organized by the National Judicial Institute, entitled “Challenge of Managing Proceedings in the Unified Family Courts”, Toronto, February 2002 (three judges);
- Symposium organized by the National Judicial Institute, entitled “Mentoring in the Judiciary”, Ottawa, March 2002 (three judges);
- Symposium organized by the National Judicial Institute, entitled “Penal Law: Enigma and Dilemma”, Vancouver, March 2002 (eight judges).

2.3.4 Visiting Trainee Judge

The Conseil de la magistrature welcomed a trainee judge from the École nationale de la Magistrature de France, for a two-month internship organized by the judge responsible for training at the Court of Québec.

The internship focused on the following matters:

- disclosure of evidence;
- launching a criminal procedure;
- preliminary investigation;
- role of probation officers;
- sentencing.

During this period, the trainee judge was able to interact with judges working in the various divisions of the Court of Québec and to attend hearings.



3 Ethics

3.1 Codes of Ethics¹

Two codes of ethics determine the rules of conduct and the duties of provincially appointed judges toward the public, litigants and lawyers. One code is for full-time judges and the other is for part-time municipal court judges. Furthermore, part-time municipal court judges are bound, under the *Act respecting municipal courts* (c. C-72.01), to respect the rules set forth in section 45 of the Act. The codes of ethics and section 45 are presented in Appendix VI.

The rules of ethics were developed for an independent judiciary, in that they do not dictate standards to judges, but simply establish general principles relating to their conduct which are intended as a reference tool for judges.

The Conseil evaluates the conduct of judges according to these general principles. The Conseil and, where applicable, its inquiry committees, are called upon to clarify these principles during the examination of a complaint.

In a case which it examined in 1995, the Supreme Court of Canada said the following:

Ethical rules are meant to aim for perfection. They call for better conduct not through the imposition of various sanctions but through compliance with personally imposed constraints. A definition, on the other hand, sets out fixed rules and thus tends to become an upper limit, an implicit authorization to do whatever is not prohibited².

3.2 Complaints Process

Anyone can file a complaint against a judge. The complaint must be made in writing to the Secretary of the Conseil, and must state the facts relating to the judge's wrongdoing and any other relevant circumstances. The Secretary of the Conseil then forwards an acknowledgement of receipt to the complainant and a copy of the complaint to the judge.

The complaint is examined by the members of the Conseil. If at this stage, additional information is required, the Conseil may assign someone to obtain all the necessary information and to report to the Conseil. The complainant and the judge are then informed of the Conseil's proceedings. For example, if the incident warranting the complaint took place during a hearing, the designated person will be able to request a complete copy of the file from the court as well as a copy of the court recordings.

If the complaint was filed by a member of the Conseil, this individual cannot participate in the examination of the complaint.

After examining the complaint, if the Conseil finds that it is unfounded or that its nature and importance do not justify an inquiry, the Conseil then advises the complainant and the judge of its decision, along with the grounds for such decision.

If the Conseil decides that the complaint warrants an inquiry, it forms a committee consisting of five individuals. It should be noted that when a complaint is filed by the Minister of Justice, the Conseil must form a committee to conduct an inquiry.

An inquiry committee can be made up of current and past members of the Conseil. This committee must consist of at least three members of the Conseil, one of whom is designated

1. Section 49 of the *Act to amend the Act respecting municipal courts, the courts of Justice Act and other legislative provisions* (2002, c.21) came into effect on July 1, 2002. This section amends section 262 of the *Courts of Justice Act* with respect to the codes of ethics. This issue is addressed in section 5.1 of this report.

2. *Ruffo v. Conseil de la magistrature et al.*, [1995] 4 S.C.R. 316, 332-333.



as Chair, and no more than two past members. The quorum of the committee is three members.

For the purpose of the inquiry, the members of this committee are vested with the powers and immunities of commissioners appointed under the *Act respecting commissions of inquiry*, except for the power of imprisonment.

As prescribed by the *Courts of Justice Act*, the inquiry committee forwards a copy of the complaint to the judge. Within 30 days thereafter, the committee summons the judge in question and the complainant to appear at the inquiry. It also advises the Minister of Justice and the Minister or his representative can intervene during the inquiry.

At this stage, the Conseil may retain the services of a lawyer or another expert to assist the committee in conducting the inquiry. The judge in question can also retain the services of a lawyer.

The committee hears the “parties”, their lawyers and their respective witnesses. It may inquire about relevant facts and summon any person qualified to testify on these facts. The witnesses may be examined and cross-examined by the “parties”.

Although the Act uses the word “parties”, it is important to note that the Supreme Court of Canada stated, in the *Ruffo* case cited earlier, that the process before the inquiry committee is not an adversarial one. In fact, the committee’s inquiry is intended to be the expression of purely investigative functions in search of the truth. Its primary goal is to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. The function of the inquiry committee is to maintain public order.

Depending on the nature of the complaint, the Conseil may suspend the judge for the duration of the inquiry. This suspension is not a sanction but is intended to protect the credibility of the justice system.

Once the inquiry is completed, the committee submits its report and recommendations to the Conseil.

If the inquiry report concludes that the complaint is unfounded, the Conseil must send a notification, along with the grounds of its decision, to the Minister of Justice, the judge concerned and the complainant.

Moreover, if the inquiry report determines that the complaint is founded, the Conseil, following the recommendations of the report, reprimands the judge or makes a recommendation to the Minister of Justice and Attorney General to file a motion in the Court of Appeal for an inquiry. If the committee makes the second recommendation, the Conseil suspends the judge for a period of 30 days.

Regarding the removal of judges, the Conseil has only the power of recommendation. If the Minister of Justice and Attorney General files a motion in the Court of Appeal, the judge is automatically suspended from his position until the Court of Appeal rules on this matter. After its inquiry, the Court of Appeal sends a report to the government, which has the power to remove a judge from the bench.

The Supreme Court of Canada has ruled on the fact that the legislator had only foreseen two possible sanctions:

The Comité’s mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack



of any definitive power of removal become entirely comprehensible and clearly reflect the objectives underlying the Comité's establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.¹

3.3 Confidentiality of the Complaints Process

The entire complaints process prior to the holding of the first hearing of the inquiry committee is in camera. This procedure was upheld by the Superior Court, which concluded, in July 1993², that the pre-inquiry stage is not a judicial or quasi-judicial procedure.

However, the hearings of the inquiry committees are public, subject to a specific order to the contrary³.

3.4 Statistics

3.4.1 Complaints Received Since the Creation of the Conseil

From its creation until March 31, 2002, the Conseil de la magistrature received 1,020 complaints.

Since the 1990s, it has been receiving an average of 70 complaints a year.

It should be noted that, according to the *Courts of Justice Act*, once a written complaint is lodged against a judge, a file is automatically opened. This means that even if the complaint is not based on the behaviour of the judge, but is rather an appeal of the decision rendered, it is counted as a complaint.

Further details on the statistics pertaining to complaints handled by the Conseil since 1979 can be found in Appendix VII.

3.4.2 Data for the 2001-2002 Budgetary Year

During the 2001-2002 budgetary year, the Conseil completed the examination of 11 complaints that were at the examination stage as at March 31, 2001 and received 87 new complaints filed by 90 complainants, representing 28 more complaints than in 2000-2001.

The results of the 11 complaints that were being examined as at March 31, 2001 are as follows: eight complaints were deemed unfounded, including four that required additional information, and three that were referred to an inquiry.

These results appear in appendix VII in relation to the 2000-2001 budgetary year.

Of the 87 complaints received in 2001-2002, 70 were deemed unfounded, one was deemed not of a nature or importance as to warrant an inquiry, while four complaints were the subject of an inquiry. As at March 31, 2002, 12 complaints were at the examination stage.

It should be noted that during the 2001-2002 budgetary year, three inquiry committee reports were referred to the Conseil. In one case, the report concluded that the complaint

1. *Ruffo v. Conseil de la magistrature et al.*, [1995] 4 S.C.R. 309.

2. *Southam inc. v. Procureur général du Québec et l'honorable juge en chef Albert Gobeil*, [1993] R.J.Q. 2374 (C.S.).

3. *Southam inc. v. Yvon Mercier et al.*, [1990] R.J.Q. 437 (C.S.).



was unfounded, while in two other cases, they recommended a reprimand for the judge. These reports are summarized in section 3.5.

The following table shows the complaints received during the 2001-2002 budgetary year according to the jurisdiction exercised by the courts.

Jurisdiction	Number of Complaints
Small Claims Division	26
Criminal and Penal Division	20
Municipal Courts	13
Youth Division	12
Civil Division (excluding the Small Claims Division)	11
Specialized Tribunals	3
Other	2*
Total	87

* Two complaints did not apply to any specific jurisdiction.

The breakdown by jurisdiction has been fairly constant over the past few years, with about 30% of complaints relating to the Small Claims Division, while slightly more than 20% involve the Criminal and Penal Division.

It is interesting to note that, apart from the field or subject matter, the complaints can be further sub-divided by whether or not the complainants are parties to the case, or have legal representation in court, or by their region of origin and the type of allegations raised.

According to the data collected, 63 out of the 90 complainants were men (70%), 79 were parties to the case (87.8%), and 75 were not represented by a lawyer (83.3%).

The regional origins of the complainants are presented in a table in Appendix VIII, which shows that 65.5% of the complaints originated from three regions in particular: Montréal (33.3%), Montérégie (18.9%), and Québec City area (13.3%).

The allegations raised by the complainants can be sub-divided by whether they concern the behaviour of a judge inside or outside the courtroom. It should be noted that very few complaints concern the behaviour of a judge outside of the courtroom. In fact, two complaints were filed on this subject, one having to do with the presence of a judge in a television commercial, and the other dealing with the conduct of a judge in the performance of his duties as a member of the Conseil.

With respect to the behaviour of a judge during court proceedings, the complaints raised usually pertain to the judge's comments and attitude in court, or the fact that the judge did not apply the rules of law, including the fact that the decision was unfounded or erroneous. However, this theoretical division is not etched in stone, since many complaints frequently involve several allegations. For instance, a complaint may be brought against a judge for both his attitude during court proceedings and the fact that his decision was erroneous. As an illustration of this point, out of the 85 complaints received concerning a judge's behaviour in court, 14 had to do with the judge's comments, 44 criticized the judge's



attitude in court, and 57 pertained to the judge's application of the rules of law. Indeed, four cases out of 10 involved multiple complaints.

As for the 14 cases mentioned above, the judge was accused of using language that was inappropriate, unrealistic, racist, in bad faith or discredited the complainant. In three of these 14 complaints, the judge is also accused of adopting an attitude that was unbecoming of a judge; in four others, he is accused of incorrectly applying the rules of law; and in two others, the charge is for of adopting an inappropriate attitude as well as incorrect application of the law.

As regards the 44 complaints about the judge's attitude during the hearing, the complainants allege that the judge:

- admonished the complainant;
- failed to listen and to show consideration;
- had a closed attitude and peremptory tone;
- had a completely "couldn't-care-less" attitude;
- had a condescending attitude toward a lawyer;
- had a discriminatory attitude toward the complainant who was not a "true blue" Quebecer;
- had an arrogant, impatient and aggressive attitude;
- had an attitude that demeaned or denigrated the complainant;
- ridiculed the complainant during the trial;
- screamed at the complainant;
- seemed rushed and tired, making the complainant nervous before the judge;
- was biased in favour of the Crown;
- was not focused during the hearing.

Of these 44 complaints, 30 contained other charges, such as inappropriate language in three cases, incorrect application of the rules of law in 25 other cases, and inappropriate language as well as incorrect application of the rules of law in two other cases.

Finally, 57 complaints concern elements related to the application of the rules of law, notably the fact that the judge allegedly:

- arrived at the conclusions in his decision despite the evidence presented by the complainant;
- committed errors in appreciation the facts and allowed a motion from the other party without hearing the complainant;
- declared the complainant guilty without evidence;
- did not take the complainant's testimony into account and preferred the lies of the other party;
- made a rude comment about the complainant's actions, in rendering his decision;
- rendered a decision based on what he felt were the complainant's intentions, rather than the facts;



- rendered an incomplete and erroneous decision by failing to recognize the documents produced by the complainant;
- showed bias by describing the complainant as “not credible”;
- was in a hurry to end the hearing by denying the complainant the power to examine witnesses.

Of these 57 complaints, 31 contained other charges, such as inappropriate language in four cases, reprehensible attitude in 25 other cases, and inappropriate attitude and language in two other cases.

When the complaints concern the judge’s language, the complainants occasionally reproduce the judge’s comments textually, but they more often do not. Likewise, they try to explain their perception of the judge’s attitude by referring to his manner of running the trial or his comments. Examination of the complaint by the members of the Conseil, specifically by listening to the court recordings, helps shed light on complainants’ allegations.

With respect to the non-application of the rules of law by the judge, the allegations often pertain to the judge’s discretion in administering evidence, as well as to the primary function of a judge, which is to render a decision.

3.5 Decisions of the Conseil

This section contains abstracts of some complaints handled between April 1, 2001 and March 31, 2002. It includes complaints that resulted in a decision of the Conseil at the examination stage as well as all inquiry reports submitted during this period.

As stated previously, the pre-inquiry process is held in camera. As a result, the name of the judge mentioned in a complaint is omitted at the examination stage.

3.5.1 Decisions of the Conseil at the Examination Stage

3.5.1.1 Allegation of Offensive Language

Complaint

In this case, the complainant maintained that, during the proceedings, the judge accused him of lying deliberately to the court.

Examination of the Complaint

The Conseil needed additional information and assigned someone to gather the information. The court recordings and the correspondence sent to the Conseil by the complainant and the judge showed that the hearing was preceded by a telephone conversation involving the judge, the prosecutor and the lawyer for the accused, the complainant in this case.

During this communication, the complainant asked that his client’s case be put off to another date, indicating to the judge that he had recently issued a ruling against his client. He also indicated that the evidence which he, as a lawyer, intended to present in this case was the same. The judge was not able to immediately verify the complainant’s statements



and said that he was relying on the latter's explanations.

A few days later, the judge wrote to the complainant to tell him that verifications had shown that he was not the one who issued a ruling in respect of the client in question. The complainant then informed the judge that it was, indeed, another judge. A date was set for the hearing.

During the hearing, the judge reminded the complainant that the case had been "unassigned" due to an error by the latter, which was admitted. A discussion then followed between the judge and the complainant on the error committed and on the qualification of this error.

The complainant wanted to know whether the judge was insinuating that he had lied. The judge then said that what the complainant had said was not the truth and that if it was not the truth, then it was a lie. The judge added that a lie could be voluntary or involuntary, whereas the complainant felt that a lie is voluntary.

Decision

The dictionary Le Nouveau Petit Robert defines a "lie" as "an untrue statement deliberately intended to deceive." - Our translation -

According to the definition of the word and the nature of the discussions that took place at the hearing, the Conseil noted that the judge, upon the complainant's insistence to know the judge's perception, misunderstood the meaning of the word "lie".

The judge could have had the perception that he had been misled into granting a postponement, without that necessarily justifying the exchange he had with the complainant.

Moreover, even if the judge construed the word "lie" differently from its regular meaning, the Conseil could not conclude that there were grounds for an inquiry.

For these reasons, the Conseil found that the nature and significance of the complaint did not justify an inquiry.

3.5.1.2 Allegation of Unjustified and Disagreeable Comments

Complaint

The Conseil needed additional information and assigned someone to gather the information. The court recordings showed that the complainant had been one of the victims in a case of armed aggression and forcible confinement, and that she came to court on her own volition for the sentencing of the accused.

The complainant took issue with the judge for asking the prosecutor whether he had insisted that she attend or whether she had decided to come on her own.

The court recordings showed that the judge had asked the following question to the prosecutor with reference to the victims: "Is it they who insisted to be here this morning or is it you who asked them to come?" After hearing the explanations, the judge added: "It is absolutely their right, I was just asking whether it is you who insisted." - Our translation -

Having been informed that the victims did not want to be heard, the judge concluded his remarks in a composed and respectful manner toward all the persons present, and the Conseil found no hint of a reproach from the judge regarding the victims' presence.



Decision

The examination of the complaint did not reveal any ethical error that could have been committed by the judge.

For these reasons, the Conseil ruled that the complaint was unfounded.

3.5.1.3 Allegation of Bias

Complaint

In this case, the complainant maintained that the judge was biased against her and showed little consideration for social workers who had been in contact with her daughter. Finally, she asked that her case be transferred to another judge.

Examination of the Complaint

The Conseil needed additional information and assigned someone to gather the information. The court recordings showed that the judge said that the case could not proceed on its merits because, although she had examined it in full, she still had found no answers to her questions. She also had questions about other elements. The judge's tone was firm but polite.

Decision

The Conseil noted that the court proceedings were conducted within the confines of the judge's judicial discretion. The Conseil cannot and must not intervene in the exercise of this judicial discretion.

In addition, nothing in the case can lead the Conseil to conclude that the complainant, who was a party to the proceedings, could not be heard during the hearing on the merits.

For these reasons, the Conseil ruled that the complaint was unfounded.

3.5.2 Inquiry Committee Reports

3.5.2.1 Complaint Against Judge Jacques Sauvé

Complaint

In this case, the complaint was brought by a city manager regarding the conduct of a municipal court judge who held this position on a part-time basis concurrently with that of a lawyer. The judge was criticized for eating at a restaurant with a businessman accompanied by his lawyers, even though this businessman were appearing before the judge that same morning.

Examination of the Complaint

The Conseil needed additional information and assigned someone to gather the information. The members agreed that the information collected showed that an inquiry was justified.

Inquiry Committee

The evidence collected during the inquiry showed that the judge had been designated to preside over the hearing of 42 complaints against a company whose principal shareholder was a well-known local contractor. The judge knew this contractor who, incidentally, had never been his client, and told the committee that he was comfortable hearing the case.



Since the hearing was likely to run for several days, it was agreed that the case should be put off to a later date, to allow the plaintiff to communicate the evidence. The judge left the municipal courthouse around 10 a.m. to go and visit his sister, who reminded him that she had worked for this contractor some 25 years ago. During his testimony before the inquiry committee, the judge mentioned that he then made the firm decision to recuse himself from the case, given the possible appearance of bias.

The judge went for lunch at a restaurant and wound up sitting near the table shared by the contractor and his lawyers. Upon invitation from one of the lawyers to join them, the judge said he accepted spontaneously, on condition that they did not discuss the cases he was examining. The judge added that he thought there was no problem, since he had decided “in his mind” to recuse himself. - Our translation -

There is no evidence to show that the cases the judge was examining were discussed during the meal.

The inquiry committee noted that the Supreme Court has reminded members of the judiciary that they must set their own personal limits, in order to avoid doing anything reprehensible. The Supreme Court said the following:

The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens¹.

Report Recommendation

The inquiry committee felt that the judge’s insouciance had raised an obvious doubt as to his appearance of impartiality and that any well-informed citizen was justified to be worried about his conduct.

In light of the evidence gathered, the inquiry committee concluded that the judge had failed in his duty to act in a reserved manner and in his obligation to preserve the integrity of the judicial system, thereby jeopardizing the trust that the public must have in this institution.

Moreover, each case is unique and a judge who, after twenty years in the judiciary, commits an ethical error, must receive a sanction commensurate with the act committed, considering the specific circumstances of this case and the absence of precedents that must play in his favour.

In fact, a lawyer who also serves as a municipal court judge is certainly placed more regularly in situations where he must avoid being criticized for the appearance of bias in favour of his colleagues of the Bar or witnesses with whom he has professional or personal ties.

For these reasons, the inquiry committee concluded that the judge’s conduct constituted a violation of the Code of Ethics and recommended that the Conseil issue a reprimand.

1. *Therrien v. Minister of Justice et al.*, [2001] S.C.R. 35, par. 111.



3.5.2.2 Complaint Against Judge Michel Jetté

Complaint

In this case, the complainant criticized the judge for his general attitude and for acting in a condescending manner toward the complainant and certain citizens. She referred to the judge's comments during motions for postponement or during the hearing of cases, and to comments he reportedly made after hearing her own case.

Examination of the Complaint

The Conseil needed additional information and assigned someone to gather the information. The members of the Conseil agreed that the information collected showed that an inquiry was justified.

Inquiry Committee

The inquiry committee listened to the audio recording of the proceedings related to the complaint and heard the complainant's testimony as well as the judge's explanations.

The court recordings did not show any conduct that could lead anyone to believe that the judge's attitude was condescending. In four cases submitted to the judge concerning violations of the Highway Safety Code, he found the accused guilty after telling them summarily that he did not believe their versions and that he believed those contained in the police reports.

The inquiry committee was aware that, in the four cases, the judge followed the same process and dismissed the arguments as well as the testimonies of the accused and found them guilty, without even seeing or hearing the police officers, basing his judgment strictly on the police reports.

However, this demonstration alone is not enough to lead the committee to conclude that the judge had been biased. Rather, it highlighted the judge's understanding of the weight to be given to police reports, an issue that falls under the purview of an appeals court and not an inquiry committee.

Although the judge's conduct could, in certain respects, lead the complainant to think the contrary, the judge's explanations showed that he rendered justice according to his understanding of the principles of law, his conscience and in an impartial manner.

Lastly, the inquiry committee examined the judge's conduct toward the complainant as she came out of the courtroom. It turns out that she had been found guilty and that she had shown her discontent at that point. The complainant indicated that as she left the courtroom, she said: "I knew it", while the judge said he heard her saying: "There's no justice". - Our translation -

The judge then asked the security officer the following question: "Would you mind getting her for me, the one whom I hear screaming over there? Would you mind catching her? Bring her to me." - Our translation - When she came back into the courtroom, the judge explained to her that he did not approve of the way in which she was expressing her discontent. She apologized and the judge told her that if she was not satisfied, she could appeal the decision.

Report Recommendation

While the judge may have been shocked to find his decision called into question, it must be admitted that the words he used against the complainant have no place in a courtroom.



Although his words were regrettable and inopportune, they did not appear to the members of the inquiry committee to be serious enough as to constitute an ethical violation.

For these reasons, the inquiry committee concluded that the complaint was unfounded.

3.5.2.3 Complaint Against Judge Gilles Garneau

Complaints

In this case, the Conseil received three complaints concerning the judge's conduct while presiding over a case. The complainants found fault with the judge for the words he allegedly used and the circumstances in which he used them.

Since the Minister of Justice was one of the complainants, the Conseil was bound to hold an inquiry in accordance with section 268 of the *Courts of Justice Act*

Inquiry Committee

It was established that the judge spoke to the prosecutor without the presence of the accused and after ordering the clerk to stop the court recording. Speaking for his client, the judge's lawyer admitted that he had erred and expressed himself as follows:

[...] Judge Garneau committed an error by speaking off the record with the prosecutor to point out the Ambruster case, in the absence of the accused. He regrets this error and its attendant negative consequences for the victim and the administration of justice, particularly following the Court of Appeal decision of February 27, 2001 and the media fallout at the end of June 2001.

Deeply shocked by the behaviour of the accused toward the victim, during cross examination, indisposed by a comment from the accused whereby he twisted the facts for his own ends and denigrated the conduct of the Court since the beginning of the trial, the judge, in a moment of impatience and indignation, and unbeknownst to the accused, asked the prosecutor to consider the Ambruster case in his submissions on sentencing, which he believed imminent, convinced then that the accused would not offer a defence - Our translation -

The judge's lawyer indicated that the judge had a moment of weakness caused by the provocative attitude of the accused since the beginning of the trial. Everybody knows that the Palais de Justice has a central recording system for all courtrooms. The judge's error was "spontaneous and emotional". - Our translation - It could be flagged and deplored, but it does not warrant a reprimand.

For the inquiry committee, there was no doubt that the media coverage following the Court of Appeal's decision to order a new trial and the victim's refusal to testify during the second trial made the case that much bigger. However, to decide whether the judge committed an ethical error or not, the inquiry committee must place itself in the moment in time when the incident occurred, and not based on what occurred subsequently.



Moreover, examining the report of the proceedings, listening to some relevant portions of the court recordings and reading the stenographic notes showed that the judge, except for the subject of the complaint, ran the proceedings correctly and gave the accused considerable latitude in examining witnesses. On several occasions, he suggested that the accused get or, at the very least, consult a lawyer.

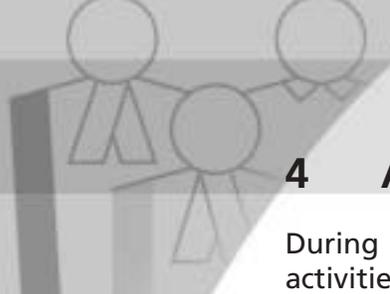
Report Recommendation

The inquiry committee concluded that the conduct held against the judge would raise a doubt, in the mind of a reasonable and sufficiently informed person, as to the judge's obligation to act impartially and objectively, and to the appearance of impartiality and objectivity.

The inquiry committee also concluded that the judge had failed in his obligation to preserve the integrity of the judiciary, which might undermine the public trust.

Moreover, the sanction must be commensurate with the act committed, considering the specific circumstances of the present case and the absence of precedents on the part of the judge.

For these reasons, the inquiry committee recommended that the Conseil issue a reprimand.



4 Administrative Activities

During the 2001-2002 budgetary year, the Office of the Secretary carried out its regular activities along with other work arising from the specific files of the Conseil.

4.1 Enquiries

Given the Conseil's mandate, the Office of the Secretary receives many enquiries, mostly via telephone. The majority of these enquiries come from individuals who have gone through the court system and who would like to know if the actions that they hold against a judge could warrant a complaint, how they can lodge a complaint, and the ensuing process after a complaint is filed. This offers an ideal opportunity to explain the mission and operating structure of the Conseil.

If the questions raised are outside the Conseil's mandate, the citizens are referred to other organizations that may be in a position to help them.

4.2 Publications

The Office of the Secretary currently publishes two information pamphlets: *Le Conseil de la magistrature* and *La déontologie judiciaire*.

In addition, the reports of the inquiry committees produced since April 1997 are accessible through the Centre de recherche en droit public of the Université de Montréal at the following address: <http://www.canlii.org/qc/jug/qcmq/index.html>.

Finally, all the decisions and reports of the inquiry committees can be consulted on the Web site of the Société québécoise d'information juridique (SOQUIJ): <http://www.azimut.soquij.qc.ca>.

4.3 Handling of Complaints

The Office of the Secretary is responsible for the processing of files, from the time the complaint is received until a decision is sent. It coordinates the docketing of files for the inquiry committees, organizes the hearings and manages and keeps files. The Secretary is also responsible for certifying the decisions of the Conseil.

4.4 Training and Continuing Education

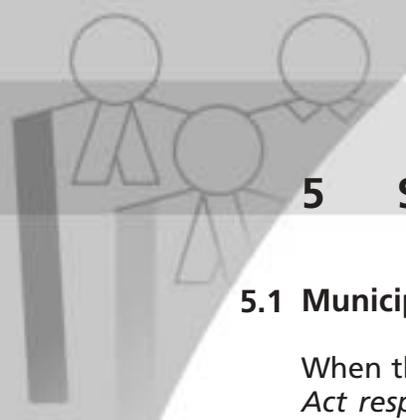
The Office of the Secretary is in charge of acquiring and paying for legal documentation to be used by the judges under its jurisdiction. On an annual basis, the Office of the Secretary handles thousands of orders for purchases or subscription renewals. It also keeps the Conseil informed about expenses in this regard.



The Office of the Secretary is also responsible for following up on the decisions of the Conseil regarding the training and continuing education activities carried out by the courts and tribunals.

4.5 Introductory Session for Newly Appointed Judges of the Court of Québec

As part of the training activities organized by the Court of Québec, the Secretary of the Conseil participated in two initial training sessions for newly appointed judges. During these sessions, the Secretary presented the mission of the Conseil, its operating structure and the activities of the Office of the Secretary to the newly appointed judges.



5 Specific Files

5.1 Municipal Courts

When the Conseil was preparing this report, the government passed the *Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions* (2002, c.21). Most of its provisions came into force on July 1, 2002, including those relating to the Conseil.

Apart from revising the management structure in municipal courts, the amendments made by this Act are mainly related to the composition of the Conseil as well as its codes of ethics.

5.1.1 New Management Structure of Municipal Courts

The Act subjects all municipal courts of Québec, including those of the cities of Laval, Montréal and Québec City, to the *Act respecting municipal courts*. It establishes a new position of Associate Chief Judge in charge of municipal courts in the Court of Québec. This person, who reports to the Chief Judge of the Court of Québec, manages the municipal courts.

This Act also changes the management structure of municipal courts. It calls for the creation of the position of presiding judges appointed by the government, in the courts where the judges fulfil their functions on a full-time and exclusive basis. It also stipulates that the presiding judge may be assisted by an Associate Presiding Judge appointed by the government, when the circumstances warrant.

5.1.2 Changes in the Composition of the Conseil

Section 48 of the Act amends section 248 of the *Courts of Justice Act*, which determines the composition of the Conseil.

Hence, the function of Chief Judge in municipal courts has been replaced by that of Associate Chief Judge of the Court of Québec, with responsibility for municipal courts. The four Associate Chief Judges of the Court of Québec are therefore expected to be part of the Conseil.

As well, the Conseil's membership included one of the chief judges of the municipal courts of the cities of Laval, Montréal or Québec. The Act has been amended to allow the government to appoint a presiding judge of a municipal court to the Conseil.

The Act further stipulates that the two judges recommended by the Conference des juges du Québec shall be selected from among the judges of the Court of Québec, and that the judge recommended by the Conférence des juges municipaux du Québec shall be chosen from among all municipal court judges.

5.1.3 Changes in the Code of Ethics

Section 49 of the Act amends section 262 of the *Courts of Justice Act*, which establishes the content of the codes of ethics.

In 1981, the Conseil adopted two codes, one for part-time municipal court judges and the other for full-time judges. The judges of the municipal courts of the cities of Laval, Montréal and Québec are governed by the latter code.

The amendments made to section 49 of the Act are designed to ensure that all municipal court judges are governed by one code, whose provisions may vary depending on whether they work as judges on a full-time and exclusive basis or not.



Lastly, section 66 of the Act contains a transitional provision which allows the judges of the municipal courts of the cities of Laval, Montréal and Québec to continue to be governed by the code of ethics for provincial court judges until the Conseil adopts a new code of ethics for municipal court judges.

The Conseil will examine this issue during the 2002-2003 budgetary year.

5.2 Judicial Ethics: Proposed Legislative Amendments

During the 2001-2002 budgetary year, the Conseil proposed amendments to the *Courts of Justice Act* to the Minister of Justice following consultation with judges and the recent Supreme Court decision in the *Richard Therrien*¹ case, which deals inter alia with the Conseil's jurisdiction and the ethics process.

Basically, the desired changes are meant to improve the efficiency of the complaint handling process. They mainly concern the examination of complaints, the inquiry committee, applications for judicial review, and the regulatory authority of the Conseil.

The Conseil also reiterated its orientation to the Minister of Justice regarding functions and activities incompatible with the office of judge.

The Conseil then submitted a recommendation to the Minister of Justice for clarifying the *Courts of Justice Act* by avoiding to list certain activities or functions, as second paragraph of section 129 of the Act does. According to the Conseil, determining whether certain non-judicial functions or activities are appropriate is an ethical issue involving the principle of judicial independence. As a result, if such a situation of fact arises, it should be brought before the Conseil, which is the appropriate body to enforce the codes of ethics and to develop jurisprudence on this matter.

5.3 Legal Documentation

During the 2001-2002 budgetary year, the Conseil continued to examine its role, which is to provide judges with the necessary documentary tools for their professional development.

During the same period, the Conseil ratified the report of the committee charged with recommending solutions to facilitate the transition from hard copy documentation to new technologies. Judges committees will be formed over the next budgetary year to participate in the implementation of this report. It is essential that judges be closely associated with this process, which is of paramount importance to them.

The Conseil believes that achieving its stated objectives will depend on the judges' approval of the documentation available in electronic format, and on the pooling of works that are not available on-line in community libraries.

It is against this backdrop that the Conseil has started discussions with the Centre d'accès à l'information juridique, whose mission includes the establishment of a network of libraries for the legal community, thereby increasing the amount of documentation currently available for the judiciary.

Moreover, the Conseil is aware that these changes would force it to adjust its practices, and that the success of such an undertaking depends in large part on a realistic implementation schedule.

1. *Therrien v. Minister of Justice et al.*, [2001] S.C.R. 35.



The Conseil has therefore adopted a schedule which reflects the different steps to be completed over the next three years to ensure that, by April 1, 2005, judges have received the necessary training on using new technologies and that they have better tools to exercise their jurisdiction.

5.4 Second Language Courses

In July 1992, the Conseil and the government of Canada concluded a five-year inter-governmental cooperation agreement for the promotion of official languages. The goal is to facilitate access to judicial services in English through language training for provincially appointed judges. This agreement was renewed until 2000-2001. Under the agreement, the Department of Canadian Heritage reimbursed the Conseil for half of the expenses incurred, up to a maximum of \$35,000. an amount that was reduced to \$20,000. in 1997.

Recently, the Department of Canadian Heritage indicated that it was prepared to maintain this collaboration and to enter into a new agreement with the government of Québec. The Conseil pointed out to the Minister of Justice the importance of continuing the discussions with the federal authorities, in order to conclude an agreement that would provide the funding it needs to carry on with the language courses given by the Office of the Commissioner for Federal Judicial Affairs.

5.5 Conseil's Training and Continuing Education Budget

Since the 1998-1999 budgetary year, the Conseil has been making representations to the Minister of Justice for its budget to be adjusted on a permanent basis, so that it can organize an annual symposium for all full-time provincially appointed judges. During the 2001-2002 budgetary year, the Conseil received assurances from the Minister of Justice that it will receive the funds it needs for such a symposium next year. The Conseil intends to continue making representations for this funding to become recurrent.

Also during the 2001-2002 budgetary year, the Conseil applied to the Minister of Justice for funding for the training of judges on the use of new technologies and the adoption of new laws.

5.6 Creation of a Web Site

The Office of the Secretary has retained the services of a firm to develop a Web site, which will allow users to consult and search information in a user-friendly environment.

The Conseil's Web site will be operational during the next budgetary year.



APPENDIX I **Members and Staff of the Conseil de la magistrature as at March 31, 2002¹**

Members

Honourable Huguette St-Louis, Chief Judge of the Court of Québec, President
Honourable Rémi Bouchard, Senior Associate Chief Judge of the Court of Québec,
Vice-President

Honourable Michel Jasmin, Associate Chief Judge of the Court of Québec
Honourable Jacques Lachapelle, Associate Chief Judge of the Court of Québec
Honourable Louise Provost, Associate Chief Judge of the Court of Québec
Honourable Paule Lafontaine, President of the Professions Tribunal
Honourable Gilles Charest, Chief Judge of the Municipal Courts of Québec
Honourable Gilles Gaumont, Chief Judge of the Municipal Court of Québec City
Honourable Claude Pinard, Judge of the Court of Québec
Honourable Michel Simard, Judge of the Court of Québec
Henri Grondin, Lawyer, Grondin, Poudrier, Bernier
Alain Létourneau, Lawyer, Cain, Lamarre, Casgrain, Wells
Noëlla Jean, Research Agent
Marlène Rateau, Teacher

Staff

Jean-Pierre Marcotte, Lawyer, Secretary of the Council
Michelle Blanchet, Secretary
Liliane Gouge, Desk Officer
Carolle Richard, Administrative Assistant

1. A position has been vacant since the resignation of the Judge Denis Laberge on March 25, 2002. At the time this activity report was presented, his position has been vacant.



APPENDIX II Jurisdiction of the Conseil de la magistrature

Excerpts from the *Courts of Justice Act* (R.S.Q., c. T-16)

PART VII

THE CONSEIL DE LA MAGISTRATURE, REFRESHER PROGRAMMES FOR JUDGES AND JUDICIAL ETHICS

CHAPTER I

THE CONSEIL DE LA MAGISTRATURE

DIVISION I

ESTABLISHMENT

Constitution. **247.** A body, hereinafter called the “council”, is established under the name of Conseil de la magistrature.

1978, c. 19, s. 33.

Composition. **248.** The council shall be composed of 15 members, namely,

- (a) the chief judge of the Court of Québec who shall be the chairman of the council;
- (b) the senior associate chief judge of the Court of Québec;
- (c) the three associate chief judges of the Court of Québec;
- (d) one of the chief judges of the Municipal Courts of Laval, Montréal or Québec;
- (d.1) one judge chosen among the persons exercising the functions of chief judge of the Labour Court, president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
- (d.2) the chief judge of the municipal courts;
- (e) two judges chosen among the judges of the Court of Québec or the Municipal Courts of Laval, Montréal or Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- (f) one judge chosen among the judges of the Municipal Courts other than those of Laval, Montréal or Québec and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
- (g) two advocates appointed upon the recommendation of the Barreau du Québec;
- (h) two persons who are neither judges nor advocates.

1978, c. 19, s. 33; 1986, c. 48, s. 4; 1986, c. 61, s. 47; 1987, c. 50, s. 8; 1988, c. 21, s. 53; 1991, c. 70, s. 4; 1995, c. 42, s. 42; 1998, c. 30, s. 40.

Appointment of members. **249.** The Government shall appoint the members of the council contemplated in paragraphs d, d.1 and e to h of section 248. To sit on the council, those members shall make the oath contained in Schedule III before the chief judge or the senior associate chief judge of the Court of Québec.

Vice-chairman. The vice-chairman of the council is elected by the council from among its members.



Term of office. **249.** The term of office of the members of the council appointed under the first paragraph is not more than three years; at the expiry of their term, these members remain in office until they are replaced or reappointed.

1978, c. 19, s. 33; 1988, c. 21, s. 54; 1989, c. 45, s. 6; 1995, c. 42, s. 43; 1998, c. 30, s. 41; 1999, c. 40, s. 324.

Remuneration and expenses. **250.** The members of the council who are not judges are not entitled to any remuneration, except in such cases, on such conditions and to such extent as may be determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the performance of their duties, on the conditions and within the limits determined by the Government.

Indemnity. The judges are entitled to the indemnity provided for in section 119.

1978, c. 19, s. 33; 1988, c. 21, s. 55.

Quorum. **251.** Eight members of the council, including the chairman or vice-chairman, are a quorum.

1978, c. 19, s. 33; 1986, c. 48, s. 5.

Meetings. **252.** The council meets as often as necessary, when convened by the chairman.

Sittings *in camera*. It may sit *in camera* and hold its sittings at any place in Québec.

Head office. The council has its head office in the territory of Ville de Québec or in the territory of Ville de Montréal, as the Government may decide.

1978, c. 19, s. 33; 1996, c. 2, s. 985.

Internal management. **253.** The council may make bylaws for its internal management or to establish committees and determine their functions.

1978, c. 19, s. 33.

Minutes. **254.** The minutes of the sittings of the council or of one of its committees are authentic if they are approved by the members of the council or of the committee, as the case may be; the same rule applies to documents or copies emanating from the council or forming part of its records if they are certified true by the chairman or the secretary.

1978, c. 19, s. 33.

Secretary. **255.** The chairman shall appoint the secretary of the council, for a five-year term, from among the advocates on the Roll of the Order of Advocates for at least 10 years who are members of the public service. The Government shall determine the salary, the employment benefits and other conditions of employment of the secretary.

Leave. Upon being appointed, the secretary shall cease to be subject to the Public Service Act (chapter F-3.1.1); the person appointed to the office of secretary shall be on leave without pay for the duration of the five-year term.

1978, c. 19, s. 33; 1978, c. 15, s. 140; 1983, c. 55, s. 161; 1989, c. 45, s. 7; 1997, c. 76, s. 2.



Functions. **255.1.** The secretary of the council shall exercise the functions of the secretary on an exclusive basis, under the authority of the chairman.

Oath. The secretary shall, before taking office, make the oath set out in Schedule III, before the chief judge of the Court of Québec.

1989, c. 45, s. 7; 1997, c. 76, s. 2; 1999, c. 40, s. 324.

Expiry of term. **255.2.** At the expiry of the five-year term of office, the secretary shall remain in office until replaced or re-appointed.

1989, c. 45, s. 7; 1997, c. 76, s. 2.

Appointment. **255.3.** The members of the personnel of the council, other than the secretary, shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).

1989, c. 45, s. 7; 1997, c. 76, s. 2; 2000, c. 8, a. 242.

DIVISION II

FUNCTIONS OF THE COUNCIL

Functions. **256.** The functions of the council are:

- (a) to organize, in accordance with Chapter II of this Part, refresher programmes for judges;
- (b) to adopt, in accordance with Chapter III of this Part, a judicial code of ethics;
- (c) to receive and examine any complaint lodged against a judge to whom Chapter III of this Part applies;
- (d) to promote the efficiency and uniformization of procedure before the courts;
- (e) to receive suggestions, recommendations and requests made to it regarding the administration of justice, to study them and to make the appropriate recommendations to the Minister of Justice;
- (f) to cooperate, in accordance with the law, with any body pursuing similar purposes outside Québec, and
- (g) to hear and decide appeals under section 112.

1978, c. 19, s. 33; 1988, c. 21, s. 56.



CHAPTER II

REFRESHER PROGRAMMES FOR JUDGES

Information, programmes for judges. **257.** The council shall establish information, training, refresher or reorientation programmes for the judges of the courts under the legislative authority of Québec and appointed by the Government.

1978, c. 19, s. 33.

Preparation. **258.** The council shall determine the needs, prepare the programmes and fix the terms and conditions of application; it may, for that purpose, act in cooperation in particular with the Conférence des juges du Québec, the Conférence des juges municipaux du Québec, the Barreau du Québec, the law faculties and the Ministère de la Justice.

1978, c. 19, s. 33; 1987, c. 50, s. 9.

Authorization for expenditures. **259.** The Government determines the amounts over which expenditures by the council in the application of this chapter require the approval of the Minister of Justice.

1978, c. 19, s. 33.

CHAPTER III

JUDICIAL ETHICS

DIVISION I

GENERAL PROVISION

Applicability. **260.** This chapter applies to a judge appointed under this act.

It also applies to a judge of a Municipal Court and to a justice of the peace appointed in accordance with section 158, if the deed of appointment indicates that section 162 applies to that justice of the peace.

1978, c. 19, s. 33; 1980, c. 11, s. 98; 1995, c. 42, s. 44.

DIVISION II

CODE OF ETHICS

Code of ethics. **261.** The council shall, by regulation, adopt a judicial code of ethic

Meeting of the judges. However, it must previously call a meeting of the judges to whom the code of ethics applies to consult them on the draft regulation.

Approval. Coming into force. A regulation made under this section is published in the *Gazette officielle du Québec* at least thirty days before it is submitted to the approval of the Government. If it is so approved, it comes into force on the date of its publication in the *Gazette officielle du Québec* or on a later date fixed therein

1978, c. 19, s. 33.



Contents. **262.** The code of ethics determines the rules of conduct and the duties of the judges towards the public, the parties to an action and the advocates, and it indicates in particular which acts or omissions are derogatory to the honour, dignity or integrity of the judiciary and the functions or activities that a judge may exercise without remuneration notwithstanding section 129.

Special provisions. It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts other than the Municipal Courts of Laval, Montréal and Québec, or special provisions may be established for those judges. For the purposes of this chapter, the rules set out in section 45 of the Act respecting municipal courts (chapter C-72.01) are deemed to be special provisions of the code of ethics applicable to municipal judges. The code may also indicate the functions or activities that the chief judge of the municipal courts may exercise without remuneration notwithstanding section 37.1 of the Act respecting municipal courts.
1978, c. 19, s. 33; 1980, c. 11, s. 99; 1988, c. 21, s. 57; 1988, c. 74, s. 8; 1989, c. 52, s. 138; 1998, c. 30, s. 42.

DIVISION III

EXAMINATION OF COMPLAINTS

Object of complaints. **263.** The council receives and examines a complaint lodged by any person against a judge alleging that he has failed to comply with the code of ethics.

1978, c. 19, s. 33; 1988, c. 21, s. 58.

Contents. **264.** Any complaint is made in writing to the secretary of the council and states the facts with which the judge is charged and the other relevant circumstances.

1978, c. 19, s. 33.

Necessary information. **265.** The council shall examine the complaint; it may, for that purpose, require from any person such information as it may deem necessary and examine the relevant record, even if the record is confidential under the Youth Protection Act (chapter P-34.1).

Conflict. If the complaint is lodged by a member of the council, he cannot participate in the examination of the complaint by the council.

1978, c. 19, s. 33; 1986, c. 48, s. 6; 1988, c. 21, s. 59.

Copy to judge. **266.** The council shall forward a copy of the complaint to the judge; it may require an explanation from him.

1978, c. 19, s. 33.

Complaint not justified. **267.** If the council, after examining a complaint, establishes that it is not justified or that its nature and importance do not justify an inquiry, it shall notify the plaintiff and the judge of it and state its reasons therefor.

1978, c. 19, s. 33.



Inquiry. **268.** The council may, after examining a complaint, decide to make an inquiry. It must make an inquiry, however, if the complaint is lodged by the Minister of Justice or if the latter requests it pursuant to the third paragraph of section 93.1.

1978, c. 19, s. 33; 1988, c. 21, s. 60; 1990, c. 44, s. 24.

DIVISION IV

INQUIRY

Committee. **269.** To conduct an inquiry on a complaint, the council establishes a committee consisting of five persons chosen from among its members and designates a chairman among them.

Quorum. Three persons are a quorum of the committee.

1978, c. 19, s. 33.

Composition. **269.1.** Notwithstanding the first paragraph of section 269, a committee of inquiry may be composed of members of the council and of persons who have previously been members of the council.

Composition. However, such a committee must include at least three members of the council, from whose number the committee shall designate a chairman, and not more than two previous council members.

1991, c. 70, s. 5.

Oath. **269.2.** Any person who has previously been a member of the council and who is appointed to sit on a committee must, before taking up his functions, make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.

1991, c. 70, s. 5; 1995, c. 42, s. 45; 1999, c. 40, s. 324.

Inquiry. **269.3.** A person who ceases to be a member of the council may continue to sit on a committee of inquiry established under section 269 or 269.1 in order to complete an inquiry undertaken by the committee.

1991, c. 70, s. 5.

Remuneration and indemnities. **269.4.** A person to whom either of section 269.2 and 269.3 applies is entitled for the time he is a member of a committee to no remuneration other than the remuneration and indemnities council members are entitled to receive under section 250.

1991, c. 70, s. 5.

Meetings. **270.** The committee meets as often as necessary, when convened by its chairman.

1978, c. 19, s. 33.



Copy of complaint, or request. **271.** The committee communicates to the judge a copy of the complaint or of the request of the Minister of Justice made pursuant to the third paragraph of section 93.1.

Calling by committee. Within thirty days after the communication of the complaint, the committee calls the judge concerned and the plaintiff; it also notifies the Minister of Justice, and the latter or his representative may intervene at the proof or hearing.

1978, c. 19, s. 33; 1988, c. 21, s. 61; 1990, c. 44, s. 24.

Hearing. **272.** The committee hears the parties, their attorneys and their witnesses.

Facts and testimonies. It may inquire into the relevant facts and call any person apt to testify on such facts.

Examination. The witnesses may be examined or cross-examined by the parties.

1978, c.19, s. 33.

Powers and immunity. **273.** The members of the committee enjoy, for the purposes of an inquiry, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

1978, c. 19, s. 33; 1992, c. 61, s. 621.

Prohibition. **273.1.** An advocate who is a judge of a Municipal Court may not act as a prosecutor for the application of this chapter.

1980, c. 11, s. 100.

Recusation of a member of the committee. **274.** A party to the inquiry may request the recusation of a member of the committee for one of the causes provided for in articles 234 and 235 of the Code of Civil Procedure (chapter C-25).

Obligation to declare. Furthermore, a member of the committee who is aware of a ground of recusation to which he is liable is bound to declare it.

1978, c. 19, s. 33.

Rules of procedure or practice. **275.** The committee may make rules of procedure or rules of practice for the conduct of an inquiry.

Orders of procedure. If necessary, the committee or one of its members makes the orders of procedure, based on the Code of Civil Procedure (chapter C-25), that are necessary for the carrying out of its duties.

1978, c. 19, s. 33.

Suspension of a judge. **276.** The council may suspend a judge for the duration of an inquiry on him.

1978, c. 19, s. 33.



Report of inquiry and recommendations. **277.** The committee submits the report of its inquiry and its recommendations to the council. It transmits that report to the Minister of Justice; in addition, it transmits a copy of its record of the inquiry in the case where the council makes the recommendation provided for in paragraph b of section 279.

1978, c. 19, s. 33.

Complaint not justified. **278.** If the report of the inquiry establishes that the complaint is not justified, the council notifies the judge concerned, the Minister of Justice and the plaintiff. That notice states the grounds on which it is based.

1978, c. 19, s. 33.

Complaint justified. **279.** If the report of the inquiry establishes that the complaint is justified, the council, according to the recommendations of the report of the inquiry,

(a) reprimands the judge; or

(b) recommends that the Minister of Justice and Attorney General file a motion with the Court of Appeal in accordance with section 95.

Suspension. If it makes the recommendation provided for in paragraph b, the council suspends the judge for a period of thirty days.

1978, c. 19, s. 33; 1980, c. 11, s. 101; 1988, c. 21, s. 62; 1988, c. 74, s. 9.

Motion to Court of Appeal. **280.** If the Minister of Justice and Attorney General, in accordance with section 95, files a motion with the Court of Appeal, the judge is suspended from office until the report of the Court.

1978, c. 19, s. 33; 1988, c. 21, s. 63.

Services of an advocate. **281.** The council may retain the services of an advocate or of another expert to assist the committee in the conduct of its inquiry.

1978, c. 19, s. 33.

CHAPTER IV

MISCELLANEOUS PROVISIONS

Amounts required. **282.** The amounts required for the application of this part are taken out of the consolidated revenue fund.

1978, c. 19, s. 33.

PART VIII

FINAL PROVISIONS

Minister responsible. **282.1.** The Minister of Justice is responsible for the administration of this Act.

1988, c. 21, s. 64.



- Disability.** **93.1.** A judge suffering from a permanent physical or mental disability which, in the opinion of the Government, prevents the judge from effectively performing the duties. Unless the judge resumes judicial duties under the second paragraph, the judge is deemed to have ceased to hold office on the day preceding the day on which the judge satisfies any of the requirements set out in section 224.3, 228 or 246.3, as the case may be, for eligibility for a pension.
- Resumption of judicial duties** If the judge recovers, the Government may permit the judge to resume judicial duties at the same court, even if all the posts in that court are already filled.
- Disability.** The permanent disability is established, after inquiry, by the Conseil de la magistrature, at the request of the Minister of Justice. Termination of permanent disability is established in the same manner.
- 1990, c. 44, s. 4; 2001, c. 8, s. 3.
- Removal.** **95.** The Government may remove a judge only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.
- R. S. 1964, c. 20, s. 86; 1988, c. 21, s. 30.
- Modification to a notice of appointment.** **108.** Any modification to the notice of appointment of a judge concerning his place of residence shall be decided by the Government on the recommendation of the chief judge. The Government may make such a decision only if the period prescribed in section 112 for filing an appeal is expired or, where an appeal is filed, if the recommendation of the chief judge is confirmed.
- R. S. 1964, c. 20, s. 100; 1965 (1st sess.), c. 17, s. 16; 1982, c. 17, s. 76; 1987, c. 50, s. 5; 1988, c. 21, s. 30; 1995, c. 42, s. 26.
- Assignment to another division.** **111.** The chief judge may, where the administration of justice so requires and after consultation with the associate chief judges concerned, assign a judge to another division after the judge concerned has been given the opportunity to present his views in that respect.
- R. S. 1964, c. 20, s. 103; 1965 (1st sess.), c. 16, s. 21; 1965 (1st sess.), c. 17, s. 18; 1978, c. 19, s. 15; 1988, c. 21, s. 30; 1995, c. 42, s. 29.
- Notice of decision.** **112.** The chief judge who makes a recommendation under section 108 or a decision respecting the permanent assignment of a judge to another division under section 111 shall notify the judge concerned. The latter may, within fifteen days, appeal to the Conseil de la magistrature which may confirm or quash the recommendation or the decision of the chief judge.
- R. S. 1964, c. 20, s. 104; 1974, c. 11, s. 30; 1977, c. 20, s. 138; 1978, c. 19, s. 16; 1986, c. 95, s. 334; 1988, c. 21, s. 30.
- Exclusive office.** **129.** Subject to the provisions of this subdivision, the office of judge shall be exclusive.
- Incompatibility.** The office of judge is incompatible, in particular, with the office of director or manager of a legal person or any other constituted body, or with the conduct, even indirect, of commercial activities.
- R. S. 1964, c. 20, s. 121; 1965 (1st sess.), c. 17, s. 2; 1978, c. 19, s. 25; 1988, c. 21, s. 30.



APPENDIX III Internal Bylaws of the Conseil de la magistrature

Courts of Justice Act (R.S.Q., c. T-16, s. 253)

DIVISION I

GENERAL PROVISIONS

1. The following definitions shall apply in these bylaws:
 - a) “Act”: the Courts of Justice Act (R.S.Q., c. T-16);
 - b) “Council”: the Conseil de la Magistrature as established under section 247 of the Act;
 - c) “President”: the Chief Judge of the Court of Québec;
 - d) “Vice-President”: a member of the Council, elected by the members of the Council.
2. The head office of the Council shall be located in Québec City at 300 boulevard Jean-Lesage. The Council may also have an office in the City of Montreal.

DIVISION II

FUNCTIONS AND POWERS

3. The Council, in addition to its functions and powers as set forth in the Act, shall assume the following responsibilities:
 - a) approve the training and continuing education programs presented by the Chief Judges and the Presidents of the courts and tribunals under its jurisdiction, in keeping with the operating methods adopted by the Council;
 - b) determine the budget allocated to each court and tribunal for its training and continuing education programs and carry out regular follow-ups during its meetings;
 - c) establish committees and give them the necessary powers to fulfil their mandates;
 - d) approve the Activity Report of the Council.
4. The President of the Council, in addition to managing the operations of the Council, shall exercise the following functions:
 - a) prepare and preside over the meetings of the Council;
 - b) determine which issues shall be brought before the Council;
 - c) oversee the preparation of the budget and take the necessary steps to secure its approval;
 - d) sign, alone or together with any other person designated by the Council, any documents or records that fall under the jurisdiction of the Council;
 - e) assign responsibilities to the members of the Council as well as to the Secretary.
5. The Vice-President, elected by the Council from among its members, shall assume the functions and responsibilities of the President of the Council in the event of the latter’s absence or inability to act.



6. Under the authority of the President, the Secretary of the Council shall carry out the general functions pertaining to his position and those that may be assigned to him by the President or by the Council.

More specifically, the functions of the Secretary shall be the following:

- a) assume, in matters of managing the resources of the Council, which have been devolved upon him according to all applicable Acts and bylaws;
- b) prepare the meetings of the Council, draft the minutes of the meetings, and follow up on decisions made by the Council;
- c) act as the Secretary of the Executive Committee and other committees established by the Council;
- d) prepare an annual budget allocation plan for the Council's training and continuing education programs;
- e) keep and maintain the records of the Council;
- f) prepare, for the benefit of the members, documents concerning points of interest for the Council;
- g) certify the minutes of the meetings of the Council or any of its committees, as well as any documents or copies emanating from the Council;
- h) at the request of the members of the Council, express his opinion on the different issues dealt with at the meetings of the Council;
- i) prepare an annual report on the issues to be brought before the Council.

DIVISION III

COUNCIL MEETINGS

7. The Council shall hold its meetings at the head office of the Council or at any other location specified in the notice of meeting.
8. The number of meetings of the Council shall be determined by the latter in accordance with a timetable that it shall establish.
9. In addition to the regular meetings, the Council may hold special meetings as often as it deems necessary.
10. Meetings of the Council shall be convened by a written notice from the Secretary at the request of the President.

The President shall arrange for a special meeting to be convened at the written request of two members of the Council.

11. The Secretary shall forward to the members of the Council, at least three days before the meeting, a written notice of meeting which shall specify the date, time and place of the meeting. This notice of meeting shall be accompanied by an agenda.

In the case of a special meeting, the notice of meeting may be given by telephone 24 hours before the meeting. During these meetings, discussions are based solely on the items on the agenda, unless members agree otherwise.



12. The Council may dispense with notice of meeting formalities if all members of the Council consent to it.

A member may, before or after a meeting, waive the notice of meeting.

The presence of a member at a meeting constitutes a waiver on his part to a notice of meeting.
13. The members of the Council may participate in a meeting by means that enable all participants to communicate verbally, notably by telephone.
14. The meetings of the Council shall be presided over by the President or, in his absence, the Vice-President.
15. The quorum of the Council shall consist of eight members, including either the President or the Vice-President.

If a quorum is not present one half-hour after the time specified in the notice of meeting, the meeting shall be adjourned and a new notice of meeting must be issued. However, the President may extend the deadline before adjourning the meeting.
16. A meeting may, by a majority vote, be adjourned to another time or to a later date and a new notice of meeting shall not be required.
17. The decisions of the Council shall be made by a majority vote of the members present.
18. Votes shall be cast orally or by a show of hands unless the President or two members of the Council request a secret ballot.
19. In the absence of a secret ballot, the declaration by the President that a decision has been made unanimously or by a majority and the recording of this declaration in the minutes of the meeting shall constitute proof of the Council's decision, without the need to divulge the specific way in which members voted, except if a request is expressed to this effect by one of the members of the Council.
20. In case of a tie vote, the President, or the Vice-President in the absence of the President, shall have a deciding vote on any matter submitted to the Council regardless of whether the votes are cast orally, by a show of hands, or by secret ballot. The President or the Vice-President may or may not exercise his right to a deciding vote.
21. The decision to hold all or part of a meeting in camera shall be made by a majority of the members present.
22. The Council shall exercise its powers by means of decisions, except in matters that must be settled by way of a regulation, as prescribed under the Act.

A decision signed by all of the members of the Council shall have the same value as a decision made during a Council meeting which was duly convened and held. This decision shall be recorded in the minutes of the meeting following the date on which it was signed.
23. The Secretary of the Council shall draft and sign the minutes of each meeting. The minutes shall contain a summary of the deliberations of the Council as well as the decisions made at each meeting.



24. Apart from the President of the Council, the Secretary may also certify the minutes, excerpts from the minutes and other documents and copies emanating from the Council or forming any part of its records.
25. In the event that the Secretary is not able to attend any of the meetings, the Council may designate a member of the Council or a member of the staff of the Council to draft the minutes. These minutes shall be signed by such person and by the Secretary of the Council.

DIVISION IV

COMMITTEES OF THE COUNCIL

26. The Council shall establish an Executive Committee consisting of five members of the Council, including the President and the Vice-President of the Council. The other members shall be designated by the Council from among its members for a mandate that it shall determine.
27. The President of the Council shall be the President of the Executive Committee and the Vice-President of the Council shall be the Vice-President of the Executive Committee.
28. The Executive Committee shall have the following mandate:
 - a) examine the matters and execute the mandates which are entrusted to it by the Council and then report to the Council;
 - b) examine, at the request of the President of the Council, certain matters in order to make recommendations;
 - c) examine and make decisions on administrative matters between meetings of the Council and to submit its decisions for approval at the next meeting of the Council.
29. The quorum of the meetings of the Executive Committee shall consist of three members, including the President or the Vice-President.
30. The Secretary of the Council shall be the Secretary of the Executive Committee and as such, shall prepare the notice of meeting, draft and sign the minutes of the meetings, which shall be presented at the meetings of the Council.
31. With the necessary adaptations, section 7, paragraph 1 of section 11, sections 12, 13 and 14, as well as sections 16 through 25 shall apply to the Executive Committee.
32. The Council may also establish other committees. The Council shall determine the composition, mandates and powers of these committees.
33. Unless the Council decides otherwise, the Secretary shall act as Secretary of the committees established by the Council under section 32.

DIVISION V

FINAL PROVISIONS

34. These bylaws shall not be amended without the prior notification of members of the Council of such amendment in a notice of meeting.

The text of the proposed amendment must accompany the notice of meeting.



35. The internal bylaws of the Council shall be effective at the time of their adoption by the Council and shall replace any other internal bylaws previously adopted by the Council.

Effective: 15-12-99



APPENDIX IV Members of the Executive Committee as at March 31, 2002

Honourable Huguette St-Louis, Chief Judge of the Court of Québec, President

Honourable Rémi Bouchard, Senior Associate Chief Judge of the Court of Québec,
Vice-President

Honourable Gilles Charest, Chief Judge of the Municipal Courts of Québec

Honourable Michel Simard, Judge of the Court of Québec

Henri Grondin, Lawyer, Grondin, Poudrier, Bernier



APPENDIX V Criteria for Selecting Judges to Participate in External Symposiums¹

After determining that the symposium in question is relevant for the judicial function and that its cost is acceptable given the budgetary situation, the courts select the judge(s) based on the following criteria:

I- GENERAL TRAINING SYMPOSIUMS

- 1) the judge's merit based on his interest in his position, his involvement in his workplace;
- 2) relevance, i.e., the relationship between the content of the event and the duties performed by the judge;
- 3) seniority;
- 4) the judge's active participation in organizing the symposium, for example as a speaker;
- 5) the judge's participation in other similar symposiums;
- 6) the anticipated benefits for the judge himself.

II- SPECIALIZED TRAINING SYMPOSIUMS

- 1) relevance, i.e., the relationship between the content of the event and the duties performed by the judge;
- 2) the anticipated benefits for the judge himself, especially in response to a training need on a given subject;
- 3) the judge's active participation in organizing the symposium, for example as a speaker;
- 4) the judge's merit based on his interest in his position, his involvement in his workplace;
- 5) the judge's recent participation in other similar symposiums;
- 6) the commitment to transmit his acquired knowledge to other colleagues;
- 7) membership in the association organizing the symposium.

June 1999

1. These include symposiums and conventions organized by other institutions not falling under the jurisdiction of the Council.



APPENDIX VI Codes of Ethics

(T-16, r. 4.1)

Code of Ethics for Provincial Judges¹

- 1- The judge should render justice within the framework of the law.
- 2- The judge should perform the duties of his office with integrity, dignity and honour.
- 3- The judge has a duty to foster his professional competence.
- 4- The judge should avoid any conflict of interest and refrain from placing himself in a position where he cannot faithfully carry out his functions.
- 5- The judge should be, and be seen to be, impartial and objective.
- 6- The judge should perform the duties of his office diligently and devote himself entirely to the exercise of his judicial functions.
- 7- The judge should refrain from any activity which is not compatible with his judicial office.
- 8- In public, the judge should act in a reserved, serene and courteous manner.
- 9- The judge should submit to the administrative directives of his chief judge, within the performance of his duties.
- 10- The judge should uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society.

Code of Ethics for Part-Time Municipal Judges

- 1- The judge should render justice within the framework of the law.
- 2- The judge should perform the duties of his office with integrity, dignity and honour.
- 3- The judge has a duty to foster his professional competence.
- 4- The judge should avoid any conflict of interest and refrain from placing himself in a position where he cannot faithfully carry out his functions.
- 5- The judge should be, and be seen to be, impartial and objective.
- 6- The judge should perform the duties of his office diligently.
- 7- The judge should refrain from any activity which is not compatible with his functions of municipal judge.
- 8- In public, the judge should act in a reserved, serene and courteous manner.
- 9- The judge should uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society.

¹ This code is applicable to the following courts and tribunals: Court of Québec, municipal courts of Laval, Montreal and Québec City, the Human Rights Tribunal, the Professions Tribunal, the Labour Court, and justices of the peace (section 260 of the Courts of Justice Act).



Excerpts from the *Act respecting municipal courts* (c. C-72.01)

45. A municipal judge, in addition to complying with the standards of conduct and fulfilling the duties imposed by the code of ethics adopted pursuant to section 261 of the Courts of Justice Act (chapter T-16), shall observe the following rules:

- 1° He shall not, even indirectly, enter into a contract with a municipality within the territory in which the municipal court has jurisdiction, except in the cases provided for in section 305 of the Act respecting elections and referendums in municipalities (chapter E-2.2), adapted as required, nor shall he advise any person negotiating such a contract;
- 2° He shall not, even indirectly, agree to represent or act against a municipality or a member of the municipal council, an employee other than an employee within the meaning of the Labour Code (chapter C-27) or a police officer of a municipality within the territory in which the municipal court has jurisdiction;
- 3° He shall not hear a case pertaining to a contract described in paragraph 1 to which an advocate with whom he practises as an advocate is a party or a case in which such an advocate is representing or acting against a municipality or person contemplated in paragraph 2;
- 4° He shall not hear a case involving a question similar to one involved in another case in which he represents one of the parties;
- 5° He shall, with respect to every case referred to him, make and file in the record a declaration stating not only the grounds of recusation to which he is aware he is liable and which are set out in article 234 of the Code of Civil Procedure (chapter C-25), but also any grounds indirectly connected with him and arising either from the fact that he is representing one of the parties or from the activities of a person with whom he practises as an advocate.

1989, c. 52, s. 45.

APPENDIX VII Summary of Complaints Handled Since 1979

RESULTS FROM THE EXAMINATION STAGE							
YEARS	COMPLAINTS RECEIVED	Complaints Unfounded Without Additional Information	Complaints Unfounded After Additional Information	Complaints That Led to the Application of Section 267 ^a	Others ^b	Complaints Under Examination	Complaints Warranting an Inquiry ^c
1979-1980	5	1	2	1			1
1980-1981	1			1			
1981-1982	5		4				1
1982-1983	5		4				1
1983-1984	6		4	1	1		
1984-1985	10		5	1			4
1985-1986	10	1	4	3			2
1986-1987	18	1	12	2	1		2
1987-1988	24	2	17	1	1		3
1988-1989	37	4	26	1	3		3
1989-1990	41	16	13	2	5		5
1990-1991	56	33	17	2	2		2
1991-1992	65	50	13				2
1992-1993	51	34	14		3		
1993-1994	81	39	20		3		19
1994-1995	88	63	21		1		3
1995-1996	89	66	13	1	2		7
1996-1997 ^d	68	48	18				2
1997-1998 ^e	70	32	27	1			10
1998-1999	68	44	20	1	1		2
1999-2000	76	53	19		2		2
2000-2001	59	37	16	2			4
2001-2002	87	47	23	1		12	4
TOTAL	1 020	571	312	21	25	12	79

a. Complaints which, due to their nature and importance, do not warrant an inquiry (sec. 267 of the *Courts of Justice Act*).

b. These are closed files (complaints that no longer applied).

c. In all, 53 committees were set up to inquire 79 complaints.

d. Under section 93.1 of the *Courts of Justice Act*, the Minister of Justice submitted a request to the Council and the latter then set up an inquiry committee. Since this is not a complaint, it is not counted in this appendix.

e. Two files opened during the budgetary year each contained several letters and petitions and were counted as two complaints.



RESULTS OF THE INQUIRIES					
YEARS	Complaints Unfounded After Inquiry	Complaints That Led to a Reprimand ^a	Complaints That Led to a Recommendation of Destitution	Others ^b	Complaints Under Inquiry ^c
1979-1980		1			
1980-1981					
1981-1982	1				
1982-1983	1				
1983-1984					
1984-1985	2	2			
1985-1986	2				
1986-1987	1	1			
1987-1988	2			1	
1988-1989		3			
1989-1990		2		3	
1990-1991	1	1			
1991-1992	1	1			
1992-1993					
1993-1994	13	6			
1994-1995	1	1		1	
1995-1996	3	2		2	
1996-1997		1	1		
1997-1998	1	9			
1998-1999					2
1999-2000	1				1
2000-2001	1	1			2
2001-2002		3			1
TOTAL	31	34	1	7	6

a. The 34 complaints gave rise to 21 reprimands.

b. These are files that were closed following the retirement or resignation of the judge and one case in which the Council took note of the Inquiry Committee's report.

c. Five committees were set up to inquire the six complaints.



APPENDIX VIII

Regional Origin of Complainants

Regional Origin	Number
Abitibi-Témiscamingue	0
Bas-Saint-Laurent	0
Capitale-Nationale	12
Centre-du-Québec	3
Chaudière-Appalaches	1
Côte-Nord	2
Estrie	6
Gaspésie — Îles-de-la-Madeleine	1
Lanaudière	1
Laurentides	5
Laval	4
Mauricie	3
Montérégie	17
Montréal	30
Nord du Québec	0
Outaouais	4
Saguenay — Lac-Saint-Jean	0
Extérieur du Québec	1
TOTAL	90



Conseil de
la magistrature
du Québec