C A N A D A
PROVINCE OF QUÉBEC

INQUIRY COMMITTEE OF THE CONSEIL DE LA MAGISTRATURE

File numbers:
2024-CMQC-066
2024-CMQC-067

Montréal, August 5, 2026

COMPLAINT BY:

Christian Tanguay, lawyer

CONCERNING:

Judge Martin Gosselin, Municipal Court of the City of Gatineau (066)
Judge Joanne Cousineau, Municipal Court of the City of Gatineau (067)

BEFORE:

Judge Henri Richard, J.C.Q., Chair
Judge Marco LaBrie, J.C.Q.
Judge Hermina Popescu, J.C.Q.
Marie-Claude Laquerre, notary
Mr. Robert Dutrisac

INQUIRY REPORT

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[1] The public's precious confidence in its justice system, which every judge must strive to preserve, is at the heart of this inquiry report.

[2] The complainant, Christian Tanguay, a lawyer acting in his capacity as Deputy Director General of Administrative Services for the City of Gatineau, files a complaint concerning Judges Martin Gosselin and Joanne Cousineau of the Municipal Court of the City of Gatineau.

[3] The complaint arises from numerous applications by the collector of fines to impose a term of imprisonment (**DIPE**) for failure to pay amounts owing under judgments ordering defendants to pay fines.

[4] Mr. Tanguay submits that Judges Gosselin and Cousineau unlawfully issued 1,669 warrants of imprisonment (1,113 signed by Judge Gosselin and 556 by Judge Cousineau) between June 10, 2020, and December 7, 2022.

[5] In addition to a detailed account of the facts, the complaint includes nine appendices. These contain, among other things, two Superior Court judgments granting applications for writs of *certiorari*[1] and *habeas corpus*[2] concerning warrants of imprisonment signed by Judges Gosselin and Cousineau.

[6] This Inquiry Committee (**Committee**) was established by the Conseil de la magistrature du Québec (**Council**) after it examined the complaint and rendered a decision on September 23, 2025, concluding:

> [19] The allegations are serious and, at first glance, the judges' conduct could undermine public confidence in the judicial office and harm the integrity, dignity and honour of the judiciary. In these circumstances, the Council considers that an inquiry must be held.

[7] In his complaint, Mr. Tanguay questions whether Judges Gosselin and Cousineau rendered justice within the framework of the law, performed their duties with honour and maintained their professional competence, as required by sections 1, 2 and 3 of the *Code of ethics of municipal judges of Québec*[3] (**Code of Ethics**).

I. ISSUES TO BE EXAMINED

[8] a) In the circumstances described in this report, did Judges Martin Gosselin and Joanne Cousineau commit one or more breaches of judicial ethics?

b) If breaches were committed, what is the appropriate sanction in the circumstances?

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1 A writ of *certiorari* is a common law remedy that allows the Superior Court, in exercising its power of supervision and review, to review a decision of a lower court or an administrative body where it has exceeded its jurisdiction or powers or made a fundamental error of law.

2 A writ of *habeas corpus* is a legal remedy ensuring that a person who has been arrested is promptly brought before a judge to challenge the lawfulness of their detention. It protects against arbitrary or unlawful imprisonment.

3 CQLR, c. T-16, r. 2.

II. BACKGROUND

[9] Admitted to the Barreau du Québec in 1990, Judge Gosselin was appointed to the Municipal Court of the City of Gatineau in November 2018 and has been the judge responsible for that court since February 2020. His résumé lists the following areas of practice before his appointment:

- General civil law;
- Municipal law (representing the City of Gatineau for more than five years);
    - Drafting legal opinions;
    - Managing civil liability cases;
- Statutory law (transportation, forestry law, *Highway Safety Code*);
- Counsel for the Commission de la construction du Québec (Outaouais division);
    - Enforcement of collective agreements;
    - Recovery of amounts owing to workers;
- Succession law;
- Counsel for the MRC des Collines-de-l'Outaouais (10 years);
    - Municipal court: criminal regulations and the *Highway Safety Code*.

[10] Admitted to the Barreau du Québec in 1992, Judge Cousineau was appointed to the same court in January 2020. Since July 1, 2024, she has been assigned to the Municipal Court of the MRC Vaudreuil-Soulanges and the immediate surrounding area. As a lawyer, she practised mainly family law and the law of persons before the Superior Court.

[11] At hearings held on June 10, 2020, December 9, 2020, June 8, 2022, and December 7, 2022, Judge Martin Gosselin rendered judgments from the bench and later issued 1,113 warrants of imprisonment arising from DIPE brought by the collector of fines.

[12] At hearings held on June 2 and December 8, 2021, Judge Cousineau rendered judgments from the bench and issued 556 warrants of imprisonment following DIPE brought by the collector of fines.

[13] The uncontested evidence establishes that the same procedure was followed at hearings presided over by Judges Gosselin and Cousineau at which the collector of fines presented DIPE:

- Hundreds of DIPE were placed on the roll. The hearings began with applications concerning defendants who were present. Minutes were prepared for all these cases;

- The clerk then removed from the roll the cases in which defendants had paid the fine or the application could not be served;

- For all other cases on the roll, counsel for the prosecution requested warrants of imprisonment for failure to pay the amounts owing, without presenting the cases, making any submissions, producing any evidence or calling the collector of fines, who was present, to testify;

- In cases heard in the defendants' absence, neither the clerk nor the collector presented the judges with any file or document. The judges requested no additional information or documents before making their decisions;

- The judges rendered a single oral judgment from the bench, applying to all the cases, without giving any reasons. Through that judgment, they granted the hundreds of DIPE presented. No minutes were prepared for cases handled in this way. The judges signed the warrants of imprisonment a few days later;

- In fact, when the DIPE were presented, the judges had only the hearing roll. They never examined the files before rendering their single oral judgment, which applied to all DIPE on the roll;

- When delivering judgment, the judges never determined the length of the prison terms. This information appeared a few days later on the defendants' warrants of imprisonment. The number of days of imprisonment was calculated automatically by a computer system already configured within the municipal court's system, without the judges' involvement. There was therefore no hearing to determine the number of days of imprisonment, nor any individual assessment by the judges in each case.

[14] At the December 7, 2022 hearing at the Municipal Court of the City of Gatineau, presided over by Judge Gosselin, the collector of fines presented nearly 300 DIPE, including 12 concerning Mr. David Bonfond.

[15] In Mr. Bonfond's cases, as in the hundreds of other cases presented in the defendants' absence, Judge Gosselin proceeded by default and rendered judgment from the bench, without a written decision, reasons, submissions from counsel for the prosecution or the collector, evidence or files, and without determining the length of imprisonment. On December 9, 2022, Judge Gosselin signed the warrants of imprisonment as a group, imposing five days in each case, to be

served consecutively, for a total of 60 days for Mr. Bonfond, who was then imprisoned under these warrants.

[16] Mr. Bonfond was the first to apply for writs of *certiorari* and *habeas corpus*. Through his application for *certiorari*, he sought to have the sentences and warrants of imprisonment in his 12 cases set aside. He alleged that Judge Gosselin had exceeded his jurisdiction by failing to comply with the *Code of Penal Procedure*[4] (**CPP**) and basic rules of natural justice.

[17] Mr. Bonfond's application for a writ of *habeas corpus* sought a ruling on the lawfulness of his detention and an order for his release if the detention was found to be unlawful.

[18] His application for writs of *certiorari* and *habeas corpus* was heard on March 10, 2023, before Justice Catherine Mandeville of the Superior Court, after he had been imprisoned for three days.

[19] At the Superior Court hearing, Mr. Bonfond's lawyer called Ms. Nathalie Mineault, deputy clerk and head of the hearings and judgments section at the Municipal Court of the City of Gatineau. She described the procedure that led to Judge Gosselin's oral judgment on December 7, 2022, and the warrants of imprisonment he signed on December 9, 2022. Her testimony corresponds to the procedure described in paragraph 13 of this report.

[20] Mr. Bonfond also testified before Justice Mandeville that he had no fixed address, received social assistance and had never received any notice concerning the DIPE.

[21] Before the Superior Court, Mr. Bonfond's lawyer produced the recording of the December 7, 2022 hearing presided over by Judge Gosselin. It shows that warrants of imprisonment requested in more than a hundred cases were issued as a group, without a hearing, evidence or files, without requesting or receiving submissions from counsel for the prosecution or the collector of fines, without checking compliance with the conditions required by law, and without giving reasons or individually determining the number of days of imprisonment. Judge Gosselin stated: "I issue the warrants for all cases that have not been called," which included Mr. Bonfond's cases.

[22] Justice Mandeville rendered judgment from the bench and granted Mr. Bonfond's application for writs of *certiorari* and *habeas corpus*, using clear, unequivocal and blunt terms to describe how Judge Gosselin

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4 CQLR, c. C-25.1.

handled the cases. Since the judgment was rendered from the bench, we reproduce the following points from the transcript of the March 10, 2023 hearing. The pronoun "I" therefore refers to Justice Mandeville's remarks:

> a) This is clearly a case of Judge Gosselin exceeding his jurisdiction when he issued the 12 warrants of imprisonment for failure to pay the fine against the applicant on... in fact, they were issued orally on December 7, 2022, then signed by the judge on December 9, 2022, specifying five days of imprisonment in each warrant;
>
> b) I found that jurisdiction was exceeded in each case, for many reasons, I would say, since none of the safeguards in the *Code of Penal Procedure* to protect individuals against arbitrary detention in cases of imprisonment for failure to pay fines were applied here;
>
> c) Judge Gosselin simply chose not to act in any way as a judge or as a guardian of Mr. Bonfond's rights. He performed none of the checks required of the court, gave no reasons for his decision, and did not even hear Mr. Bonfond or ensure that his right to be heard was respected, although the Code provides that he is entitled to a hearing;
>
> d) First, since imprisonment is a last resort, Judge Gosselin had to check that Mr. Bonfond had received prior notice and had been offered alternative measures, of which he would also have been notified or informed. There is no evidence that Mr. Bonfond was offered compensatory work or received prior notice of the DIPE, while the evidence shows that his address was incorrect;
>
> e) No evidence was presented of efforts to locate Mr. Bonfond;
>
> f) Judge Gosselin did not check that the prior notice had been served on Mr. Bonfond and received no evidence of this from the collector, since he did not even have access to the proof of service;
>
> g) Judge Gosselin failed in his most basic duty to perform these checks and proceeded without checking that the person had been notified of a hearing date. As a result, Mr. Bonfond could not use that hearing date to oppose the warrants of imprisonment;

h) The collector presented no evidence and did not even speak at the hearing before Judge Gosselin;

i) Counsel for the prosecution asked for a warrant of imprisonment for failure to pay in every case that had not been removed from the roll. The judge complied without in any way exercising his important judicial duty to oversee the procedure and ensure that the collector had fulfilled the obligations to give notice and offer alternative measures. He did not even check whether the person could offer a reasonable excuse for failing to pay. Depriving a person of liberty is serious, even for a single day. It is quite shocking that we have here a person who spent three days in custody and who, had he not asked a lawyer to represent him, could have spent 60 days in custody, without Judge Gosselin having in any way reviewed whether he should be detained for failing to pay municipal fines;

j) Judge Gosselin made no effort to check, as he was required to do, or to exercise judicial oversight of the collector's application;

k) Judge Gosselin did not check whether alternative measures had been offered and received no evidence on that point;

l) Shockingly, a computer system determined the number of days of detention, without any individual assessment or any other consideration by the judge;

m) On December 7, 2022, Judge Gosselin issued warrants of imprisonment as a group in Mr. Bonfond's 12 cases. Outside court, he signed preprinted warrants providing for five days of detention in each case;

n) Judge Gosselin had no evidence and performed no checks to establish that imprisonment was appropriate;

o) There was no hearing to determine the required number of days of imprisonment or to assess the appropriate number of days in relation to the fines;

p) It is absurd that a computer system determined the number of days of detention two days after the warrants of imprisonment were issued orally;

q) It is shocking to see a lack of judicial oversight when it is specifically required by the *Code of Penal Procedure* and when fundamental rights are at stake;

> r) Judge Gosselin had to give written reasons for his decision, an essential requirement under the *Code of Penal Procedure*;
>
> s) The judgments in Mr. Bonfond's 12 cases resulted in arbitrary detention, without any judicial oversight or compliance with the procedures set out in the *Code of Penal Procedure*;
>
> t) The judge therefore exceeded his jurisdiction;
>
> u) There was a clear breach of procedural fairness and a violation of Mr. Bonfond's rights under the *Canadian Charter of Rights and Freedoms*, particularly section 9, which provides that everyone has the right not to be arbitrarily detained or imprisoned.
>
> [Emphasis added by the Committee]

[23] Justice Mandeville therefore set aside the sentences and warrants of imprisonment against Mr. Bonfond and ordered his immediate release.

[24] Following this judgment, the City of Gatineau began reviewing the files to ensure that no one else was subjected to unlawful imprisonment.

[25] To that end, on April 17, 2023, the City of Gatineau filed an "Application for a writ of certiorari and an application to stay the execution of warrants of imprisonment issued under the Code of Penal Procedure"[5] concerning the 1,669 warrants issued by Judges Gosselin and Cousineau between June 2020 and December 2022.

[26] Justice Mandeville, who also heard this case, granted the application to stay the execution of these warrants from the bench in the proceedings brought by the City of Gatineau before the Superior Court.

[27] The City's lawyers then wrote to the municipal court clerk on June 19, 2023, asking her to confirm the procedure followed in these cases before the warrants were issued.

[28] It is useful to reproduce in full the August 30, 2023 letter sent in reply by Claudine Lacasse, lawyer and clerk of the Municipal Court of the City of Gatineau:

> Dear Counsel,

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5 *Ville de Gatineau v. Cour municipale de Gatineau*, file no. 550-36-000108-231.

> In your letter of June 19, 2023, you asked me to confirm or deny the following three statements:
>
> 1. There is no written judgment giving reasons for the Municipal Court's decision to issue warrants of imprisonment in the cases listed in Appendix A;
>
> 2. There are no hearing minutes for the cases listed in Appendix A; and
>
> 3. No evidence was presented before the Municipal Court in the cases listed in Appendix A, whether concerning service of the DIPE on the persons concerned, their ability to pay or the absence of any reasonable excuse for not paying the fines.
>
> Although all the evidence is in the Municipal Court's paper files for the cases listed in Appendix A, I confirm that no such evidence was presented in the courtroom through testimony by the collector of fines or the filing of supporting documents. As a result, the substitute clerk prepared no minutes. There is no written judgment by the judge who heard these cases, as the recordings of the hearings held on June 10, 2020, December 9, 2020, June 2, 2021, December 8, 2021, June 8, 2022, and December 7, 2022 confirm. These were oral judgments.
>
> I trust this answers your request.
>
> Respectfully,
>
> Claudine Lacasse, lawyer,
> Clerk.
>
> [Emphasis added by the Committee]

[29] In a judgment rendered from the bench on October 10, 2023, Justice Catherine Mandeville set aside the 1,669 warrants of imprisonment issued by Judges Gosselin and Cousineau, which concerned a total of 1,126 people.

[30] In his complaint, Mr. Tanguay refers to an application for authorization to bring a class action against the City of Gatineau in connection with the 1,669 warrants issued by Judges Gosselin and Cousineau. The action is on behalf of every individual who had no fixed address when a DIPE was presented, whose address was unknown or whose address was that of a shelter or a service centre for people experiencing homelessness. On September 5, 2024, the Superior Court granted the application for authorization.[6]

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6 *Picard v. Ville de Gatineau*, 2024 QCCS 4897.

III. THE JUDGES' SUBMISSIONS AND TESTIMONY

[31] On March 13, 2024, through their respective lawyers, Giuseppe Battista and Isabel J. Schurman, Judges Gosselin and Cousineau sent the Council their submissions in response to Mr. Tanguay's complaint.

[32] In that document, the judges refer to certain excerpts from the complaint and the facts it contains. First, they state that although the collector of fines obtained no signature as proof of service of the DIPE on Mr. Bonfond, the collector nevertheless obtained confirmation that the document had been delivered.

[33] Second, they acknowledge that no evidence was presented in the courtroom concerning the cases in which warrants of imprisonment were issued, including through testimony by the collector. It should be noted that the collector was present in the courtroom when the DIPE were heard.

[34] In their submissions, the judges note that the complaint arises in the context of an application for authorization to bring a class action against the City of Gatineau. As a result, "it could be advantageous for the City of Gatineau to hold the municipal court judges responsible for the harm suffered by the plaintiffs, which might relieve it of the obligation to compensate them."

[35] Regarding Justice Mandeville's judgments of March 10 and October 10, 2023, the judges submit that her comments are irrelevant to the Council's analysis, for two reasons.

[36] First, although Judge Gosselin was named as an impleaded party, no evidence or submissions were presented on his behalf. Justice Mandeville therefore could not consider the explanations that would be submitted to the Council and, in any event, was not required to do so.

[37] Second, Justice Mandeville's role in the application for *certiorari* was not to assess the quality of anyone's work, whether that of the collector or the municipal judges, but only to decide whether they had exceeded their jurisdiction in issuing the warrants of imprisonment.

[38] The judges' submissions then describe the steps to be followed between the time a defendant is required to pay an amount and the time a judge may issue a warrant of imprisonment if it remains unpaid. The judges note that many of these steps are the responsibility of the collector, who is

a public officer designated by the Minister of Justice[7] and must ensure that certain preliminary requirements are met, for example:

> a) Promptly sending the defendant a notice of judgment and, where applicable, a request to pay the amount owing within the stated time (article 322 CPP);
>
> b) Obtaining available information on the defaulting defendant's residence or workplace from the competent authority of a government department or agency (article 323 CPP);
>
> c) Seizing property once the time for paying the amounts owing has expired or when the defendant fails to comply with the agreement reached with the collector (article 329 CPP);
>
> d) In certain cases, offering the defendant the opportunity to pay the amount owing through compensatory work or alternative measures (article 333 CPP).

[39] The judges further submit that it is the collector's responsibility to ask a judge to impose a term of imprisonment and to serve the defendant with notice of that application. In their view, they have no obligation to conduct an inquiry or hear witnesses in performing their role under article 347 CPP.

[40] According to Judges Gosselin and Cousineau, the Superior Court decided that the absence of prior notice of the presentation of the DIPE would have justified granting *certiorari*.

[41] Regarding the absence of evidence in the courtroom, the judges explain that it was logical and reasonable to infer that defendants facing an application for a warrant of imprisonment had been served with the notice. They could conclude that people whose cases had not been removed from the roll had been served with the application. In the circumstances, the judges could therefore be satisfied that the collector, who was present at the hearing, had complied with the law and properly followed the steps in carrying out the work, and that the first condition for issuing a warrant of imprisonment was met.

[42] Regarding the absence of evidence about the defendants' ability to pay or the absence of any reasonable excuse for not paying the fines, the judges submit that it was acceptable in the circumstances to presume that the persons concerned had failed to cooperate. They were not the appropriate persons to raise arguments on their own initiative to spare the defendants the consequences of their absence.

[43] Regarding their failure to exercise judicial discretion to determine the number of days of imprisonment, Judges Gosselin and Cousineau argue that when

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7 See article 322 CPP.

the defendant is absent, they have no factor to consider other than the amount of the fine. In their view, using a predetermined scale to set the number of days of imprisonment based on the fine did not seem unreasonable. At the hearing, however, the judges acknowledge that they did not know how the computer system determined the length of imprisonment.

[44] Regarding the absence of written reasons, Judges Gosselin and Cousineau question what "reasons" would contain when the defendant is absent and there has been no debate. In those circumstances, they argue, the written "reasons" can be expected to consist of standard wording. That is exactly what occurred, since their decision was recorded on a form entitled "Warrant of imprisonment for failure to pay the fine," containing the following information:

- The case number;
- The date of issue;
- The date of the offence;
- The date of judgment;
- The defendant's name, address, date of birth and home telephone number;
- Details of the offence;
- The amount of the fine and other costs;
- The number of days of imprisonment.

[45] The judges also refer to the following two paragraphs in the warrant forms they signed:

> WHEREAS, since then, the measures that could be taken, or have been taken, to recover the fine have not or would not allow it to be recovered in full, and the outstanding balance is the amount shown alongside;
>
> WHEREAS, as appears from the defendant's file, a judge of this Court ordered this warrant to be issued because the judge considered that the other measures provided by law for recovering the fine had not or could not allow the outstanding fine to be recovered in full.

[46] The judges therefore state that in every case the sentence was indeed "supported by written reasons."

[47] Finally, the judges state that an error of law does not automatically amount to a breach of section 1 of the Code of Ethics. They submit that nothing suggests they acted in bad faith or on a whim, deliberately failed to apply the law, acted for an improper purpose, displayed gross ignorance of a legal rule or deliberately departed from one.

[48] Regarding section 2 of the Code of Ethics, which requires them to perform their duties with integrity, dignity and honour, they submit that it has no connection with the allegations against them. They also state that they maintained their professional competence as required by section 3 of the Code of Ethics.

[49] At the Committee's hearing, the judges explain that they relied entirely on the "system" put in place by their predecessors and the clerk of the Municipal Court of the City of Gatineau.

[50] Judge Cousineau adds that she checked with many other municipal courts that followed the same procedure. However, she admits that she did no research into legal commentary or case law before presiding over DIPE hearings.

[51] As in their written submissions, the judges testify that they proceeded without consulting the files, receiving any evidence, requesting or receiving submissions from counsel for the prosecution or the collector, performing the checks required by law, rendering written judgments with reasons or determining the length of imprisonment. In their testimony, the judges finally acknowledge the distinction between the oral judgment they rendered from the bench without reasons and their signing of the warrants a few days later.

[52] At the hearing, the parties also file the following "Amended Admissions":

> For more than 15 years, until December 2022, applications to impose a term of imprisonment (DIPE) were handled as follows at the Gatineau Municipal Court:
>
> - Since around the early 2000s, DIPE hearings presided over by Judges François Gravel (municipal court judge from 1992 to 2018) and Yves Daoust (municipal court judge from 1997 to 2019) followed the same procedure as the DIPE hearings under inquiry;
>
> - Upon his appointment in November 2018, Judge Gosselin received instructions from Judge Yves Daoust on the steps to follow in conducting DIPE hearings;
>
> - Upon her appointment in January 2020, Judge Cousineau received the same instructions on the steps to follow from Judge Gosselin.

 The court office organized two sittings a year, at which hundreds of cases were grouped together and handled in one sitting lasting about two to three hours.

 The collector of fines generated a preliminary list of DIPE containing the cases on the roll.

 A letter was sent to defendants by ordinary mail offering them the opportunity to perform compensatory work.

 If there was no response, a follow-up was made when a telephone number was in the file.

 The collector of fines generated standardized DIPE, including the terms of imprisonment sought, using a computer system put in place by Judge François Gravel. The system established a ratio between the amounts of the outstanding fines and the days of imprisonment to be served. The DIPE were sent by certified mail to the last known address.

 The hearing roll containing all DIPE did not state the terms of imprisonment requested.

 At DIPE hearings, the collector of fines was present and states that a paper file and an electronic file were available for each defendant. The judges did not know that the paper files were in the courtroom.

 Judge Cousineau recalls that there were no paper files in the courtroom, but that the collector of fines had a laptop that she consulted regularly. People who were present and had reached an agreement were invited to go to the court office to discuss payments or compensatory work, because the clerk had their files.

 Each paper file contained, among other things, a copy of the DIPE and proof of service. Each electronic file contained notes detailing all recovery steps taken for a particular defendant.

 Only the cases of defendants who were present were assessed individually before the judge, based on the evidence held by the collector of fines. The defendants were sworn in to testify before the judge. At the request of counsel for the prosecution, the judge rendered judgment. The judge's decision following the defendant's testimony was recorded in the minutes.

 The cases of absent defendants were handled as a group at the request of counsel for the City of Gatineau, without the judges examining the collector's files and without any evidence being presented in the courtroom.

 Before proceeding in the defendants' absence, the constable generally checked, at the request of the judge and clerk, that no one was waiting outside the courtroom.

 Cases that had been settled or in which service had not been made were identified by their roll numbers by counsel for the City of Gatineau and removed as a group at her request.

 For the remaining cases on the roll, counsel for the City of Gatineau made a general oral request for warrants of imprisonment as a group.

 After the hearing, the collector of fines generated standardized warrants of imprisonment, including the terms of imprisonment, using a computer system put in place by Judge François Gravel.

 The judges later signed the warrants in their offices without consulting each defendant's file.

 The last DIPE hearing at the Municipal Court of the City of Gatineau was held on December 7, 2022.

[53] The Committee notes that at the December 8, 2021 hearing presided over by Judge Cousineau, after warrants had been issued in cases heard in the defendants' absence, counsel for the City said to her: "In the end, I'm like a plant here, Your Honour." The judge replied: "I'm like the pot, I'm like the saucer, Ms. Fish." In the Committee's view, this quip reveals Judge Cousineau's mindset about her role at that hearing, which led to warrants of imprisonment being issued.

IV. LEGISLATIVE PROVISIONS GOVERNING DIPE

[54] The CPP came into force on October 1, 1990. DIPE are a means of enforcing judgments that order a defendant to pay an amount following a penal offence. The relevant CPP provisions are in Chapter XIII, entitled "Execution of judgments," specifically Division II, entitled "Provisions respecting imprisonment for failure to pay amounts owing."

[55] The general provisions of the chapter on execution of judgments provide for the Minister of Justice to designate persons to act as collectors and exercise the following responsibilities and powers:

- Unless the judgment has been satisfied, the collector promptly sends the defendant a notice of judgment and, where applicable, a request to pay the amount owing within the stated time (article 322 CPP);

- Once an order to pay an amount becomes enforceable, the collector may summon the defendant before a judge or clerk to be questioned about their property and sources of income (article 322.1 CPP);

- At the collector's request, a judge may order the defendant to produce any documents establishing their financial situation (article 322.2 CPP);

- If the defendant cannot be found, a judge may, at the collector's request, order the competent authority of a government department or agency to provide the available information on the defaulting defendant's residence or workplace (article 323 CPP);

- If the defendant still cannot be found and has not paid the amounts owing, the collector may ask a judge to issue a warrant to bring the defendant before the collector so that the amounts can be recovered (article 324 CPP);

- At the defendant's request, the collector may grant more time to pay if an examination of the defendant's financial situation gives the collector reason to believe that the defendant can pay but that the circumstances justify an extension (article 327 CPP);

- The collector and the defendant may enter into a written agreement for the amounts owing to be paid in instalments, within the time and on the terms they determine (article 328 CPP);

- The collector may seize property once the time for payment has expired or if the defendant fails to comply with the agreement reached with the collector (article 329 CPP);

- If the collector has reasonable grounds to believe that seizure does not or will not allow the amounts owing to be recovered and, after examining the defendant's financial situation, is satisfied that the defendant cannot pay, the collector must offer the defendant the opportunity to discharge the debt through compensatory work, subject, in particular, to the availability of such programs (articles 333 and following CPP).

[56] For the purposes of this report, articles 346 and 347 CPP are reproduced in full:

> 346. Where the defendant does not fulfil an undertaking to appear before the collector, where compensatory work could not be offered or

> where the defendant refuses or neglects to perform such work, the collector may apply to a judge to impose a term of imprisonment and issue a warrant for the defendant's imprisonment if the amounts owing have not been paid.
>
> Prior notice of the application must be served on the defendant. However, the judge may hear the application if the notice could not be served despite reasonable efforts to notify the defendant.
>
> If the defendant is under 18 years of age, the collector must also serve prior notice of the application on the defendant's parents. The judge may proceed against the defendant without that notice or adjourn the hearing on such terms as the judge determines and order that notice be served on the parents.
>
> 347. The judge may impose a term of imprisonment and issue a warrant of imprisonment if satisfied that, in the circumstances, the measures provided in this chapter to recover the amounts owing are insufficient to recover them in full. However, the judge may impose the sentence and issue the warrant only if satisfied that the defendant has, without a reasonable excuse, refused or neglected to pay those amounts or discharge them under this chapter.
>
> Written reasons must be given for imposing the sentence.

[57] It should be noted that the legislature amended several CPP provisions through Bill 32, *An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to an appeal*[8] (**Bill 32**), assented to on June 5, 2020. The following sentence was added at the end of the first paragraph of article 347 CPP and is reproduced again here:

> However, the judge may impose the sentence and issue the warrant only if satisfied that the defendant has, without a reasonable excuse, refused or neglected to pay those amounts or discharge them under this chapter.

[58] This amendment came at a time of criticism over the disproportionate imprisonment of people experiencing homelessness or who were otherwise vulnerable.[9]

[59] It is also useful to recall that, in its final report filed and made public on September 30, 2019, the Public Inquiry Commission on relations between Indigenous Peoples and certain public services:

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8 S.Q. 2020, c. 12.

9 QUÉBEC, NATIONAL ASSEMBLY, *Journal of Debates of the Committee on Institutions*, 1st sess., 42nd legislature, February 13, 2020, "Clause-by-clause consideration of Bill 32 - An Act mainly to promote the efficiency of penal justice and to establish the terms governing the intervention of the Court of Québec with respect to an appeal," 3:20 p.m. (Mr. Marc Tanguay).

listening, reconciliation and progress, known as the "Viens Commission," made the following calls for action specifically concerning DIPE:

> **CALL FOR ACTION No. 46 - Addressed to cities and municipalities**
>
> Put an end to the imprisonment of vulnerable people, people experiencing homelessness or at risk of becoming homeless, for failure to pay fines for municipal offences.
>
> **CALL FOR ACTION No. 48**
>
> Amend the *Code of Penal Procedure* to put an end to the imprisonment of vulnerable people, people experiencing homelessness or at risk of becoming homeless, for failure to pay fines for municipal offences.

V. ANALYSIS

A) Judges: guardians of the Constitution and of rights and freedoms

[60] The *Canadian Charter of Rights and Freedoms*[10] (**Canadian Charter**) enshrines the following legal rights, among others, in the Constitution:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> 9. Everyone has the right not to be arbitrarily detained or imprisoned.
>
> 10. Everyone has the right on arrest or detention
>
> a) to be informed promptly of the reasons therefor;
>
> b) to retain and instruct counsel without delay and to be informed of that right; and
>
> c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

[61] The *Charter of human rights and freedoms*[11] (**Québec Charter**) provides for the following fundamental rights and freedoms, among others:

> 1. Every human being has a right to life, and to personal security, inviolability and freedom.

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10 *Canadian Charter of Rights and Freedoms* in the *Canada Act 1982* (U.K.), 1982, c. 11, Schedule B, Part I.

11 CQLR, c. C-12.

[...]

[62] As for legal rights, the Québec Charter states:

> 23. Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of their rights and obligations or of the merits of any charge brought against them.
>
> The tribunal may, however, order that the hearing be held in private in the interests of morality or public order.
>
> 24. No one may be deprived of their liberty or rights except on grounds provided by law and in accordance with prescribed procedure.
>
> 32. Every person deprived of their liberty has a right of recourse to *habeas corpus*.

[63] The Committee considers it useful to review the case law highlighting judges' essential role as guardians of the Constitution and of the rights and freedoms guaranteed by the Canadian and Québec Charters. This is because the Committee concludes that, through their gross ignorance, Judges Gosselin and Cousineau failed to fulfil this essential role and duty. This is a significant breach of section 1 of the Code of Ethics, which provides that a judge's role is to render justice within the framework of the law.

- *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145, pp. 155 and 169:

  > **The courts are the guardians of the Constitution** and must consider these factors when interpreting its provisions.
  >
  > [...]
  >
  > Although **the courts are the guardians of the Constitution and of the rights it confers on individuals**, it is the legislature's responsibility to enact laws containing the safeguards needed to meet constitutional requirements.

- *R. v. Beauregard*, [1986] 2 S.C.R. 56, para. 24:

  > The reason for this modern, two-part understanding of judicial independence is the recognition that courts do more than decide individual cases. That is, of course, one role. It also provides the setting for another, different and equally important role: **protecting the Constitution and the fundamental values it enshrines - the rule of law, fundamental justice, equality and preservation of the democratic process**, to name perhaps the most important. In other words, judicial independence is essential to the fair and just resolution of individual cases. It is also

the lifeblood of the constitutional character of democratic societies.

- *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425, pp. 562-563:

> **I see no reason** why **a court, whose responsibility is to ensure a fair trial in accordance with the principles of fundamental justice, should wait for legislation to fulfil that duty, particularly when most of the law of evidence was originally developed by the courts.** I note that the Ontario Court of Appeal has held that section 7 of the Charter gives a court residual discretion to relax evidentiary rules in limited circumstances to ensure a fair trial for the accused; [...]. In the past, if judges had considered that using derivative evidence in certain circumstances was "likely to render the trial unfair" [...], they would have excluded it as prejudicial or unfair. That is how the law of evidence evolved. **It would be strange for judges, now guardians of the Constitution, to hesitate to exclude such evidence where its use would make the trial unfair.** The law of evidence, like other areas of law, must adapt where necessary to meet constitutional requirements. The alternative, striking down an otherwise valid provision under the principles of fundamental justice, seems excessive, particularly when the corresponding provision in section 5 of the *Canada Evidence Act* and equivalent provincial provisions have formed the very fabric of the general law of evidence for nearly a century.

- *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123, pp. 1174-1175:

> However, the common thread in section 7 and sections 8 to 14 is **the intervention of the judiciary as guardian of the justice system.** [...] Sections 9 and 10 provide protection in cases of detention, arrest and imprisonment. **Among the fundamental principles underlying these rights is habeas corpus, through which a person has traditionally been ordered to be brought before a judge to determine the lawfulness of their detention.**

- *R. v. Harrer*, [1995] 3 S.C.R. 562, para. 24:

> As I noted in *Thomson Newspapers*, above, at p. 563, **judges, as guardians of the Constitution, must exercise their discretion where necessary to give effect to the Charter right to a fair trial.**

- *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3:

> [126] [...]. I acknowledge that provincial courts are created (sic) by statute and that their existence is not required by the Constitution. However, **there is no doubt that these statutory courts play a crucial role in applying the Constitution and protecting its values.** As that role has grown in recent years, it is clear that provincial courts should be recognized as having a degree of institutional independence.
>
> [127] **This role is most evident** w**hen** w**e examine the remedial po**w**ers of provincial courts to enforce the Constitution.** Although provincial courts are established by statute, this Court has held that they may enforce the constitutional supremacy provision, section 52 of the *Constitution Act, 1982*. [...]. Provincial courts also regularly use subsections 24(1) and (2) of the Charter to grant remedies, since they are courts of competent jurisdiction for those purposes: *Mills v. The Queen*, [1986] 1 S.C.R. 863. Provincial courts therefore have the power to stay proceedings: for example, *R. v. Askov*, [1990] 2 S.C.R. 1199. They may also exclude evidence obtained in violation of a Charter right: for example, *R. v. Collins*, [1987] 1 S.C.R. 265. They use subsections 24(1) and (2) because of their leading role in hearing penal proceedings, where the need for these remedial provisions most often arises.

- *Vriend v. Alberta*, [1998] 1 S.C.R. 493, para. 136:

> **Because courts are independent of the executive and legislature, litigants and citi**z**ens generally can usually expect reasoned and supported decisions that comply** w**ith constitutional requirements**, even if some decisions may not be universally accepted. In performing their duties, courts do not second-guess legislatures or governments or make value judgments about the policies they consider should be adopted; that is the task of the other branches of government. **The courts' responsibility is to uphold the Constitution, and the Constitution itself expressly gives them that role.**

- *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203:

  [46] [...]. **As guardians of Charter rights, courts have a duty to ensure that the remedy is proportionate to the violation found** and to determine the appropriate remedy.

  [...]

  [110] In determining the appropriate remedy, the Court must follow the principle of respect for the Charter's purposes and values, and the principle of respect for the legislature's role: *Schachter v. Canada*, [1992] 2 S.C.R. 679, pp. 700-701; *Vriend*, above, para. 148. Justice Sopinka expressed the first principle well in *Osborne v. Canada (Treasury Board)*, [1991] 2 S.C.R. 69, at p. 104:

  > In choosing an appropriate Charter remedy, a court must focus above all on applying the measures best suited to protecting the Charter's values and providing those whose rights have been violated with the remedy that best achieves that goal. **This follows from the court's role as guardian of the rights and freedoms enshrined in Canada's supreme law.**

- *Therrien (Re)*, 2001 SCC 35:

  3. The judge's role: "a place apart"

  108 The judicial function is unique. **Our society entrusts its judges with important powers and responsibilities.** [...]. In addition, since the adoption of the Canadian Charter, **[the judge] has become a leading defender of individual freedoms and human rights and the guardian of the values it enshrines**: *Beauregard*, above, p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, above, para. 123. **To the person appearing before the judge, the judge is therefore first and foremost the one who states the law, recognizes their rights or imposes obligations on them.**

  109 Beyond being a legal expert responsible for resolving disputes between parties, a judge also plays a fundamental role for those observing the justice system from outside. **The judge is the pillar of the entire justice system and of the rights and freedoms it seeks to promote and protect. For citizens,**

> **the judge not only promises, through the judicial oath, to serve the ideals of justice and truth on which the rule of law in Canada and our democracy are based, but is also called on to embody them.**

- *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, 2002 SCC 13, para. 35:

> Generally, **the judge's expanded role as an adjudicator of disputes, interpreter of the law and guardian of the Constitution requires complete independence from any other entity in performing judicial duties.**

- *Ell v. Alberta*, 2003 SCC 35, para. 23:

> Therefore, **because of its role as adjudicator of disputes and guardian of the Constitution, the judiciary must be completely independent.**

- *Ontario (Attorney General) v. G*, 2020 SCC 38, para. 98:

> [98] Nevertheless, the courts remain **"the guardians of the Constitution and of the rights it confers on individuals."**

- *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31:

> [70] [...]. **The approach must reflect the courts' role as guardians of the Constitution and the particular importance of justification in decisions that engage Charter protections** (*Vavilov*, para. 133). Where a decision engages Charter values, [...].

[Bold added by the Committee]

B) Case law on DIPE

[64] Judges Gosselin and Cousineau state that they relied entirely on the procedure already established by their predecessors and the municipal court clerk. They use this to justify their approach before signing 1,669 warrants of imprisonment between June 2020 and December 2022, without files, evidence, requesting or receiving submissions from counsel for the prosecution or the collector, performing any of the checks required by law, rendering written judgments or giving reasons, or determining the length of imprisonment.

[65] Judge Cousineau testifies that she checked with 73 municipal courts that operated in the same way. The Committee cannot consider this testimony

because no evidence was presented to establish precisely how other municipal courts handle DIPE in the defendants' absence. The Committee therefore considers it relevant to review the case law establishing the state of the law before June 10, 2020, the date of the first hearing presided over by Judge Gosselin at which DIPE were presented in the defendants' absence. This review contradicts the testimony of Judges Gosselin and Cousineau about the procedure allegedly followed in similar cases by many other municipal courts.

[66] ***Ville de Lachine v. Poirier*, [1993] R.J.Q. 1639 (C.M.).** The judgment in this case is dated May 11, 1993. It is the first judgment addressing the application and interpretation of articles 346 and 347 CPP, which came into force on October 1, 1990.

[67] Without discussing the facts of that case, Judge Yves Fournier of the Lachine Municipal Court establishes that article 347 CPP gives a judge discretion to impose a term of imprisonment. He states:

> Article 347, which gives the judge discretion, specifies that the judge must be satisfied that the measures provided have proved insufficient.
>
> Imprisonment does not result from an arbitrary decision. The decision must rest on a reasoning process for which the Court must give reasons. The Court therefore has judicial discretion.
>
> Discretion can become arbitrary if it is not supported by criteria, express or implied, governing its exercise. If there are none (sic), the decision must be described as arbitrary. (p. 34)

[68] It should be noted that defendant Poirier's attempts to challenge this judgment were unsuccessful, as shown by the Court of Appeal's decision of June 29, 1995.[12] Thus, as early as 1993, it was clearly established that a court imposing imprisonment for unpaid fines must give reasons for its decision. The decision must rest on a reasoning process based on statutory criteria; otherwise, it becomes arbitrary.

[69] The Committee also notes that on November 18, 2002, the Court of Québec, presided over by Judge Pierre Lortie, applied this judgment of the Municipal Court of the City of Lachine in *Percepteur des amendes v. Gagnon*, J.E. 2003-295 (C.Q.).

[70] ***Manège v. Girard*, 2015 QCCA 1128.** In this case, the appellant appealed a Superior Court judgment refusing to issue a writ of *habeas corpus* with ancillary *certiorari*. He had been imprisoned following a hearing before a Québec City Municipal Court judge who accepted the collector's proposed term of imprisonment without questioning or weighing

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12 *Poirier v. Ville de Lachine*, [1995] R.J.Q. 1696 (C.A.).

the equivalence ratio between the amounts owing and the proposed term, and without analyzing the overall effect of so many consecutive periods of detention.

[71] The Court of Appeal allowed the appeal and noted that the equivalence table between the amount owing and the term of imprisonment for failure to pay, formerly appended to the *Summary Convictions Act*, CQLR, c. P-15, was removed when the CPP was amended in 1995. The Court continued:

> [8] Since then, it has been within the discretion of the judge hearing the application for warrants of imprisonment to determine, as a last resort, the appropriate period of detention for failure to pay in respect of all offences governed by the *Code of Penal Procedure*.
>
> [Emphasis added by the Committee]

[72] The Court of Appeal noted that, in his originating application, the appellant supported his argument that the deprivation of his liberty was unlawful with grounds mainly concerning breaches of procedural fairness and the municipal judge's surrender of judicial discretion to the administration.

[73] Thus, in its decision of June 19, 2015, Québec's highest court clearly established that imposing a term of imprisonment for failure to pay a fine is within the municipal judge's discretion and requires an analysis based on statutory criteria.

[74] ***Pruneau v. Percepteur des amendes*, 2016 QCCS 334.** In this case, the appellant faced applications for a warrant of committal under section 734.7 of the *Criminal Code* and a warrant of imprisonment for failure to pay amounts owing under article 347 CPP.

[75] The appellant applied to the Superior Court for judicial review by *certiorari* and *habeas corpus*.

[76] The Court noted that the collector of fines presented common evidence in all the cases before the Court of Québec judge. The hearing began around 10:45 a.m. and ended around 5:10 p.m.

[77] The Superior Court's January 25, 2016 judgment recalled the principles established by the Supreme Court in *R. v. Wu*,[13] which held that a genuine inability to pay a fine is not a valid ground for imprisonment but rather a reasonable excuse for not paying.

[78] This Superior Court judgment clearly distinguishes between the written reasons a judge's decision must contain, so that the person concerned knows why they are being imprisoned, and the warrants of imprisonment issued afterward.

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13 [2003] 3 S.C.R. 530.

[79] Accordingly, contrary to what Judges Gosselin and Cousineau submit to the Committee, the warrants they signed a few days after the DIPE hearings are not the judgments imposing imprisonment. Those judgments must give written reasons (article 347 CPP).

[80] ***Québec (Ville de) v. Quesada*, 2016 QCCM 22.** In this case, the collector of fines requested warrants of imprisonment under article 347 CPP. The defendant was absent when the application was presented. Despite that absence, Judge Jacques Ouellet of the Municipal Court of the City of Québec analyzed the application, citing articles 346 and 347 CPP, among others.

[81] Judge Ouellet also referred to the Court of Appeal decision in *Manège v. Girard*, cited above. He exercised his discretion to impose a term of imprisonment using an equivalence table that was no longer in force, but only after analyzing all the evidence presented about the steps taken by the collector before presenting the DIPE.

[82] Once again, this judgment establishes the importance of a municipal judge hearing the collector's evidence and analyzing the entire file and the facts before deciding, even in the defendants' absence. Judges Gosselin and Cousineau neglected to do so.

[83] ***Ville de Laval v. Lamarche*, 2017 QCCM 233.** In this case, the Laval Municipal Court considered whether it could impose imprisonment for an unpaid fine when the defendant had not been served with the DIPE in accordance with article 346 CPP.

[84] After analyzing the relevant statutory provisions, Judge Chantal Paré stated:

> [15] According to the case law, an application for imprisonment is an exceptional measure that must be interpreted narrowly. All the decisions consulted indicate that it is a measure of last resort. "The end of the road," to quote Justice Mailhot of the Court of Appeal on this point.
>
> [16] The judge may hear the application without prior notice if, after careful examination, the judge considers that all reasonable efforts were made to notify the defendant.
>
> [17] One purpose of adopting the *Code of Penal Procedure* was to avoid detaining individuals unable to pay the amounts owing by offering an alternative, namely community work.
>
> [18] Where the defendant cannot be found, the Superior Court tells us the course to follow: issue a warrant to bring the defendant before the appropriate authority.
>
> [...]

> [22] The case law clearly teaches that, since this is a measure of last resort, the Court must carefully examine the conditions for imposing imprisonment, particularly where prior notice has not been served on the defendant.
>
> [23] It is useful to recall the Supreme Court of Canada's teaching: "a warrant of committal may be issued only if the offender has, 'without reasonable excuse, refused to pay the fine.'"
>
> [Emphasis added by the Committee; references omitted]

[85] Once again, even before Judges Gosselin and Cousineau were appointed as municipal judges, a municipal court clearly established the importance of carefully examining the statutory conditions that may lead to imprisonment, whether or not the defendant is present.

[86] ***Percepteur des amendes v. Duchesne*, 2018 QCCM 239.** At the hearing before Judge Aryanne Guérin of the Laval Municipal Court, the collector of fines called no witnesses and presented no documentary evidence in support of a DIPE.

[87] The collector argued that, under her oath of office and in the same way as a lawyer, she could make submissions summarizing the recovery steps taken and thereby justify issuing warrants of imprisonment.

[88] Judge Guérin recalled that imprisonment for failure to pay fines is a last resort. A warrant of imprisonment may be issued only if the judge is satisfied that the other measures under the CPP are insufficient to recover the amounts owing. This is because "[t]he nature of the application and its impact on a person's liberty call for a restrictive application" (para. 6).

[89] The judge criticized the collector's attempt to introduce evidence without calling a witness. She concluded that the collector must testify to establish the facts, like any other witness, and stated:

> [16] However, regardless of the procedure used by the collector to submit the relevant documentary evidence, this is an extreme measure. The judge must carefully and thoroughly examine the entire collection process demonstrated at a hearing. This judicial intervention is the final recourse available in enforcing the judgment.
>
> [17] Simply placing the collector's file in the court file does not relieve the collector of the burden of proof. Through testimony, the collector can demonstrate the recovery steps taken, supported by documents already in the court file or produced at the hearing.

> [18] In this case, no document was produced in support of the application, and none was even accessible to the judges because of the court's computer system. The consultation on the judge's own initiative suggested by the collector was therefore impracticable, contrary to the objectives of the *Act to establish a legal framework for information technology*.
>
> [Emphasis added by the Committee; references omitted]

[90] Finally, Judge Guérin analyzed judgments on the subject showing that the collector testifies to establish the steps taken and files several documents supporting the allegations.

[91] This judgment, rendered on October 25, 2018, predates the appointments of Judges Gosselin and Cousineau. They could have consulted it.

[92] ***Ville de Québec v. Bernard*, 2019 QCCM 93.** In this case, Judge Patrice Simard of the Québec City Municipal Court, like his colleague Jacques Ouellet in *Quesada*, cited above, exercised his judicial discretion to determine the length of imprisonment after analyzing all the facts presented about the collector's steps, including sending a notice of judgment, an offer of compensatory work and prior notice of the DIPE.

[93] Once again, in the defendant's absence, the judge carefully analyzed the evidence before granting the DIPE and imposing imprisonment.

[94] In addition to the case law, the Committee consulted the eleventh edition, published in 2019, of Guy Cournoyer's *Annotated Québec Code of Penal Procedure*.[14] He was then a judge of the Superior Court and the Court Martial Appeal Court. The judges completely disregard the existence of this important reference work on the main statute they must familiarize themselves with before sitting as municipal judges: the CPP.

[95] Had Judges Gosselin and Cousineau taken the time to consult the *Annotated Québec Code of Penal Procedure* before hearing DIPE, they would have understood that their procedure had no legal foundation and no constitutional or statutory basis. At the Committee's hearing, the judges also referred to no judgment or authority that could support, validate or justify their approach to DIPE at the sittings giving rise to the complaint.

[96] The Committee's review of the case law led it to the Superior Court judgment in *Martineau Beaupré v. Labelle*, 2023 QCCS 1076, rendered

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14 COURNOYER, Guy, *Annotated Québec Code of Penal Procedure*, 11th ed., Montréal, Wilson & Lafleur, 2019, 1,232 pages.

from the bench by Justice Michel Pennou on March 14, 2023, with reasons set out in a written judgment dated March 29, 2023.

[97] This judgment was sent to all municipal judges by Claudie Bélanger, a Court of Québec judge and then Associate Chief Judge responsible for municipal courts. It was rendered after the sittings covered by the complaint.

[98] In that case, the collector had told the municipal judge that prior notice of the DIPE hearing could not be served on the defendant. The judge left it to the collector to determine the length of imprisonment.

[99] Justice Pennou noted that neither in her oral reasons nor in the document recording her written reasons did the municipal judge state that she was satisfied that the defendant had, without a reasonable excuse, refused or neglected to pay the amounts owing or discharge them under the CPP.

[100] The Superior Court therefore granted the application for a writ of *habeas corpus* with ancillary *certiorari*. It also concluded that the municipal judge had failed to establish the total period of imprisonment and had unlawfully delegated her discretion to determine its length to the collector of fines.

[101] Justice Pennou stated that he could not accept the City's arguments that the burden of establishing a reasonable excuse, such as poverty or an inability to perform compensatory work, rested on the defendant, and that the defendant's absence, and therefore the absence of evidence of an excuse, meant that non-payment and the inadequacy of other collection measures justified issuing warrants of imprisonment.

[102] Justice Pennou reiterated that the municipal judge's satisfaction under article 347 CPP "must be based on all the evidence and information available to the judge" (para. 23). He then stated:

> [26] Thus, a judge imposing imprisonment for failure to pay a fine must formally conclude, on a balance of probabilities, that the defendant can pay the amounts owing but refuses or neglects to do so, whether or not the defendant is present or presents evidence.
>
> [27] The defendant has the right to present evidence at the hearing to establish a reasonable excuse. But the defendant's absence from the hearing - and therefore the absence of evidence presented by the defendant - does not necessarily lead to the conclusion that there is no reasonable excuse for failing to pay the amounts owing.
>
> [Emphasis added by the Committee]

[103] Judges Gosselin and Cousineau submit that it was only through this judgment that they truly understood the scope of articles 346 and 347 CPP. Without minimizing

the importance of Justice Pennou's judgment in *Martineau Beaupré*, the Committee concludes that it establishes nothing new. All the principles it sets out appear in the earlier judgments reviewed in the preceding paragraphs, which were available to Judges Gosselin and Cousineau.

C) Breaches of judicial ethics

Section 1: A judge's role is to render justice within the framework of the law.

[104] Judges are presumed to know the law and the nature of their judicial duties and to have acted in accordance with their legal obligations.[15] However, for the reasons that follow, the Committee concludes that these presumptions have been rebutted. Based on all the facts presented, the arguments and the applicable legal principles, the Committee also concludes that Judges Gosselin and Cousineau failed in their duty to render justice within the framework of the law, as required by section 1 of the Code of Ethics.

[105] The primary source of law is legislation. Here, articles 346 and 347 CPP are unambiguous and leave no room for interpretation.

[106] Only where a defendant fails to honour an undertaking to appear before the collector, where compensatory work could not be offered, or where the defendant refuses or neglects to perform such work may the collector ask a judge to impose a term of imprisonment and issue a warrant of imprisonment if the amounts owing have not been paid.

[107] Before granting such an application, a judge must therefore check that these conditions have not been fulfilled.

[108] Prior notice of the application must also be served on the defendant. However, the judge may hear the application if the notice could not be served despite reasonable efforts to notify the defendant.

[109] Accordingly, even when a defendant is absent, a judge must verify the reasonable efforts made to notify the defendant of an application for imprisonment, as part of a "hearing of the application."

[110] Article 347 CPP also requires the judge to be satisfied that the measures for recovering the amounts owing are insufficient to recover them in full. This requirement has existed since the CPP came into force on October 1, 1990.

[111] On June 5, 2020, before the first DIPE hearing presided over by Judge Gosselin, the legislature added another requirement concerning what a judge must be satisfied of before imposing a sentence and issuing a warrant of imprisonment. The judge must be satisfied that, without a reasonable

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15 *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, paras. 15-18 (***Cojocaru***).

excuse, the defendant has refused or neglected to pay the amounts or discharge them under the CPP chapter entitled "Execution of judgments." Finally, the CPP provides that written reasons MUST be given for imposing imprisonment.

[112] Instead of performing their judicial duties in DIPE matters, Judges Gosselin and Cousineau blindly relied on the process already established by the clerk of the Municipal Court of the City of Gatineau and the collector. They disregarded their constitutional duty to safeguard defendants' fundamental rights and freedoms and entirely, completely and utterly bypassed the substantive and procedural requirements of articles 346 and 347 CPP.

[113] The Committee shares the clear and unequivocal conclusions expressed by Justice Catherine Mandeville of the Superior Court in her March 10, 2023 judgment, reproduced in paragraph 22 of this report. Like Justice Mandeville, the Committee considers shocking the grossly negligent way in which Judges Gosselin and Cousineau proceeded in unlawfully issuing 1,669 warrants of imprisonment concerning a total of 1,126 people.

[114] To paraphrase Justice Mandeville, Judges Gosselin and Cousineau clearly exceeded their jurisdiction by applying none of the safeguards and simply choosing not to act in any way as judges or guardians of individuals' rights. They performed none of the mandatory checks and also imposed sentences without written decisions or any reasons. They thus failed in their most basic duty of vigilance, giving up their important judicial responsibility to oversee the procedure and ensure that the collector had fulfilled the required duties. This resulted in some individuals being unlawfully deprived of their liberty, even if only for a single day. The minimum checks required of the judges under the CPP included the following questions, which the law required them to ask:

- Does the defendant owe an amount?;
- Did the defendant honour the undertaking to appear before the collector?;
- Could compensatory work be offered to the defendant?;
- Did the defendant refuse or neglect to perform that work?;
- Was prior notice of the DIPE duly served on the defendant?;
- If that notice could not be served, what reasonable efforts were made to notify the defendant?;
- What satisfies the judge that the CPP measures for recovering the amounts owing are insufficient to recover them in full?;

- What satisfies the judge that the defendant has, without a reasonable excuse, refused or neglected to pay the amounts or discharge them under the CPP?;

[articles 346 and 347 CPP]

[115] Their failure to assess each case individually and exercise their discretion judicially before signing warrants containing prison terms they had never considered further illustrates their complete surrender of their roles as judges and guardians of citizens' fundamental rights. This led to the unlawful and arbitrary issue of warrants of imprisonment, which, among other consequences, caused Mr. Bonfond to spend three days in prison.

[116] Judges Gosselin and Cousineau acknowledge no breach of judicial ethics. Instead, they try to justify their conduct by saying that they relied on existing practices and procedures, and on the interpretation of the law passed on to them, without ever questioning them.

[117] In fact and in law, Judges Gosselin and Cousineau did not misinterpret the law. Through their gross negligence, they completely ignored it, contenting themselves with acting obediently as rubber stamps, in disregard of all applicable legal rules.

[118] An inquiry committee's analysis in a disciplinary inquiry is fundamentally different from that of an appeal court or a court conducting judicial review. It does not concern whether the judge's decision complies with the law, is correct or is justified by the facts in evidence. Rather, it concerns the judge's conduct and approach to judicial duties: is the judge seeking to act "within the framework of the law" or on other grounds? Does the judge take care to apply legal rules as the judge understands them?

[119] The Court of Appeal describes section 1 of the Code of Ethics as the "cornerstone of the judge's role," adding that the judiciary's "primary mission is to apply the law."[16] To fulfil this duty, a judge must strive in the judgment to identify the legal rules applicable to the dispute and analyze the evidence in light of those rules. The judge may make a mistake without breaching judicial ethics. However, the intention to apply legal rules as defined by the legislature, case law or any other relevant source of law must be clear and evident.

[120] To maintain public confidence in judicial institutions, a judge must clearly show in the judgment that the decision rests on legal reasoning and that the dispute has not been decided arbitrarily or with disregard for the legal system. The legitimacy of the power the judge exercises

16 *Re Ruffo*, 2005 QCCA 1197, para. 285.

depends on this. The considerable freedom judges have in performing their duties is absolutely essential to judicial independence. However, that freedom must be exercised within the legal framework defined by the society that entrusts them with their responsibilities and authority.

[121] The Committee recognizes the distinction between an error of law and a breach of judicial ethics. The Superior Court addressed the issue thoroughly in two recent judgments.[17] The Committee understands that, under the current law, a judge breaches the ethical duty to render justice within the framework of the law only in the following cases:

- Deliberately refusing to apply the law, in bad faith or on a whim;

- Deliberately refusing to apply the law by invoking a noble cause to justify not rendering justice within the framework of the law and applying instead what the judge considers just;

- Making an error of law through ignorance that is, moreover, gross ignorance.

[122] For the reasons given above, the conduct of Judges Gosselin and Cousineau amounts to breaches of judicial ethics because they made numerous errors of law through gross ignorance of their role and of clear, long-established legal rules.[18]

[123] Similarly, author Luc Huppé, now a Court of Québec judge, explains that, depending on "the nature of the breach, the same conduct could give rise to a disciplinary complaint and open the way to an appeal or judicial review."[19] "It is therefore the judge's conduct that must be examined in judicial ethics, not the correctness of the decision. If ethically inappropriate conduct also causes a judge to err in law, the judge is not shielded from ethical review."[20]

[124] On analysis, the evidence shows that the judges had not even a minimal knowledge of the content of articles 346 and 347 CPP before hearing DIPE. They heard DIPE without first doing any research into legal commentary or case law about their responsibilities in this area or the major consequences such applications can have for the person concerned. Their approach shows gross negligence regarding their role, their duty to know the law and comply with its requirements, and the consequences of their decisions for defendants. The resulting errors of law stem from ignorance that

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17 *Gauthier v. Conseil de la justice administrative*, 2026 QCCS 6, and *Descôteaux v. Conseil de la magistrature du Québec*, 2025 QCCS 2535.
18 *Descôteaux*, above, para. 53; *Gauthier*, above, para. 90.
19 HUPPÉ, Luc, *Judicial ethics: Canadian law: an international perspective*, Montréal, Wilson & Lafleur, 2018, para. 67.
20 *Gauthier v. Conseil de la justice administrative*, above, note 17, para. 93.

is, moreover, gross ignorance. In other words, the judges failed to do their basic work and disregarded the inherent features of their office identified by Huppé in paragraph 83 of the work cited above, which the Committee summarizes as follows:

> - First, the judicial function implements a system of social regulation based on law, whose supremacy in the social order is proclaimed in the preamble to the *Canadian Charter of Rights and Freedoms*;
>
> - Second, the judicial function does not give its holder arbitrary power that may be freely exercised according to the holder's own view of it;
>
> - Third, the judicial function is defined by the court's impartiality, a fundamental standard expressly enshrined in the Constitution that applies personally to members of the judiciary;
>
> - Fourth, the judicial function is exercised within a permanent collective structure: the courts that make up the country's judicial system.

Section 2: A judge must perform the duties of office with integrity, dignity and honour.

[125] The Committee concludes that Judges Gosselin and Cousineau also failed in their duty to perform their role with integrity, dignity and honour, contrary to section 2 of the Code of Ethics. Author Luc Huppé writes the following about the duty to act with dignity:

> Although difficult to define precisely, judicial dignity is closely linked to society's view of the institutions responsible for administering justice. As a public service established for all those who come before the courts to ensure the rule of law, justice is a serious matter that judges cannot take lightly or treat casually. It has lasting consequences both for those who become subject to it through a dispute and for the legal rules the courts interpret or establish. This view of justice cannot be maintained unless judges act with a certain seriousness.
>
> For justice to play its full role in society's development, judicial institutions must command respect, not only because of their authority but also because of the public's regard for them. To show themselves worthy of their office, judges must therefore display qualities consistent with the defining features of the judicial function, such as judgment, moderation, self-control and a sense of responsibility. Thoughtless acts and disregard for others and society are ill-suited to judicial institutions and their members alike. Dignified conduct therefore requires

> judges to show in their actions and words the degree of seriousness and respect needed to remain consistent with the tone of justice in society. They must also approach their relations with colleagues and judicial institutions generally in this spirit.[21]
>
> [Emphasis added by the Committee]

[126] The Conseil de la magistrature du Québec has previously examined the meaning of honour in *Petit and Plouffe*:[22]

> [33] Larousse defines "honour" as a "Set of moral principles that prompt a person never to do anything that would cause a loss of self-respect or the respect of others" and a "Sense of one's own dignity, reputation." Le Robert offers the following: "The fact of deserving regard and respect (from others and oneself) in moral terms and according to society's values" and "A feeling that drives a person to gain or preserve the respect of others or oneself."
>
> [34] A judge's conduct must therefore meet society's and litigants' expectations, given the status of respectability and dignity conferred by the office, which must be earned.

[127] Applying these principles, given the gross negligence Judges Gosselin and Cousineau displayed in applying simple legal rules, the Committee concludes that they acted lightly, casually and with an obvious lack of seriousness toward the fundamental rules they were required to apply. They contented themselves with acting blindly as rubber stamps, without considering the harmful consequences of abandoning their duties and responsibilities.

[128] From the perspective of the people subject to the 1,669 warrants issued by the judges, it is easy to see that the judges' conduct lacked the minimum consideration a judicial institution must show. Their disregard for the particular circumstances of each case, and their systemic approach of not consulting the files before ordering imprisonment, seriously dehumanize justice.

[129] Treating people so impersonally is simply incompatible with the dignity and honour of judicial institutions. The judicial function rests on an individual assessment of the facts submitted to the courts. In this essential respect, it differs from the legislative function, which establishes general, impersonal standards. Justice dispensed in groups of dozens or hundreds of cases, based solely on a bare list of names on a hearing roll, sends the people concerned and the public generally

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21 HUPPÉ, Luc, *Judicial ethics: Canadian law: an international perspective*, above, note 19, para. 239.
22 *Petit and Plouffe*, 2024 CanLII 137951 (QC CM).

the message that the court attaches no importance to the human beings who must bear the consequences of those decisions: in this case, the loss of their liberty.

[130] The conduct established before the Committee is unworthy of judges who swore to perform their judicial duties with integrity and exercise all the powers of their office. As the Court of Appeal teaches in *Ruffo*,[23] "[b]y taking the oath, judges promise to serve the ideal of justice on which the rule of law and democracy rest: they undertake to render justice impartially and formalize the legal relationship between themselves and those subject to the court's authority." A judge must never behave like, or consider themselves to be, a plant, a pot or a saucer. Judge Cousineau's quip reveals the judges' complete surrender of their duties under the law and the applicable legal rules, clearly established for many years in DIPE matters.

Section 3: A judge has a duty to maintain professional competence.

[131] The record also shows that Judges Gosselin and Cousineau failed in their duty to maintain professional competence, as required by section 3 of the Code of Ethics. According to author Luc Huppé, in an environment of constant and rapid change, every judge must actively renew their knowledge to stay in step with the legal system to which they belong. Judges cannot remain untouched by changes in legislation or case law. As important participants in applying and developing the law, they must ensure that they can make decisions consistent with the direction society is taking in its legal development.[24]

[132] The duty to maintain professional competence logically extends the considerations that enabled a judge to be appointed. Section 25 of the *Regulation respecting the selection procedure of candidates for the office of judge of the Court of Québec, municipal court judge and presiding justice of the peace*[25] provides that candidates are assessed, among other things, on their competence, including their level of legal knowledge and experience in the areas of law in which they will perform their duties.

[133] This factor remains important throughout a judicial career. It determines the judge's ability to "render justice within the framework of the law," a law the judge must know and master in order to apply it. A judge who fails to take the necessary steps to maintain professional competence loses, in a sense, one of the essential qualities that

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23 *Re Ruffo*, 2005 QCCA 1197, para. 45.
24 HUPPÉ, Luc, *Judicial ethics: Canadian law: an international perspective*, above, note 19, para. 220.
25 CQLR, c. T-16, r. 4.1.

enabled the appointment to the judiciary. There is a clear link between judges' professional competence and public confidence in judicial institutions.

[134] In this case, Judges Gosselin and Cousineau testify that they read articles 346 and 347 CPP when they learned that they would preside over DIPE hearings. By their own admission, they did no research into legal commentary or case law before sitting in these matters and did not take the time to consult the annotated CPP.

[135] The judges invoke a lack of adequate training before hearing DIPE cases. That argument cannot be accepted, since simply reading and applying articles 346 and 347 CPP would have prevented the errors found. Instead of checking the applicable legal framework themselves, they blindly relied on the existing procedure and the practices of the municipal court clerk and the collector of fines.

[136] In the Committee's view, maintaining judicial competence goes beyond participating in training or professional development. It requires judges to conduct their own research in areas with which they are less familiar or unfamiliar. If a judge hears a case involving legal rules the judge does not know, the judge must take the time to deepen that knowledge before deciding.

[137] Here, Judges Gosselin and Cousineau not only neglected to keep their competence up to date but also displayed gross ignorance of the basic legal rules governing DIPE. They failed completely and lamentably in this respect. Although the document applies to federally appointed judges, the Committee also considers it useful to refer to the *Ethical Principles for Judges*, which require judges to perform their duties competently:

> 3.C.1 To preserve public confidence in the judiciary, it is essential that judges adhere to high standards of education and competence.
>
> 3.C.2 Judges should know the law and keep their knowledge current. This includes not only substantive and procedural rules but also an understanding of their impact on the people affected.
>
> 3.C.3 Judges have a duty to maintain and enhance the knowledge, skills and personal qualities needed to judge well. This important aspect of judicial diligence and competence involves participation in continuing professional development programs.

Section 5: A judge must be manifestly impartial and objective.

Section 9: A judge must preserve the integrity and uphold the independence of the judiciary, in the best interests of justice and society.

[138] Sections 5 and 9 of the Code of Ethics are inseparably linked. They require a judge, on the one hand, to be manifestly impartial and objective and, on the other, to preserve the integrity and uphold the independence of the judiciary in the best interests of justice and society. This is the understanding advanced by the Supreme Court of Canada in *R. v. Lippé*:[26] judicial independence is ultimately intended to ensure a reasonable perception of impartiality and is only a means to that end. "If judges could be perceived as 'impartial' without judicial 'independence,' the requirement of 'independence' would be unnecessary" (p. 32). It is useful to recall that this decision specifically addresses judicial independence in relation to municipal judges.

[139] Disciplinary case law has used the test developed by the courts to assess a judge's breach of the duty of impartiality. The disciplinary body asks whether an informed person, examining the matter thoroughly, realistically and practically, would have a reasonable apprehension that the judge was not impartial.[27]

[140] The Committee is aware that judges and their judicial decisions benefit from a strong presumption of integrity and impartiality, since judges are presumed to have honoured their oath in performing their duties.[28] They are also presumed to know the law and the nature of their judicial duties and to have acted in accordance with their legal obligations.[29] An appearance of bias is established when a judge's conduct creates a reasonable apprehension of bias: an apprehension that would be reasonable from the perspective of a reasonable and informed person who knows all the relevant circumstances, including the historical traditions of integrity and impartiality, is aware that impartiality is one of the duties judges have sworn to uphold, and examines the matter thoroughly, realistically and practically.[30] To rebut the presumption of integrity and impartiality, convincing evidence must show that a reasonable person, informed of all relevant circumstances, would conclude that the judge did not form an opinion on the issues or decide them impartially and independently.[31]

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26 *R. v. Lippé*, [1991] 2 S.C.R. 114.
27 HUPPÉ, Luc, *Judicial ethics: Canadian law: an international perspective*, above, note 19, para. 150.
28 *Cojocaru*, above, note 15, paras. 14-22.
29 *Cojocaru*, above, note 15, paras. 15-18.
30 *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, paras. 20-25; *Cojocaru*, above, note 15, para. 19.
31 *Cojocaru*, above, note 15, para. 22.

[141] The Committee concludes that these presumptions are rebutted by the judges' complete abandonment of their responsibilities in issuing warrants of imprisonment contrary to the mandatory, unambiguous provisions of articles 346 and 347 CPP. They failed to fulfil their crucial role as guardians of defendants' rights and freedoms. It bears repeating that they did so without evidence, files, requesting or receiving submissions from the collector or counsel for the prosecution, performing any of the checks required by law, determining the number of days of imprisonment or rendering written judgments with reasons. In doing so, they seriously compromised the integrity and impartiality of their judicial decisions. Based on all the evidence, the Committee is satisfied that a reasonable, informed person, aware of all relevant circumstances and examining the matter thoroughly, realistically and practically, would conclude that the judges did not form their own opinions or render their judgments impartially and independently. They blindly relied on counsel for the prosecution's request and on a computer system to determine the days of imprisonment, contenting themselves with acting as rubber stamps.

[142] The duty of impartiality extends to every component of the judicial function and binds judges in all aspects of that function. As its central principle, breaches of this duty may occur in different settings, including the content of judgments and decisions.[32]

[143] Impartiality and independence are no less important in cases heard in a party's absence. Quite the opposite. In those circumstances, the court does not benefit from a balanced debate before deciding. It receives only one party's submissions, based on that party's position. The court's role is to render justice impartially and in accordance with the law, rather than simply give effect to one party's requests. To remain impartial and independent, the court cannot blindly grant the relief sought by a party or let a computer system determine the days of imprisonment in its place. It must form its own opinion, admittedly based on the only evidence presented, but according to what it considers just and lawful.

[144] This duty of impartiality and independence has particular significance in penal or criminal proceedings. With few exceptions, the prosecuting party before the court is always the same. Judges hearing these matters must therefore take particular care to show accused persons, defendants and the public that they maintain the distance from the prosecution needed to preserve their impartiality and independence. Blindly granting the prosecution's requests,

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32 HUPPÉ, Luc, *Judicial ethics: Canadian law: an international perspective*, above, note 19, para. 149.

without any evidence or explanation from the prosecution, without it establishing the merits of its application, and without the judge even taking the trouble to consult the file to check minimal compliance with statutory conditions, can only convince a reasonable, informed person that the judges did not form their own opinions or decide impartially and independently. They blindly relied on the prosecution's requests and contented themselves with acting as rubber stamps. The same applies to allowing a computer system to determine the days of imprisonment in their place.

[145] The Committee reiterates that Judges Gosselin and Cousineau completely abandoned their judicial duties by assuming that the clerk, counsel for the prosecution and the collector of fines had complied with the law. The judges examined neither the files nor the evidence. They neither requested nor received submissions from counsel for the prosecution or the collector. They also did not check that the statutory preconditions were met before issuing warrants of imprisonment without reasons, with the length of imprisonment determined by a computer system rather than by them. In these circumstances, an informed person examining the situation realistically and practically would conclude that the judges did not decide independently and impartially but deferred to the City's administrative authorities, compromising their ability to reach a just decision.

[146] More seriously still, by abandoning their important judicial duties, Judges Gosselin and Cousineau failed to preserve the integrity and uphold the judicial independence they enjoy. They relied entirely and blindly on others, without even rendering written judgments or giving reasons as required by law. Their conduct is contrary to the exercise of their judicial duties and their important role as guardians of citizens' rights and freedoms.

[147] In light of all the above, the Committee concludes that Judges Martin Gosselin and Joanne Cousineau breached sections 1, 2, 3, 5 and 9 of the Code of Ethics.

D) Sanction

[148] As the Supreme Court recalls in *Therrien*,[33] an inquiry committee's work is part of a disciplinary process. The committee's first task is to determine whether the complaint is well-founded, as provided in section 279 of the *Courts of Justice Act*[34] (**CJA**). If it is, the Committee's role is to recommend that the Council reprimand the judge or recommend that the Minister of

33 *Therrien (Re)*, 2001 SCC 35 (***Therrien***).
34 CQLR, c. T-16.

Justice and Attorney General apply to the Court of Appeal under section 95 CJA, which provides:

> 95. The Government may remove a judge only upon a report of the Court of Appeal made after an inquiry at the request of the Minister of Justice.

[149] The Committee is well aware of the case law establishing that a reprimand is a severe sanction for a judge. However, it must also ask whether the judges' conduct so clearly and completely undermines the impartiality, integrity and independence of the judiciary that it shakes litigants' or the public's confidence in their justice system and renders the judges incapable of performing the duties of their office.[35]

[150] The answer rests on the "precious confidence the public places in its justice system, which every judge must strive to preserve."[36]

[151] The breaches identified in this report concerning Judges Gosselin and Cousineau are serious and irreparable. They had significant consequences for the persons subject to the warrants, quite apart from the class action the City of Gatineau now faces because of their issue. These were not isolated acts: they were repeated at every sitting at which DIPE were presented and affected more than a thousand people. In the Committee's view, the judges' conduct at DIPE hearings clearly and completely undermines the impartiality, integrity and independence of the judiciary, to the point of shaking litigants' and the public's confidence in their justice system and rendering the judges incapable of performing their duties. This conclusion is unavoidable even though the judges have no disciplinary history.

[152] In disregarding the basic, essential principles at the heart of the law, including their role as guardians of citizens' fundamental rights and freedoms, Judges Gosselin and Cousineau displayed such incompetence that they irreparably damaged the confidence the public must have in the judiciary. Ultimate responsibility for this judicial debacle rests exclusively with Judges Gosselin and Cousineau. The Committee considers that their gross negligence at DIPE hearings undermines litigants' and the public's confidence in the justice system, compromises their ability to fully perform the judicial duties entrusted to them, and thereby contributes to bringing the justice system into disrepute.

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35 *Therrien*, above, note 33, para. 147.
36 *Ibid.*

[153] The Committee recognizes the severity of its conclusion. From the perspective of Judges Gosselin and Cousineau, they merely continued the system established at the Municipal Court of the City of Gatineau. The existence of such a "system" provides context for their conduct but cannot excuse it. Every judge is personally responsible for complying with the ethical duties that apply to them. As the Supreme Court of Canada has held, compliance with ethical duties depends primarily on self-imposed constraints.[37] Every judge must question the propriety of their conduct and determine the limits they must not cross.

[154] In the "Amended Admissions" filed in the record and reproduced in paragraph 52 of this report, Judges Gosselin and Cousineau state that, after their appointments, they each received from another judge "instructions on the steps to follow in conducting DIPE hearings." This is a terrible misunderstanding. Judges cannot receive instructions on how to perform their judicial duties. No one, inside or outside the court, has authority to give a judge "instructions" on how to perform those duties or render judgments.

[155] Every judge is independent of colleagues and of the rest of the court to which the judge belongs. This independence guarantees everyone who comes before a court that the judge will perform their duties without outside interference and free from influences others might seek to exert to direct the judge's decisions. Independence is granted for the public's benefit, not the judge's personal benefit. As a result, a judge cannot rely on colleagues' views, recommendations, examples or advice to justify their actions. A judge cannot excuse their conduct by saying that they did the same as other judges or followed "instructions" they had received. Judges must take full responsibility for how they choose to perform their duties.

[156] Colleagues' conduct may inspire a judge, but it cannot be followed without assessing whether it meets ethical requirements. The usual procedures and common practices of a court, even if developed over many years, do not guarantee that the conduct of a judge who adopts them will necessarily be considered beyond reproach. They do not protect a judge from a possible ethical breach. Judges must look to the Constitution, legislation, the court's rules of procedure and other sources of law for guidance in performing their judicial duties. The familiar saying is that "ignorance of the law is no excuse." All the more so for judges responsible for applying it.

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37 *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, para. 110.

[157] Based on its analysis, the Inquiry Committee considers that it should recommend that the Council recommend that the Minister of Justice and Attorney General apply to the Court of Appeal under section 95 CJA to have Judges Martin Gosselin and Joanne Cousineau removed from office.

FOR THESE REASONS, the Inquiry Committee concludes that the complaint is well-founded and recommends that the Conseil de la magistrature recommend that the Minister of Justice and Attorney General apply to the Court of Appeal to have Judges Martin Gosselin and Joanne Cousineau removed from office under section 95 of the *Courts of Justice Act*.

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Judge Henri Richard, J.C.Q.
Chair of the Committee

Judge Marco LaBrie, J.C.Q.

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