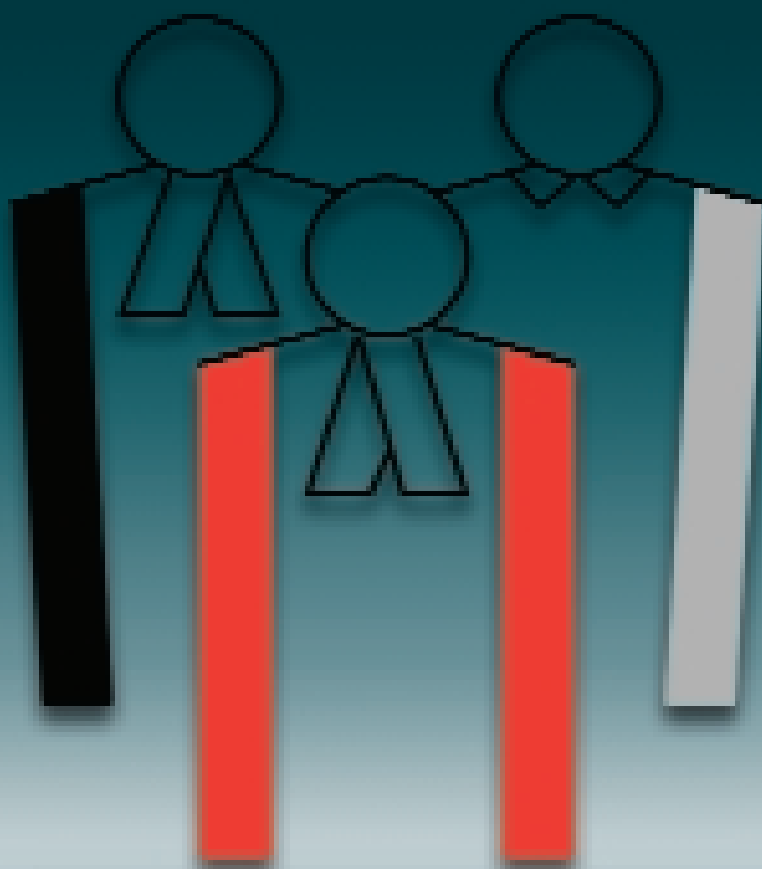


ACTIVITY REPORT

2002-2003

2002-2003



**Conseil de
la magistrature
du Québec**

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Activity report

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In this document, the masculine gender is used for the sake of brevity only, with no discrimination intended.

Government of Québec

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I am pleased to present the activity report of the Conseil de la magistrature du Québec for the 2002-2003 budgetary year.

Since my mandate ends in August 2003, this is the final report I will be presenting, in accordance with the *Courts of Justice Act*. As I complete my mandate, I would like to reflect on some of the Conseil's concerns which, I believe, deserve special attention.

Need for modernized legislation

The Conseil's main role, as the gatekeeper for judges' conduct, is to maintain judicial independence and public confidence in judicial institutions. Indeed, the unique nature of the judicial function and the high expectations that the public has of members of the judiciary were reaffirmed by the Supreme Court of Canada in two recent decisions*.

The Supreme Court writes:

Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them [...].

Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law [...]. 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 citizens.

In performing its role on matters of ethics, the Conseil must ensure that citizens have access to a simple complaint handling mechanism and that judges have all the guarantees that are indispensable for upholding their procedural rights.

After 20 years of existence, the Conseil examined its role and operating methods with respect to ethics and found it essential to review the way in which complaints are handled in light of actual experience. The issues examined include the drafting of complaints as well as the handling of complaints, the inquiry committee, the role of members of the Conseil, the role of chief judges, and the judicial review process. The Conseil consulted judges and proposed legislative amendments to the Minister of Justice.

Basically, these proposals are meant to improve the efficiency of the complaints process, while respecting the rights of both complainants and judges.

* *Therrien v. Minister of Justice et al.* [2001] 2 S.C.R. 3
Moreau-Bérubé v. New Brunswick (Conseil de la magistrature) [2002] 1 S.C.R. 249

The Conseil wishes fervently that the Minister of Justice would introduce a bill in the National Assembly that reflects the orientations put forth by its members.

Indeed, it is in the same spirit of modernization and evolution of standards applicable to judges that the Conseil decided to analyze the provisions of the *Courts of Justice Act* pertaining to functions and activities that are incompatible with the office of judge and proposed amendments to the Minister to clarify the legislation.

The Act lists certain functions and activities that are incompatible with the office of judge. However, the Conseil submits that the Act should avoid such listing of functions or activities, since doing so may hamper the judge's ability to engage in functions or activities that would otherwise be compatible with the performance of his judicial functions. 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 develop jurisprudence on this matter.

Need for modern tools and appropriate funding

The Conseil's secondary role is to ensure that judges have the appropriate means to maintain and develop their skills, by providing them with access to the documentation they need to fulfill their responsibilities, or getting them to participate in training and continuing education activities.

The Conseil therefore examined access to legal documentation. As part of this process, it consulted law bookstores and librarians and asked specialists to submit recommendations to facilitate the transition from hard-copy documentation to new technologies and the pooling of books not available online in public libraries.

This process led the Conseil to adopt an action plan whose measures are spread out until April 2005.

In terms of training and continuing education, the Conseil insists that judges participate actively in organized activities. However, with limited and insufficient budgets, it is difficult for the Conseil and the courts to develop and implement training programs that meet the legitimate needs in this area.

I had the opportunity on several occasions to convey this concern to the various Ministers of Justice during my mandate. Unfortunately, it must be admitted that the ministers did not respond favourably to the repeated calls for a budget increase. This surprises the Conseil a great deal, since training and continuing education are essential for maintaining and improving the quality of justice, one of the priorities of the Ministry of Justice.

The Conseil feels that it is the Minister of Justice who must defend the needs of the judiciary within the government. Indeed, it is the Minister of Justice who has the means to convince cabinet colleagues about the legitimacy, validity and timing of the Conseil's requests.

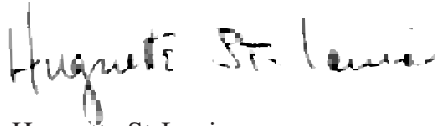
This is why the Conseil is hoping strongly that its budgetary requests will be received favourably.

Conclusion

The Conseil's mission is essential. Its members are aware of their role in the administration of justice. In performing their functions, they help maintain public confidence in the justice system.

I would like to take this opportunity to thank all the members and staff of the Conseil for their contribution and relentless efforts, a reflection of their commitment to providing high-quality service. The Conseil cannot fulfill its mission without the devotion of all these people.

Finally, I am proud of what we have accomplished to date. It will be up to my successor to continue the projects that have been started and to take up other challenges in order to maintain public confidence in the judicial system.

A handwritten signature in black ink, reading "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, August 2003

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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, 2003, 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 established under the *Courts of Justice Act*. The pertinent sections are reproduced 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, 2003, 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 Members

As at March 31, 2003, 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;
- four Associate Chief Judges of the Court of Québec;
- one Judge-President of a Municipal Court;
- one judge chosen among persons performing the functions of President of the Human Rights Tribunal or Chairman of the Professions Tribunal;
- two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- one judge chosen among the judges of the Municipal Courts 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 and the four Associate Chief Judges of the Court of Québec are all ex-officio members of the Conseil. The other members are appointed by the government 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 is elected by the Conseil among its members.

Finally, the members of the Conseil who are not judges receive 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 Vice-President. The Conseil may hold its meetings in camera anywhere in Québec. During the 2002-2003 budgetary year, the members of the Conseil met eight times.

The Conseil may adopt bylaws to facilitate its internal governance or to create committees and determine their functions. The Conseil has adopted a set of internal by-laws that generally govern its administration and operation. The internal by-laws are reproduced in Appendix III.

These bylaws notably call for the creation of an Executive Committee composed of five members of the Conseil, including the President and the Vice-President. 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:

- to examine issues brought before it and to execute the mandates entrusted to it by the Conseil and then to report back to the Conseil;
- to examine certain issues when requested by the President of the Conseil, in order to present recommendations to the Conseil;
- to examine and make decisions regarding 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 2002-2003 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 Ordre des avocats 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 performs his functions on an exclusive basis, under the authority of the President. At the end of his 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 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. Since its budget is not pre-determined, the Conseil should not be influenced by budgetary constraints in its decision-making.

However, the government determines the budget pertaining to the training and continuing education of judges. If the Conseil wishes to change this budget, it must seek the approval of the Minister of Justice.

During the 2002-2003 budgetary year, the training and continuing education budget was established at \$1,312,300, representing an increase of \$225,000 from the previous year. This non-recurrent amount was used as follows: \$100,000 for the training of judges on the new *Youth Criminal Justice Act*, \$50,000 for training on the new provisions of the *Code of Civil Procedure*, and \$75,000 for the organization of a seminar.

The *Courts of Justice Act* gives the Conseil the mandate to establish information, training and continuing education programs for judges from the courts and tribunals under the legislative authority of Québec and appointed by the government. Moreover, article 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 2002-2003, 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 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 seminars and conferences not organized by the courts and tribunals are paid to each court or tribunal. The Conseil has established a rule that no more than 20% 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 2002-2003 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

Jurisdiction

The Court of Québec is composed of no more than 270 judges. Apart from the Chief Judge and the Associate Chief Judge, who performs the same functions as the Chief Judge but under his authority, the government also appoints three associate judges: one for the Civil Division, one for the Criminal and Penal Division, and one for the Youth Division. In addition, the Chief Judge designates, from among the judges of the Court and with the approval of the government, ten coordinating judges to assist the Chief Judge in the various regions and, when circumstances warrant, a maximum of eight associate coordinating judges.

The three associate chief judges assist the Chief Judge and the judges in each matter under the Court's jurisdiction.

The jurisdictions of the three divisions of the Court can be summarized as follows:

Civil Division

The judges who sit in the Civil Division hear cases in which the sum in dispute is less than \$70,000, except for applications for support and matters reserved for the Federal Court of Canada. They also handle the recovery of sums due to municipalities or to school boards as provided for in the Code of Civil Procedure.

In the Civil Division, judges also exercise the powers granted to them by the law in administrative matters. They have exclusive jurisdiction to hear appeals of certain decisions, such as those rendered by the Commission d'accès à l'information, the Régie du logement, the Tribunal administratif du Québec, the Comité de déontologie policière and the ethics committees formed under the *Act respecting the distribution of financial products and services and the Real Estate Brokerage Act*. This appeal jurisdiction also applies to decisions rendered by the Minister of Revenue in provincial tax matters.

When sitting in the Small Claims Division of the Civil Division, the judges now hear claims for amounts of \$7,000 and under that are owed by individuals, companies or associations, in their own name and for their own personal behalf. A legal entity, company or association may not, as creditor, submit such a claim unless, at all times during the 12-month period preceding the application, no more than five persons bound to it by contract of employment were under its direction or control. Since there are no formalities in the Small Claims Division, written proceedings are extremely simplified and it is the judge himself who directs debate, examines witnesses, hears the parties, gathers the pertinent facts and determines the applicable questions of law. Judgments are without appeal.

People can also file a summary appeal in tax matters before a judge of the Small Claims Division and appeal of certain decisions rendered by the Minister of Revenue under the *Act respecting the Québec Pension Plan*.

Criminal and Penal Division

Judges who sit in the Criminal and Penal Division have jurisdiction, within the limits provided for by law, over proceedings brought under various federal and provincial statutes.

Examples of federal statutes include the *Criminal Code* and the *Controlled Drugs and Substances Act*. In this regard, judges sit alone without a jury and can hear cases involving multiple criminal charges. In fact, they hear all criminal cases, except for those heard before a court consisting of a judge and a jury.

Under federal laws, these judges can also hear cases for summary offences and act during preliminary proceedings.

As for provincial laws, these judges act under the *Code of Penal Procedure* and preside over cases involving almost all laws passed by the National Assembly, such as the *Highway Safety Code*, the *Income Security Act*, the *Environmental Quality Act* or the *Consumer Protection Act*.

Youth Division

The judges who sit in the Youth Division have jurisdiction over all civil, criminal and penal matters related to young people.

In civil matters, they hear, in the main, any proceeding regarding the security and development of children (up to the age of 18) under the *Youth Protection Act*, which makes it possible to intervene in cases where one or more children are in danger. They also hear cases in matters of adoption in accordance with the Civil Code of Québec.

In criminal and penal matters, the judges of the Youth Division apply the *Youth Criminal Justice Act*. They also hear, in first instance, cases in which persons less than 18 years of age but over 12 years of age have been accused of offences under the *Criminal Code* (including murder), a federal or provincial statute, or a municipal by-law.

As part of the municipal territorial organization that took place in Québec in 2002, all Québec municipal judges are now under the authority of a fourth associate chief judge at the Court of Québec, who is responsible for municipal courts. In this regard, the role of this associate chief judge differs from that of the other associate chief judges.

Finally, a fifth associate chief judge has been added to the Court, namely, the associate chief judge responsible for the Labour Court. Under the Act that created the Commission des relations de travail, the Labour Court is supposed to be abolished. However, it will continue to exist as long as cases filed with the court are still pending. The Act also provides that judges of the Labour Court will no longer be seconded from the Court of Québec.

As at March 31, 2003, this court was composed of 272 judges.

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 an annual training program, determining its implementation costs, developing and organizing activities to meet expressed needs, recruiting the human resources required for 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 three associate chief judges, six judges who deal with different subjects (two for civil matters, two for youth affairs and two for criminal and penal issues), and the judge responsible for training, who chairs the committee. 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 2002-2003 budgetary year, the Court of Québec organized numerous training activities, including:

- two seminars on conducting a trial;
- two seminars on the formulation of judgments;
- a seminar on retirement planning;
- a seminar on administrative law
- a seminar on tax law;
- a seminar on social realities;
- two training sessions on the *Youth Criminal Justice Act*;
- two training sessions on reforming the *Code of Civil Procedure*;
- two initial training sessions for newly appointed judges;
- a training session for judges in management situations;
- a training session on judicial conciliation;
- a training session on criminal law;
- a training session on youth law;
- eleven periodic training sessions given on a regional basis.

The periodic training sessions focused on the following topics:

- evaluation of bodily injury;
- evaluation by the court of expert reports and qualification of an expert;
- the *Terrorism Act*
- the legal framework of information technologies;
- construction law;
- tattooing, body piercing and self-mutilation: from the normal to the pathological;
- youths and drugs;
- penal and criminal elements of evidence;
- psychiatric clinical examinations;
- appeal jurisdictions of the Court of Québec;
- substance abuse therapies for youths.

2.2.2 Human Rights Tribunal

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 as defined in the Québec *Charter of Rights and Freedoms*.

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 Charter also states that individuals may bring action before the Tribunal when the Commission ceases to act on their behalf.

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, 2003, not including the President, the Tribunal was composed of two judges and ten assessors selected according to a procedure established by government regulation. These two judges perform their duties concurrently with those of the Court of Québec.

Training and Continuing Education

During the 2002-2003 budgetary year, the Human Rights Tribunal held one summit that addressed the following topics:

- reasonable accommodation: an asset or an obstacle for schools in fulfilling their mandates;
- religious diversity at the workplace: an accessible challenge;
- multi-ethnicity and disability: a case of double discrimination;
- national judges and international law.

2.2.3 Professions Tribunal

Jurisdiction

The Professions Tribunal principally hears appeals of decisions rendered by the disciplinary offices or committees of the various professional orders and the administrative committees of some of these orders.

The Professions Tribunal consists of eleven judges from the Court of Québec designated by the Chief Judge of the Court of Québec. From among these judges, the Chief Judge appoints a President, as well as a Vice-President to replace the President in case he is absent or is prevented from assuming his role.

As at March 31, 2003, this Tribunal was composed of eleven judges, including a President and a Vice-President, who perform their duties concurrently with those of the Court of Québec.

Training and Continuing Education

During the 2002-2003 budgetary year, the Professions Tribunal held a study session where the following subjects were discussed:

- appeal on the merits: an interlocutory injunction without immediate appeal;
- appeal jurisdiction: evolution or revolution;
- drafting and validity of complaints;
- strict and absolute liability: admissible defence;
- work product privilege and communication of evidence;
- review: *functus officio* or disqualification.

2.2.4 Municipal Courts

New Structure of Municipal Courts

Following the municipal territorial reorganization reform, there are now 86 municipal courts in Québec serving 802 municipalities. These courts are governed by the *Act respecting municipal courts* (R.S.Q., c. C-72.01), including the municipal courts of Laval, Montréal and Québec, which were previously governed by charters.

Each municipal court is composed of at least one judge. The government may appoint several judges to the same court to ensure that it works properly. Municipal courts and their judges fall under the authority of the Associate Chief Judge of the Court of Québec, who is responsible for municipal courts.

When the court is composed of several judges, the government designates one of them to be in charge of the court. However, in courts where judges perform their duties on a full-time and exclusive basis, as is the case in the cities of Montréal, Laval and Québec, the government appoints a judge-president from their midst when justified by the volume of judicial work required. It may also appoint an associate judge-president to assist the judge president in performing his tasks.

Jurisdiction

In penal matters, municipal courts have jurisdiction over statutory violations of municipal by laws and cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. They also exercise their jurisdiction in accordance with part XXVII of the *Criminal Code* concerning summary convictions.

In civil matters, municipal 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, 2003, in addition to the Associate Chief Judge, these courts were composed of 97 judges, including one judge-president in the cities of Laval, Québec and Montréal, and one coordinating judge in the cities of Gatineau and Longueuil.

Training and Continuing Education

In 2002-2003, the Municipal Courts held several training activities that included the following:

- five regional seminars;
- two study sessions;
- one seminar on criminal law;
- one seminar on the writing of judgments;
- one seminar on oral judgment;
- one symposium;
- one computer training session;
- one training session for newly appointed judges.

These activities addressed the following issues:

- the minor's approach before the courts;
- breathalyzer;
- specific order and post-sentence inquest;
- disclosure of evidence;
- probation and victim compensation;
- hit-and-run offence.

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 2002-2003 budgetary year, the training session was held in Québec City, from April 13 to April 19, 2002. During this activity, in which 12 judges from the Court of Québec and one judge from the Municipal Court of Québec City and one judge from the Municipal Court of Montréal participated, the following topics were discussed:

- conditional sentence and conditions of the order;
- evaluation of facts and credibility;
- judicial independence;
- conducting a trial;
- sentencing;
- discrimination and prejudice;

- *Young Offenders Act*;
- writing judgments;
- “under the influence” infractions;
- search warrants;
- means of defence in criminal and regulatory law;
- rules of evidence.

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.

In 2001, the Conseil adopted a new training program focused more on the performance of judicial functions and on facilitating the continuous improvement of judges. The Conseil approved the applications of 40 judges who began their courses during the fall of 2002.

2.3.3 Participation in External Seminars

In addition to the training provided by the courts and tribunals, the Conseil encourages judges to 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 2002-2003 budgetary year, 66 judges participated in the following activities:

- Seminar organized by the Institut Philippe-Pinel, entitled “Prise en charge des adolescents difficiles”, Montréal, April 2002 (three judges);
- Seminar organized by the Canadian Association of Provincial Court Judges, entitled “Trial Court of the Future”, Saskatoon, May 2002 (two judges);
- Seminar organized by the National Judicial Institute, entitled “Civil Law Torts Seminar”, Montréal, May y the Université de Sherbrooke, entitled “Journées pluridisciplinaires Charles-Coderre”, Sherbrooke, May 2002 (three judges);
- Seminar organized by the Canadian Institute for the Administration of Justice, entitled “Judgment Writing”, Montréal, July 2002 (two judges);
- Seminar organized by the Federation of Law Societies of Canada, entitled “2002 National Seminar on Criminal Law”, Ottawa, July 2002 (three judges);
- Seminar organized by the National Council of Juvenile and Family Court Judges, entitled “Juvenile and Family Courts: Protecting America’s Future”, Boston, July 2002 (two judges);

- Seminar organized by the National Judicial Institute, entitled “Hearing and Deciding Charter Issues”, Mont-Tremblant, August 2002 (one judge);
- Seminar organized by the Canadian Criminal Justice Association, entitled “Advancing Restorative Justice: Enhancing Practices and Expanding Horizons”, Gatineau, September 2002 (two judges);
- Seminar organized by the Barreau du Québec, entitled “Le droit comme instrument d’équilibre entre la sûreté et la liberté: les responsabilités des autorités publiques et celles des avocats”, Montréal, September 2002 (one judge);
- Seminar organized by the World Forum, entitled “Drugs, Dependencies and Society”, Montréal, September 2002 (four judges);
- Seminar organized by the National Judicial Institute, entitled "Child Protection and the Law", Ottawa, September 2002 (four judges);
- Seminar organized by the National Judicial Institute, entitled "Retirement Planning for Québec Judges", Montréal, September 2002 (one judge);
- Seminar organized by the National Judicial Institute, entitled “Social Context Education”, Charlottetown, September 2002 (two judges);
- Seminar organized by the Canadian Association of Provincial Court Judges entitled : “The Role of Trial Judges”, Charlottetown, October 2002 (three judges);
- Seminar organized by the Canadian Association of Provincial Court Judges entitled : “Seminar on Judgment”, Charlottetown, October 2002 (one judge);
- Seminar organized by the Canadian Institute for the Administration of Justice, entitled “Dialogues about Justice: The Public, Legislators, Courts and the Media”, Gatineau, October 2002 (two judges);
- Seminar organized by the Société québécoise de droit international, entitled “Accès direct des individus aux tribunaux internationaux et nationaux des droits de la personne”, Montréal, October 2002 (one judge);
- Seminar organized by the Université de Montréal, entitled “International Conference: Law and the Internet”, Montréal, October 2002 (seven judges);
- Seminar organized by the Association des centres jeunesse du Québec, entitled “L’expertise en matière de garde d’enfants”, Montréal, February 2003 (two judges);
- Seminar organized by the Barreau du Québec, entitled “Réforme sur le Code de procédure civile”, Montréal, February 2003 (one judge);
- Seminar entitled “Conférence internationale Claire L’Heureux-Dubé”, Québec City, March 2003 (14 judges);
- Seminar organized by the Centre de recherche Action sur les relations raciales, entitled “Emerging Challenge and Effective Strategies”, Montréal, March 2003 (one judge);
- Seminar organized by the National Judicial Institute, entitled “Criminal Law Seminar”, Québec City, March 2003 (three judges).

2.3.4 Conseil Seminar

The Conseil organized a seminar held in Québec City on October 31 and November 1, 2002. The seminar's program was developed by a committee set up by the Conseil and chaired by the Vice-President of the Conseil, Judge Jacques Lachapelle.

During the seminar, some 200 judges attended workshops led by distinguished speakers, on the following theme: "judicial independence ... constraint or freedom guaranteed?"

In the first part of the seminar, the judges were invited to reflect on the legitimacy of judicial independence. Four speakers from different disciplines – a jurist, a philosopher, a psychologist and a sociologist – were able to present their opinions on the subject.

In the second portion, the judges attended a vox pop followed by a round table where participants from various fields expressed their position on the following question: "Are judges truly independent?"

The theme for the third portion was: "personal independence: the judge versus the institutions". Three speakers dealt with the situation of the judge inside the courtroom and in relation to his chief judge, the situation of the judge relative to legislative and executive power, as well as the link between independence and judicial ethics, or the relationship between the judge and his disciplinary body.

Finally, the closing speaker addressed the theme of "judicial independence and globalization". He reflected on what is probably the primary attribute of the function of a judge: judicial independence in the face of the internationalization of law due to the globalization of behaviours and activities; hence, judicial independence in the face of global justice which seeks to carve out a vital position for itself that transcends national divides.

The different speeches are published in the 2002 conference proceedings.

2.3.5 Visiting Trainee Judge

In February and March 2003, the Conseil 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:

- ethical principles for Québec magistrates;
- influence of the French Civil Code in Québec.

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 Ethics

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

The codes 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. They are therefore 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 periodically called upon to clarify these principles when examining complaints.

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 is 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, it 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 sets up a committee consisting of five individuals. It should be noted that when a complaint is filed by the Minister of Justice, the Conseil must set up a committee to conduct an inquiry.

An inquiry committee can be made up of current and past members of the Conseil. However, this committee must include at least three members of the Conseil, one of whom is designated 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 may intervene during the inquiry.

At this stage, the Conseil may retain the services of a lawyer or another expert to assist it 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*¹ case, 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 with pay 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.

However, 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 whole².

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

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

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 1993¹, that the pre-inquiry stage is not a judicial or quasi-judicial procedure.

However, the hearings of an inquiry committee are public, subject to a specific order to the contrary.²

3.4 Statistics

3.4.1 Complaints Received Since the Creation of the Conseil

From its creation in 1978 until March 31, 2003, the Conseil received 1,107 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 2002–2003 Budgetary Year

During the 2002-2003 budgetary year, the Conseil continued the examination of 12 complaints that were at the examination stage as at March 31, 2002 and received 87 new complaints (unchanged from last year) filed by 95 complainants.

The results of the 12 complaints that were being examined as at March 31, 2002 are as follows: ten complaints were deemed unfounded, including nine that required additional information, and two that were still being examined as at March 31, 2003.

These results appear in Appendix VII in relation to the 2001-2002 budgetary year.

Of the 87 complaints received in 2002-2003, 66 were deemed unfounded, two were deemed not of a nature or importance as to warrant an inquiry, two complaints were the subject of an inquiry and 17 were at the examination stage by the end of the budgetary year.

It should be noted that during the 2002-2003 budgetary year, two inquiry committee reports were referred to the Conseil. In one case, the report concluded that the judge should be reprimanded, while in the other case, it recommended that the judge be removed. These reports are summarized in section 3.5.

The following table shows the complaints received during the 2002-2003 budgetary year according to the jurisdiction exercised by the courts.

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

2. *Southam Inc. v. Mercier et al.*, [1990] R.J.Q. 437 (C.S.).

JURISDICTION	NUMBER OF COMPLAINTS
Small Claims Division	29
Criminal and Penal Division	24
Youth Division	13
Municipal Courts	10
Civil Division (excluding the Small Claims Division)	6
Other	5*
Total	87

* Five complaints did not apply to any specific jurisdiction.

The breakdown by jurisdiction has been fairly constant over the past few years, with about 33% of complaints relating to the Small Claims Division, while 25% involve the Criminal and Penal Division.

According to the data collected, 64 out of the 95 complainants were men (67.3%), 84 were parties to the case (88.4%), and 74 were not represented by a lawyer (77.9%).

The regional origins of the complaints are presented in a table in Appendix VIII, which shows that 56.8% of the complaints originated from three regions in particular: Montréal (21%), Montréal (17.9%), and Capitale-Nationale (17.9%).

The allegations raised by the complainants can be sub-divided into two groups: those concerning the behaviour of a judge inside the courtroom, and those involving his behaviour outside the courtroom. It should be noted that very few complaints concern the behaviour of a judge outside the courtroom. In fact, three complaints were filed on this subject, one having to do with what a judge said during a television interview and two others on certain things judges allegedly did while they were still lawyers.

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 84 complaints received concerning a judge's behaviour in court, 25 had to do with the judge's comments, 52 criticized the judge's attitude in court, and 66 pertained to the judge's application of the rules of law. Indeed, nearly six cases out of 10 involved multiple complaints.

As for the criticisms themselves, the complaints summarized below give an overview of the allegations raised by complainants.

3.5 Decisions of the Conseil

This section contains abstracts of all decisions of the Conseil at the examination stage that required the gathering of additional information as well as all inquiry reports submitted in 2002-2003.

3.5.1 Decisions of the Conseil at the Examination Stage

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

Allegation of abuse of power and failure to apply the rules of law

The Conseil received two complaints relating to the same event. In the first case, the complainant contended that the judge acted illegally, that he abused his powers, and that he caused physical and moral injury to the complainant. The second complaint was lodged by the complainant's spouse, who alleged that her spouse had received an illegal sentence and that the judge, through his comments, had convicted her too.

The court recordings showed that the complainant was charged with four offences against his former spouse. At the trial, he was represented by a lawyer and pleaded guilty to an amended charge of armed assault. The other charges were dropped.

The case was adjourned a few times so that a pre-sentencing report could be drawn up. During the hearing for submissions on sentencing, the complainant's lawyer mentioned that his client no longer acknowledged that the assault was committed with a weapon and presented a motion for the removal of this case, which was granted. The judge immediately ordered a new trial and the imprisonment of the complainant.

The complainant reappeared before the judge accompanied by another lawyer and once again pleaded guilty to the amended charge mentioned above. The judge gave him an 18-month conditional sentence, including eight months of house arrest day and night.

As for the sentence, the complainant's lawyer asked the judge whether, during the eight months of house arrest, his client could take one hour to do his groceries. This is the part of the sentence that is the subject of a separate complaint filed by the complainant's spouse. She indicated that the judge had convicted her when he said: "There's someone in his life, she'll go do the groceries." [Translation]

However, the court recordings showed that the judge said the following: "He lives with someone; they'll be able to arrange something." [Translation] The judge's comments under the circumstances are not those alleged by the complainant. They make direct reference to collaboration between the spouses, which the complainant could choose not to offer.

If he was not satisfied with the judge's decisions, the complainant could still file an appeal. It should be noted that the Conseil has no appeal jurisdiction and that it cannot intervene to correct, rectify or recast judgments.

Moreover, the court recordings showed that the judge behaved at all times in an impartial, objective, polite and courteous manner toward the parties.

The examination did not show any ethical misconduct on the part of the judge.

For these reasons, the Conseil ruled that the two complaints were unfounded.

Allegation of aggressive attitude and discrimination

In his complaint, the complainant maintained that the judge spoke to him in an authoritative and aggressive manner. He also said he had the feeling that his decision was rendered with some discrimination, alleging that the judge might have been influenced by the fact that he had complained to the Commissaire à la déontologie judiciaire and the Syndic of the Barreau du Québec.

The court recordings showed that the judge's tone of voice was neutral and calm throughout the proceedings and showed no sign of verbal aggression. He behaved at all times in an impartial, objective, polite and courteous manner.

The examination did not show any ethical misconduct on the part of the judge.

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

Allegation of arrogant attitude

In his complaint, the complainant noted that the judge “scolded him with astounding arrogance” [Translation] to keep him quiet, whereas his conduct was exemplary.

The court recordings showed that the complainant represented himself and that he appeared before the judge during the roll call. The defence lawyer informed the judge that the stenographic notes were not in the file and requested a pro forma date so he could read the notes once they were transcribed.

While the clerk was looking for a date, the complainant told the judge that, with respect to the stenographic notes, an order had been issued during the pre-inquiry for the transcription of the stenographic notes. The judge said that the notes had been received late and that a 30-day delay was to be expected. The complainant replied that this delay had expired and the judge closed the discussion on this aspect as follows: “It takes 30 days and when we don’t have them we wait. Correct?” [Translation]

The judge’s attitude, which may seem off-putting to the complainant, was displayed during the roll call, a process that generally takes place in the presence of lawyers. Moreover, it would have been preferable for the judge to adapt his tone of voice when talking to a complainant who is not familiar with this process.

The examination did not show any ethical misconduct on the part of the judge.

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

In his complaint, the complainant said that the judge had destabilized him completely by comments he made at the beginning of the hearing with regard to his inappropriate attire, all in condescending and dry tone of voice.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings showed that, upon swearing in the complainant, the judge told him the following: “Sir [...], when you come to court for a case, you dress otherwise than in shorts.” [Translation]

The complainant apologized and the judge added: “I understand, but you knew you were coming to court, it’s not a holiday camp; I am not asking you to come dressed in a tuxedo or in a suit, but otherwise than in shorts.” [Translation]

When the judge started considering the matter in dispute, the complainant accused him of being biased, given his comments, which the judge denied. Nevertheless, he gave the complainant the chance of being heard immediately by another judge, which the complainant refused.

This entire exchange lasted less than two minutes and the hearing proceeded smoothly thereafter. With the help of the judge, the complainant was able to present all his claims clearly and to enter into evidence all the documents he deemed relevant.

At the end of the hearing, after taking the case for deliberation, the judge said: “If I seemed aggressive to you at the beginning, I did not mean to be aggressive, but only wanted to make a remark regarding that and nothing more [...] It was more a comment that aggression and if you felt otherwise, I apologize.” [Translation] At that point, the complainant also apologized for his reaction.

The examination did not show any ethical misconduct on the part of the judge.

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

Allegation of disrespectful attitude and comments

The Conseil received two complaints related to the same event. In the first, the complainant maintained that the judge’s attitude prevented him from expressing himself and that the judge made some disrespectful comments. The second complaint was filed by the complainant’s mother, who alleged, among other things, that the judge laughed at her.

The court recordings showed that the judge made some comments that appeared inappropriate when he said the following to the complainant: “You did [not] know that your license had expired, sir? [...] Who will do it if you don’t know? You are 19 years old. [...] Are you still wearing diapers? [...] You are no longer in diapers? [...] You are 19 years old, sir, you are the one who takes your driver’s license, [...] who knows when it expires [not] someone else.” [Translation]

As for the allegations brought by the complainant’s mother, the recordings showed that there was an exchange with the judge that went as follows:

Judge: “You can come and testify, madam, if you want [...]. You may sit down, sir. It will [not] change much.”

Madam: “Me, I am not wearing diapers.”

Judge: “I hope you are not wearing diapers.”

Madam: “I change diapers, I can tell you that.” [Translation]

At the end of the mother’s testimony, the judge carefully told her the following, in an even tone of voice: “I do not want to insult you; you seemed insulted when I told your son that he was no longer wearing diapers.” [Translation]

Following this comment, a second exchange took place, with voices rising somewhat:

Judge: “I have children too, I know what that means. [...] They stand up when it’s time to assume their responsibilities.”

Madam: “It’s always easier to criticize other people’s children than our own.” [Translation]

The Conseil felt that the judge’s comments could constitute ethical misconduct. For these reasons, it ruled that an inquiry should be held .

1. The inquiry started on February 21, 2003 and the inquiry committee concluded that the complaint was founded. The judge was reprimanded. The inquiry committee’s report will be summarized in the 2003-2004 activity report.

Allegation of disrespectful attitude and failure to apply the rules of law

In his complaint, the complainant alleged that the judge showed him no respect, that justice was not rendered within the confines of the law, and that the judge allowed a lawyer to violate the law by authorizing him to make submissions on behalf of his client in the Small Claims Division.

The documents submitted by the complainant as well as the court recordings showed that the complainant had filed a liability suit in Québec Superior Court against a hospital, politicians and a doctor.

In the months that followed, the complainant filed an application in the Small Claims Division for \$3,000 against the same doctor involved in the case in Québec Superior Court.

Following this application, the doctor filed a motion with the Chambre de pratique through the lawyers acting on his behalf in the other case to have the complaint dismissed because it was inadmissible.

The examination showed that a motion had to be filed with the Chambre de pratique, where lawyers are allowed, especially since a notice of hearing before the Small Claims Division scheduled for the ensuing days had been postponed by the parties.

Moreover, the court recordings showed that the judge was categorical when rendering his decision on the complainant's objection, just as he was toward the doctor's lawyer on another matter. He was always polite with the complainant and the lawyer, who were both able to express their positions and submit the documents they wanted to support their claims.

The examination did not show any ethical misconduct on the part of the judge.

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

Allegation of connivance

In his complaint, the complainant indicated that two judges were "playing games with him" [Translation], taking advantage of the fact that he was defending himself, since no lawyer was willing to represent him.

The court recordings showed that the complainant was denied release and that he appeared in the ensuing days before the first judge to justify his release.

At the request of that judge, the Attorney General's prosecutor explained to the complainant that the only way he could obtain his release was to file an application for review with the Superior Court, since the judge could not reverse the decision of a justice of the peace. Finally, the judge indicated to the complainant that he had no other choice but to arrange for a pro forma preliminary inquiry at the earliest possible date.

It is the second judge who presided the hearing on that day. The complainant explained to the judge that he had been informed that there would be an inquiry, that he wanted to file an application for release and that he had been told that he could make representations on this matter. The judge asked the Attorney General's prosecutor to suggest a date for the preliminary inquiry.

The complainant then showed his discontent and the judge suggested to the Attorney General's prosecutor to meet with him to explain the situation. The session was adjourned and resumed later in the presence of the complainant.

The court recordings showed that the two judges treated the complainant with consideration, explaining to him the legal situation and informing him of the possible options in his case, in a calm and respectful tone of voice. On each occasion, the complainant was given the opportunity to express himself at length. Neither of the judges could, under the circumstances, grant the complainant the release he was seeking.

The examination did not reveal any ethical misconduct on the part of either judge.

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

Allegation of connivance and falsification of documents

In his complaint, the complainant maintained that the stenographic notes of the hearing were not consistent with what actually happened and alleged that the judge, the clerk, the prosecutor and the inspector acted in connivance to conceal information. He added that the notes did not reproduce a conversation between the judge and himself concerning the defence that he planned to present and that had been denied to him.

The complainant as well as his spouse affirmed that the judge asked to see the municipal inspector. According to their version, the prosecutor and the clerk rose and went to meet the judge in “his chamber” without them being present.

The judge denied meeting with the inspector and the prosecutor in his office or elsewhere. He also stated that it was possible that a request for adjournment had been presented, as often happens at the beginning of a trial.

For his part, the inspector recalled that the prosecutor had asked the judge for an adjournment so he could meet with him for the final preparation of the case prior to the hearing before the judge.

The prosecutor noted categorically that he never met with the judge along with the inspector. He added that he had to ask for an adjournment from the judge in order to meet with the inspector.

As for the clerk, he said it was possible that there had been an adjournment.

The court recordings showed that, following the hearing that preceded the one involving the complainant’s spouse, the prosecutor asked for an adjournment to meet with the municipal inspector. The judge consented. The clerk asked the audience to rise and, following the adjournment, the case involving the complainant’s spouse started.

This is not exceptional at all. The confusion could have arisen from the configuration of the courtroom, since the judge and the lawyer leave through doors located on the same wall.

Moreover, a careful reading of the stenographic notes shows that the complainant was able to present the elements on which he planned to base his defence and that the notes were consistent with the court recordings. The recordings alone showed that the case seemed to have unfolded smoothly, without interruption.

The examination did not reveal any ethical misconduct on the part of the judge.

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

Allegation of discrimination

In his complaint, the complainant maintained that the judge had asked a security guard to expel him from the courtroom on the grounds that he was proudly displaying his Canadian citizenship by wearing a pin featuring the Canadian flag.

The judge had no recollection of an incident involving the complainant on that day. For his part, the security guard knew the complainant since he attended court frequently. On the date mentioned in the complaint, he did not remember the events raised by the complainant.

As for the complainant, he based his complaint on statements made by the security guard. He alleged that the security guard told him that the judge had signalled him to expel the complainant.

However, the complainant acknowledged that he did not see the judge giving any such signal to the security guard.

The court recordings showed no incident that could point to the possible expulsion of the complainant.

The examination did not reveal any ethical misconduct on the part of the judge.

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

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However, the complainant acknowledged that he did not see the judge giving any such signal to the security guard.

The court recordings showed no incident that could point to the possible expulsion of the complainant.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant wanted to file a private complaint and maintained, among other things, that he was the victim of a conspiracy on the part of the judge, along with the Ontario authorities and Québec police and security officers.

The examination revealed that the justice of the peace had followed the procedure for handling private complaints by demanding that the complainant make an appointment and that he complete the private complaints form, indicating all the relevant information concerning the people against whom he planned to file a complaint.

Moreover, since the room where the judge received the complainant had no recording equipment, it was impossible to assess the tone and words used by the judge, as the judge and the complainant were alone during the exchange that gave rise to the complaint.

During the exchange, considering that the tone was rising, that the complainant seemed more and more nervous and made a gesture that led him to fear for his safety, the judge apparently ordered the complainant to leave the room.

Following these explanations, the Conseil felt that the fact that the judge expressed himself firmly or used an authoritarian tone of voice did not, in and of itself, show a lack of reserve, serenity and integrity, or impartiality on his part.

The examination did not reveal any ethical misconduct on the part of the judge.

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

Allegation of bias

In his complaint, the complainant maintained that the judge had shown “compassion, even indulgence” [Translation] from the beginning of his opponent’s testimony.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings showed that these allegations were unfounded. The judge was polite with both parties and allowed them both to express themselves freely.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge was biased because he said the following to his opponent at the beginning of the hearing: “Mr. [...] wants to have bread and butter.” [Translation] He added that the judge violated the Charter of Rights and Freedoms, which states notably that any person has a right to protect his dignity and to an impartial hearing and that any accused has a right to a full and complete defence.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings and the judge’s explanations showed that the judge said: “You can’t have your cake and eat it too” [Translation] more than 35 minutes after the trial began and that the complainant seemed to fully understand the meaning of this popular expression.

The complainant was the first to be heard for 15 minutes, followed by his opponent who then had about the same time to express himself. The judge intervened during each party’s presentation, but at no time did he exert any undue pressure on the parties to proceed more rapidly.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant contended that the judge was biased because he refused to hear his testimony and that he rendered a wrong decision.

The court recordings showed that the judge asked the complainant where he was going with his testimony and decided that it had nothing to do with the alleged offence, thus refusing to hear the witness.

The judge was very measured, never raised his voice and simply decided that the testimony was not relevant and rendered his judgment forthwith. Finally, the decision as to whether the witness should be heard or not falls under the judge's sole jurisdiction.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant maintained that the judge was in conflict of interest because he heard his case even though he knew her opponent's lawyer personally, and because he had made his decision before beginning the hearing and did not allow her the time to explain everything. She also did not understand why two of her witnesses were not called to testify.

The court recordings showed that the two parties were heard as well as certain witnesses. Also, counsel for the complainant got the opponent's lawyer to admit the content of the testimony of two witnesses without them being heard. There is no indication that everything had been decided in advance. From the beginning of the hearing, the judge told the parties and their lawyers that he had read the entire file.

The court recordings did not give any indication that the judge knew the opponent's lawyer personally. Upon checking with the judge, he confirmed that he only knew the lawyer on a professional basis.

The hearing was conducted in a serene atmosphere and the judge's comments were measured, calm, courteous and impartial.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge was not impartial or objective, that he had preconceived ideas as to his culpability, and showed obvious signs of impatience during the trial.

The court recordings, the stenographic transcription and the judge's explanations showed that the judge made no comment that could create the impression that there would be a guilty plea. The examination revealed a few signs of impatience on the part of the judge, particularly during exchanges between himself and counsel for the complainant as well as with the complainant himself during his testimony. Can a judge be criticized for circumscribing the debate so that it is relevant and essential to the defence of the accused before him?

If the judge showed signs of impatience – something he acknowledged – he felt they were understandable given the nature of the case before him, the congested docket that day, and the time already devoted to the case on details that he did not find relevant.

Despite the judge's tone of voice at certain times and a few signs of impatience during the trial, the Conseil found that the nature and significance of the complaint did not justify the holding of an inquiry.

In his complaint, the complainant alleged that the judge was biased because he convicted him without giving him the chance to explain himself.

The court recordings showed that the judge behaved at all times in an impartial and objective manner toward the parties as well as the witnesses. In addition, the complainant was represented by a lawyer who had questioned him for a long time, allowing him to present his claims.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge had a favourable disposition toward his opponent by allowing the latter to produce all documents he deemed relevant, listening to him for a long time, authorizing him and his witnesses to speak in French, even though they were bilingual and the complainant spoke only English.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings showed that the judge had allowed the complainant to express himself at length and freely on the points he held against his opponent. Indeed, he was unable to produce one document which the judge had found unfavourable for the complainant.

Apart from the complainant, one of the respondents expressed himself in English, while the other persons spoke in French, as the judge had given them the choice of using either language. The complainant did not indicate to the judge that he did not understand French, nor did he request the services of an interpreter.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant maintained that the judge was favourably inclined toward his opponent because the latter was French-speaking, while the complainant did not speak the language very well.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings showed that the complainant had chosen to address the court in French, after indicating to the judge that this was not his strongest language. At a certain point, the judge even spoke to him in English and the complainant replied in English. It should be noted that the complainant did not ask to make his submissions in another language, nor did he specify that he needed an interpreter.

The judge was somewhat firm when the parties were arguing between themselves rather than addressing him. He also explained the procedure to follow in a calm yet firm tone of voice. His tone remained measured and within the norm. There was no indication of an appearance of bias or prejudice whatsoever in favour of either party.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge was biased in favour of his opponent and the Director of Youth Protection, and that he was arrogant and irritated.

The court recordings showed that the judge behaved toward all the parties in an objective and serene manner. In addition, he fulfilled his role with integrity and displayed a great deal of patience.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge was biased in several cases in which he was involved. He referred to comments and gestures made by the judge toward him. He declared, among other things, that the judge said to him that “his place was in prison” [Translation] before the trial ended and that he “made a hand gesture as if to take aim and shoot him in the head.” [Translation]

The court recordings for several hearings showed that the judge behaved toward the complainant in a completely impartial and objective manner and was polite and courteous toward the complainant.

The examination did not reveal any ethical misconduct on the part of the judge.

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

Allegation of bias and demeaning attitude and comments

In his complaint, the complainant alleged that the judge did not allow him to present his version of the facts, that he arbitrarily refused to allow him to present documents to support his case, and that he made some vexatious comments.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by a lawyer. The court recordings showed that the complainant was able to present his version of the facts. It is true that, during the hearing, the judge refused to allow the complainant to present certain documents, but this had to do with assessing evidence and determining its probative value, areas in which the cannot intervene. Finally, the hearing was conducted in a serene atmosphere.

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

In his complaint, the complainant, referring to the transcript of the stenographic notes, maintained that the judge prevented him from intervening on several occasions, did not give him a chance, was in connivance with the Attorney General’s prosecutor, intimidated him and insulted him for being a pensioner.

Several points raised by the complainant had nothing to do with ethics but rather concerned the judge’s application of judicial discretion, something that is beyond the jurisdiction of the Conseil.

The stenographic notes from the hearing showed that the complainant represented himself. He alleged that the judge intimidated him about his age when he said the following: “You are old enough for that?” [Translation] With these words, the judge simply wanted to remind the complainant that he should know that it is his responsibility to prepare his case and to call the necessary witnesses.

Finally, the complainant alleged that the judge insulted him for being a pensioner when he said the following: “You have a lot of time to fantasize”. [Translation] Once again, the judge simply wanted to point out to the accused that he did not believe his story. It is the judge’s responsibility to rule on the credibility to be given to

a person's testimony, even though using the social status of the accused as a "pensioner" to conclude that he was fantasizing was demeaning and unacceptable.

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

In his complaint, the complainant alleged that the judge's attitude and comments toward him were disrespectful and that the judge was not impartial toward an organization that defends consumer interests.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by counsel. The court recordings showed that, during an exchange between the judge and the complainant regarding the latter's vehicle, the judge said: "It wasn't in a museum?" [Translation] In the context of this extract, the judge was surprised about the age of the vehicle and his comment does not show that he was prejudiced against the complainant.

As for the judge's comments concerning an organization that defends consumer interests, the court recordings showed that the judge wanted to put the debate in a civil context without diminishing the role that this organization plays.

Finally, throughout the trial, the judge listened to both parties. He intervened on several occasions to sum up the situation. His comments and observations were always polite toward both parties.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant maintained that the judge had abused his powers, had an arrangement with the Director of Youth Protection, and denigrated the complainant by stating that she had killed nine children.

The court recordings showed that a petition for temporary compulsory foster care had been filed with the judge concerning a minor daughter of the complainant.

When reading out his decision, the judge said the following: "I have a report from Dr. [...] which tells me, I am referring to the first page, at the bottom of the page, Mrs [...] reportedly said she had nine abortions and preferred to kill her children rather than lose them once again to Youth Protection." [Translation]

The complainant was allegedly the author of the words she attributed to the judge. Finally, the judge's interventions were limited to ruling on objections and asking the occasional question to clarify a point.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In their complaint, the complainants alleged that, at the beginning of the hearing, the judge cut one of them off and that he looked "completely enraged". [Translation] They alleged that, given the judge's comments, he had come to his decision before the end of the trial.

The court recordings showed that one of the complainants was being prosecuted for shoplifting. He mentioned that he pleaded guilty with explanations. The judge told him that he could hear his explanations, but that if they constituted a plea of not guilty, then he should plead not guilty.

The explanations concerned the taking of medication that led to memory loss. The judge gave the complainant in question a long explanation about people taking medication but who are nevertheless not authorized to shoplift. He then recommended that the complainant be represented by a lawyer and adjourned the hearing to a later date.

At the second hearing, the complainant declared that he had not consulted a lawyer and reiterated his plea of guilty with explanations. After listening to the submissions of the prosecutor and the complainant, the judge fined the latter.

The court recordings showed that the judge did indeed make a long statement with no animosity and in an acceptable tone of voice in the courtroom. Also, he was at all times impartial, objective, polite and courteous toward the parties.

The examination did not reveal any ethical misconduct on the part of the judge.

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

Allegation of bias and failure to apply the rules of law

In his complaint, the complainant alleged that the judge was biased because he had been engaged in a “heated” discussion with the judge when he held a different position. He referred notably to a case where the judge allegedly rendered a judgment without basis, and another case where he denied a petition for release. He added that despite many requests, he refused to recuse himself.

The information obtained from the judge showed that he had no recollection of a meeting with the complainant prior to his appointment as a judge. He also denied that the complainant had asked him on several occasions to recuse himself.

Moreover, the court recordings concerning three cases heard by the judge did not reveal anything that could be considered a request for the judge to recuse himself. It is true that, in these three cases, the complainant’s company was convicted, but nothing can lead one to believe that the judge was in any way biased toward anyone whatsoever.

The examination did not show any ethical misconduct on the part of the judge.

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

In his complaint, the complainant maintained that the judge could not render an impartial decision because he allegedly failed to refer to an application for review, agreed to give priority to a provisional emergency motion, and denied the complainant the right to obtain the services of a lawyer.

The court recording was of poor quality, but nevertheless revealed various elements. First of all, it appeared that the complainant was not very familiar with the process of presenting evidence and had a poor grasp of the process of examination and cross-examination. The judge had to intervene repeatedly, yet showed undeniable patience in the process.

The court recordings seemed to show that an emergency motion had been presented, but did not show any request from the complainant to obtain the services of a lawyer. Even though the recording was difficult to listen to, it showed that the hearing was suspended to give the complainant some time to prepare and to possibly consult a lawyer. This session was conducted calmly and with mutual respect.

Finally, the court recordings showed that the judge treated the complainant in an impartial, objective, polite and courteous manner.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that the judge had allowed multiple perjuries and false evidence and that he was clearly in favour of the other party.

The complaint concerned a hearing in the Small Claims Division where the parties are not represented by counsel. The court recordings showed that the judge had explained to each party how to administer evidence and that he heard all witnesses that the parties wanted to call. The court recordings also showed that the judge behaved at all times in an impartial, objective, polite and courteous manner toward the parties.

The examination did not reveal any ethical misconduct on the part of the judge.

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

Allegation of disrespectful language

In his complaint, the complainant alleged that the judge used language that was meant to demean him by calling him a “good-for-nothing”, among other things. [Translation]

The court recordings showed that the judge handled this case with a great deal of compassion and attentiveness. He only made reference to the accused’s criminal record and at no time and in no way did he use the sort of language alleged.

The examination did not reveal any ethical misconduct on the part of the judge.

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

In his complaint, the complainant alleged that, during the hearing, whereas he was not directly involved in the case, the judge had him testify, only to then insult and ridicule him.

The court recordings showed that, during the complainant’s testimony and for the rest of the hearing, the judge remained calm, courteous and serene.

It is only at the end of the hearing that the judge, following the evidence presented to him, noted the dangerousness of the complainant, while the latter was laughing.

The examination did not reveal any ethical misconduct on the part of the judge

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

Allegation of threatening language

In their complaint, the complainants contended that the judge threatened to sue them personally for harming his reputation.

This was the second complaint that the complainants filed with the Conseil against the same judge. The examination of the first complaint did not show any ethical misconduct.

The court recordings showed that one of the complainants appeared once again before the judge, who said the following:

Alright. In this case, I would like the case to be postponed to another date so that it can be heard by another judge, and let me explain. Mrs [...] has appeared before me a certain number of times for cases on a similar matter which led, in only one case, to a guilty verdict and, in the others, to a withdrawal of the complaint for humanitarian reasons or unconditional absolutions.

Following the last case where she pled guilty and [where] I convicted her, there was a complaint to the Conseil de la magistrature that was disposed of and dismissed in a reasoned judgment. Therefore, I think it would be inappropriate for me to listen even to the arguments, because we could wind up with the same problem that I had the last time, when my behaviour was deemed to have been reproachable from an ethical standpoint, although this is not what the Conseil de la magistrature decided after listening to the tapes and examining that case, that complaint.

This is all the more so, as far as I am concerned, since I feel that I reserve recourses for personal injury and the personal problems that such a complaint generate, after 36 years on the bench, where my record is absolutely intact, and after 42 years as a lawyer, where my record is absolutely intact, I plan to examine all my personal recourses. So I think it is clear that the case itself should be postponed so that it can be heard by another judge. [Translation]

When asked to give his explanations to the Conseil, the judge reiterated the basic message he had delivered, adding that he felt wounded by the complaint brought against him. He also pointed out that he could not resist the temptation of telling the people concerned exactly how he felt. He acknowledged that he should have avoided exposing his feelings in such a way.

The Conseil found that the judge's comments could constitute ethical misconduct. For these reasons, it ruled that an inquiry¹ was necessary.

3.5.2 Inquiry Committee Reports

The Conseil may, after examining a complaint, decide to hold an inquiry. However, it is bound to do so if the complaint is lodged by the Minister of Justice. The hearings of the inquiry committees are public, subject to a specific order to the contrary.

1. The inquiry started on February 3, 2003 and the committee concluded that the complaint was founded. The judge was reprimanded. The inquiry committee's report will be summarized in the 2003-2004 activity report.

Complaint against Judge Jacques Pagé

In his complaint, the complainant took issue with the judge for reversing his decision two months after “clearly giving the impression that he would win” [Translation] and asked the Conseil whether the judge had the right to change the hearing report drawn up and signed by the clerk.

On May 1, 2001, the inquiry committee asked the judge and the complainant to appear on May 22. On May 10, the judge requested that the inquiry be postponed to a later date and the inquiry committee agreed to hold the hearing on June 26.

On May 23, the judge sent a letter to the Conseil mentioning the following: “It is not my role or my duty to explain or justify my reasoned judgment [...] I do not have to pay or be blamed for the faults and errors of an incompetent clerk.” [Translation]

The first session of the inquiry committee was held on June 26, 2001, but the judge was neither present nor represented. The witnesses called, including the complainant, were present and were heard by the inquiry committee.

At the end of that day, the inquiry committee decided to continue its work and instructed its assisting counsel to ensure that the judge was present for the continuation of the inquiry. To allow the judge to obtain the services of a lawyer of his choosing, the inquiry committee suspended the continuation of its inquiry. The hearing was resumed on April 8, 2002.

It was then established that, on June 19, 2000, the judge began holding the inquiry and hearing the case of the complainant (the applicant), in the Small Claims Division. Following the filing of a document by the complainant, the hearing was postponed to allow the opposing party to make certain verifications. The parties appeared before the judge again on October 18, 2000, the date on which the judge concluded his inquiry. The clerk on duty in this case had also been the judge’s secretary for the past 23 years.

The complainant was convinced that we would win, given the comments made by the judge during the hearing. He added that, upon leaving the courtroom, his opponent was frustrated that he had lost.

The clerk was convinced that the decision had been rendered during the hearing: “When he gave his reasons, I understood that the judgment had been rendered, and this was not the first time that things happened this way.” [Translation] She added that this was confirmed by a little written note from the judge the following day.

Talking about the opposing party, the clerk made the same observation as the complainant: “and the gentleman who lost [...] he was upset at having lost [...] and he left grumbling, not happy.” [Translation]

The judge had a very different perception of the impact of his comments at the hearing. In his testimony before the inquiry committee, the judge confirmed his position in a firm manner:

Q: Did you make any comments that were of such nature or that were such that could lead Mr. [...] (complainant) to reasonably believe that he had won?

A: No and ... no. [Translation]

The clerk’s uncontradicted testimony confirmed that she had completed the hearing report appropriately by checking the box “judgment rendered during the hearing in the presence of the parties” [Translation], and noting “action upheld with interest and costs” [Translation] and signing her name.

Moreover, the official stenographer who transcribed the 58-page court recordings noted at the top of the last three pages the word “Decision”.

In a letter sent to the Conseil before even testifying before the inquiry committee, the judge wrote the following: “From the beginning, when considering the case in private after the trial, I had taken down notes and written a draft of the decision which I then set aside.” [Translation]

The day after the hearing of October 18, the clerk (the judge’s secretary) typed the draft decision which the judge had dictated on tape. She dated it October 23, knowing that the judge would return to his office on that day. She placed the draft decision and the hearing report with the file on the judge’s desk and left the office, only to return on January 3, 2001.

It is only on December 15, 2000 that the judge found the file after “looking long and hard” [Translation] and learned from his replacement secretary that she herself had taken the file down to the clerk the previous month.

It is the replacement secretary who, after typing the decision dated December 21, drew the judge’s attention to the content of the hearing report, which did not correspond to the conclusions of this decision.

It was undisputed that the judge had amended the hearing report by hand based on his own admission and the testimony of the replacement secretary. Indeed, the words “decision” and “upheld with interest and costs” were erased, while the words “deliberation” “dismissed with costs” and “December 21, 2000” [Translation] were added along with the judge’s signature.

The inquiry committee reminded the judge that he must at all times abide by very high standards of conduct; this is the price to pay for those who hold important positions and who have an obligation to maintain and preserve public confidence in the judicial system.

In assessing the judge’s conduct, the inquiry committee also considered the following questions:

1. Did the judge render a decision at the hearing of October 18, 2000?

The inquiry committee was convinced that a favourable decision for the complainant had been rendered at the hearing of October 18, 2000. It was not surprising to see that the parties in the dispute and the clerk had the same clear perception of a decision rendered at the hearing.

What’s more, the content of the hearing report, as originally completed by the clerk, not to mention the “draft decision” dictated soon thereafter by the judge, confirmed that a decision had been rendered at the hearing.

However, the inquiry committee added that it is the hearing report duly signed by the judge and dated December 21, 2000 that constituted the legal decision. The inquiry committee does not hear appeals of decisions and hence will in no way discuss the validity of a decision.

2. Did the judge follow the law and proper procedure in correcting the hearing report?

The judge’s action of blue-pencilling the hearing report two months later was unacceptable and would raise questions and concerns for anyone using the court system.

3. Did the entire situation have a negative impact on the image of justice and the integrity of the judicial system?

The judge, through the comments he made at the hearing of October 18, 2000, had rendered a decision that led all to believe that the complainant had won. Only the judge denies the obvious, in terms of both the nature of his comments and their consequences.

The image created by this whole situation is one of insouciance and nonchalance on the part of the judge, who showed no respect toward the citizen in court or the judicial system.

Such a situation, analyzed objectively by a “reasonable, impartial and well-informed person” may, without a doubt, undermine his confidence in the judiciary and hence his consideration in the administration of justice. This person would certainly have a reason to be worried about the transparency and integrity of the judicial system.

Conclusion

Through his conduct and its attendant consequences, the judge violated his obligations set forth in the Code of Ethics, notably articles 1, 2 and 10.

Furthermore, the inquiry committee could not overlook the judge’s behaviour and attitude toward the committee itself, its assisting counsel and the complainant. On several occasions during the inquiry committee’s hearing, the judge was asked to adopt a less aggressive, more serene and measured stance.

Assisting counsel for the inquiry committee noted in his final submission, and rightfully so, many passages from the transcripts of the committee’s hearing showing disrespectful, aggressive, sarcastic, vexatious and disgraceful comments made by the judge.

The complainant could, unfortunately, see for himself how the judge behaved in front of his peers and toward the complainant himself.

Generally speaking, it seemed obvious that judge did not understand the role of the inquiry committee or the importance of this judicial institution. It is also worth noting that he refused to collaborate with and was disrespectful toward the institution.

Decision

The inquiry committee unanimously recommended to the Conseil de la magistrature that Judge Pagé be severely reprimanded for failure to fulfill his ethical duties.

Complaint against Judge Claude Fortin

In his complaint, the complainant alleged, among other things, that the judge was facing criminal charges and he felt that “the Ministry of Justice and the public in general cannot and must not tolerate a magistrate remaining in office while facing charges under the Criminal Code.” [Translation]

After examining the complaint, the Conseil decided on March 1, 2000 to set up an inquiry committee. The committee’s work was suspended for nearly two years to allow the judge to pursue his different recourses before the courts.

Chronology of events

On March 23, 1999, the judge was found guilty by the Court of Québec for driving a motor vehicle while his blood alcohol level was higher than 80 mg of alcohol per 100 ml of blood. He was also found guilty of driving this vehicle while under the influence of alcohol. He received a \$400 fine along with a ban from driving a motor vehicle for a period of one year. The judge appealed this decision to the Superior Court.

On June 21, 1999, rather than exercise his appeal options, the judge decided to file a motion for new evidence in Superior Court.

On July 14, 1999, the Superior Court judge overturned the guilty verdict, allowed the motion for new evidence and ordered a new trial. The case was appealed.

On August 21, 2002, the Court of Appeal quashed the order for a new trial and reinstated the guilty verdict issued against judge Fortin.

On November 25, 2002, the inquiry committee set up by the Conseil started conducting its inquiry.

On January 7, 2003, lawyers for the judge served the Conseil and the inquiry committee with an application for judicial review. This application was heard on January 22, 2003 before the Superior Court and was dismissed.

Inquiry committee

The complaint before the inquiry committee did not deal exclusively with the fact that the judge had been found guilty of a charge of driving under the influence. It is the judge's credibility that was called into question by the decision of the Court of Québec and that of the Court of Appeal.

The inquiry committee took into consideration the fact that, on many occasions, the trial judge referred to judge Fortin's lack of credibility, the implausible nature of his explanations and the fact that the Court of Appeal adopted certain extracts of this decision on these matters.

In his testimony before the inquiry committee, the judge did not acknowledge any wrongdoing and even suggested that there would never have been any complaint against him if the complainant, who had appeared before him, had not been found guilty.

The inquiry committee wanted to know how a person using the court system or an impartial observer appearing before the judge could, after reading the decision where his credibility was seriously called into question, have confidence in this judge's impartiality and integrity.

The inquiry committee concluded that the judge's behaviour and attitude in this case as well as the decision in which he was found guilty undermine the integrity and independence of the judiciary so manifestly and so completely that they shatter the confidence of people using the court system or the public in their justice system and make the judge incapable of performing the duties of his office.

Decision

For these reasons, the inquiry committee recommended to the Conseil that judge Claude Fortin be removed from office.

In accordance with section 279 of the Courts of Justice Act, the Conseil, after reading the inquiry committee's report, recommended to the Minister of Justice and Attorney General to file a motion with the Court of Appeal.

Finally, as set forth in section 279 of the Act in case of a recommendation for removal, the Conseil suspended judge Fortin for a period of 30 days.¹

1. Judge Fortin resigned his position in the days that followed the Conseil's recommendation.

4 Administrative activities

During the 2002-2003 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 want to know whether they are addressing their complaints to the right place, how they can lodge a complaint, and what is the ensuing process after a complaint is filed. This offers an ideal opportunity to explain the mission and operating structure of the Conseil.

During the budgetary year, the Office of the Secretary worked on the development of a Web site that can be visited at <http://www.cm.gouv.qc.ca>. It provides information on the jurisdiction of the Conseil, the complaints process, publications of the Conseil, and useful links.

4.2 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.

4.3 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.

4.4 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.

4.5 Municipal Judges' Symposium

During the municipal judges' symposium that was held in May 2002, the Secretary of the Conseil participated in a workshop dealing with the ethical concerns of judges. The Secretary used this opportunity to explain the complaints process to municipal judges as well as the types of allegations raised by complainants.

4.6 Meeting with Magistrates from Rwanda and Morocco

Magistrates from Rwanda and Morocco visited Québec in the fall of 2002 as part of a study mission on the judicial system. The Secretary of the Conseil was asked to present the mission of the Conseil and its operating structure to these magistrates.

5.1 Status of Judges of Certain Municipal Courts

During the 2002-2003 budgetary year, the Conseil examined the effects of the *Act to reform municipal territorial organization in the metropolitan regions of Montréal, Québec and the Outaouais* (2000, c. 56) as well as the *Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions* (2002, c.21), as regards the status of judges of new courts stemming from the merger of certain municipalities.

It should be noted that the municipal reform led to the creation of five major cities (Montréal, Longueuil, Gatineau, Québec and Lévis). A new municipal court was therefore established in each of these cities by integrating the municipal courts that existed prior to the reform.

The legislative amendments made by the reform did not put judges on an equal footing. The Conseil believes that the judges of the municipal courts of these new cities should have the same status and has submitted its recommendations on this issue to the Minister of Justice.

Judges of the municipal courts of Laval, Montréal and Québec City perform their functions on a full-time and exclusive basis, while those of the municipal courts of Longueuil, Gatineau and Lévis are compensated per session and may, in theory, continue with their legal practice.

Judges appointed to the municipal courts of Gatineau, Longueuil and Lévis were appointed following the model of courts where judges sit on a part-time basis, whereas they do, in actual fact, perform their duties on a full-time basis. They had to give up their legal practice to devote their time and effort fully to their judicial functions, since the merger of municipal courts into one single court in these cities generates a higher volume of cases and hence a greater number of days when judges have to sit.

More importantly, however, it appears to the Conseil that, for the purposes of judicial independence, the judges of these municipal courts should be given the same status. Compensation per session should be avoided in municipal courts where the volume of work justifies that judges sit on a full-time basis.

According to the Conseil, the solution to this disparate and inequitable situation for judges in Longueuil, Gatineau and Lévis is to apply the rule consecrating the exclusive performance of a judicial function, as set forth in section 129 of the Courts of Justice Act. It should also be accompanied by a review of the status of judges in authority, to ensure for the sound administration of justice.

5.2 Code of Ethics of Municipal Judges

During this budgetary year, the government passed the *Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions* (2002, c.21). Section 49 of the Act came into effect on July 1 and amends section 262 of the Courts of Justice Act, which sets out the content of the codes of ethics.

The amendments are designed to ensure that all municipal court judges are governed by the same code, whose provisions may vary depending on whether they perform their duties 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 Laval, Montréal and Québec City to continue to be governed by the judicial code of ethics until the Conseil adopts a new code of ethics for them. The codes of ethics and section 45 of the *Courts of Justice Act* (R.S.Q., c. C-72.10) which sets out the rules of ethics applicable to municipal judges are reproduced in appendix VI.

As stipulated in section 261 of the Courts of Justice Act, the Conseil adopted a draft bylaw and convened a meeting of municipal judges to consult them on the new code of ethics. Following this consultation, the Conseil adopted a bylaw instituting the code of ethics, which is published in the *Gazette officielle du Québec* before being submitted to the government for approval.

5.3 Legal Documentation

During the 2002-2003 budgetary year, the Conseil continued its efforts to facilitate the transition from hard-copy documentation to new technologies and to pool works that are not available on-line in community libraries.

It is against this backdrop that the Conseil started discussions with the Centre d'accès à l'information juridique (CAIJ), whose mission includes the establishment of a network of libraries for the legal community, in order to increase the amount of documentation currently available for the judiciary.

Clément Samson, President of the CAIJ, and Huguette St-Louis, Chief Judge of the Court of Québec and President of the Conseil, signed a general agreement during a meeting held on February 20, 2003 attended by many personalities from the Québec legal community. This agreement is meant, among other things, to reduce the duplication and dispersion of their respective information resources.

For the time being, this agreement is not geared to any library in particular, but establishes the administrative framework in which negotiations may take place for the libraries of the different courthouses. Specific agreements will be negotiated during the next budgetary year, including one for the establishment of a common library on youth law.

5.4 Second Language Courses

As has already been indicated, 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 was to reimburse 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.

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.

The Québec Minister of Justice contacted his federal counterpart on this matter in August 2002, and the Conseil is still waiting for new developments on this issue. It plans, over the coming budgetary year, to make stronger representations in order to secure funding for this activity.

Appendix I

Members and Staff of the Conseil de la magistrature as at March 31, 2003

Members¹

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

Honourable René de la Sablonnière, Senior Associate Chief Judge of the Court of Québec

Honourable Paule Gaumond, Associate Chief Judge of the Court of Québec

Honourable Jacques Lachapelle, Associate Chief Judge of the Court of Québec, Vice-President

Honourable François Doyon, Associate Chief Judge of the Court of Québec

Honourable Paule Lafontaine, President of the Professions Tribunal

Honourable Gilles Charest, Associate Chief Judge of the Court of Québec, responsible for municipal courts

Honourable Gilles Gaumond, President-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 a member on March 25, 2002

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 four associate chief judges of the Court of Québec;
- (d) a president judge of a municipal court;
- (d.1) one judge chosen among the persons exercising the functions of president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
- (e) two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- (f) one judge chosen among the judges of the Municipal Courts 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; 2002, c. 21, s. 48; 2001, c. 26, s. 172.

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.

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 of this Act or section 45.1 of the Act respecting municipal courts (chapter C-72.01).

Special provisions.

It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts 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 are deemed to be special provisions of the code of ethics applicable to municipal judges. The provisions of the code of ethics applicable to municipal judges may vary according to whether they apply to judges exercising their functions on a part-time basis or to judges exercising their functions on a full-time and exclusive basis.

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; 2002, c. 21, s. 49.

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.

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.

6. 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, 2003

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

Honourable Jacques Lachapelle, 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 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.

1. At March 31, 2003 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, and justices of the peace (section 260 of the Courts of Justice Act).

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.

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

Rules of conduct.

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 practices 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 practices as an advocate.

1989, c. 52, s. 45.

Functions.

45.1. Every judge exercising his or her functions in a municipal court to which a president judge has been appointed must exercise such functions on an exclusive basis.

Applicability.

The second paragraph of section 129 of the Courts of Justice Act (chapter T-16) applies to the exercise of such functions.

2002, c. 21, s. 14.

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	68	48	18				2
1997-1998 ^d	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	48	32	1		2	4
2002-2003	87	46	20	2		17	2
TOTAL	1 107	618	341	23	25	19	81

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

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

c. In all, 55 committees were set up to inquire 81 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.

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	2	2			
2001-2002		3			1
2002-2003					2
TOTAL	32	35	2	7	5

a. The 35 complaints gave rise to 22 reprimands.

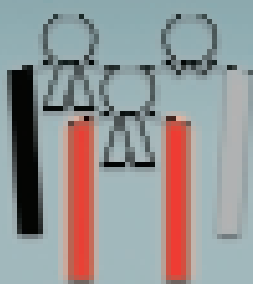
b. These are files that were closed following the retirement or resignation of the judge and one case in which the Council took note of the Inquiry Committee's report.

c. Four committees were set up to inquire the five complaints.

Appendix VIII

Regional Origin of Complainants

Regional Origin	Number
Abitibi-Témiscamingue	1
Bas-Saint-Laurent	0
Capitale-Nationale	17
Centre-du-Québec	2
Chaudière-Appalaches	6
Côte-Nord	3
Estrie	2
Gaspésie — Îles-de-la-Madeleine	0
Lanaudière	6
Laurentides	5
Laval	7
Mauricie	5
Montérégie	20
Montréal	17
Nord-du-Québec	0
Outaouais	3
Saguenay — Lac-Saint-Jean	0
Extérieur du Québec	1
TOTAL	95



**Conseil de
la magistrature
du Québec**