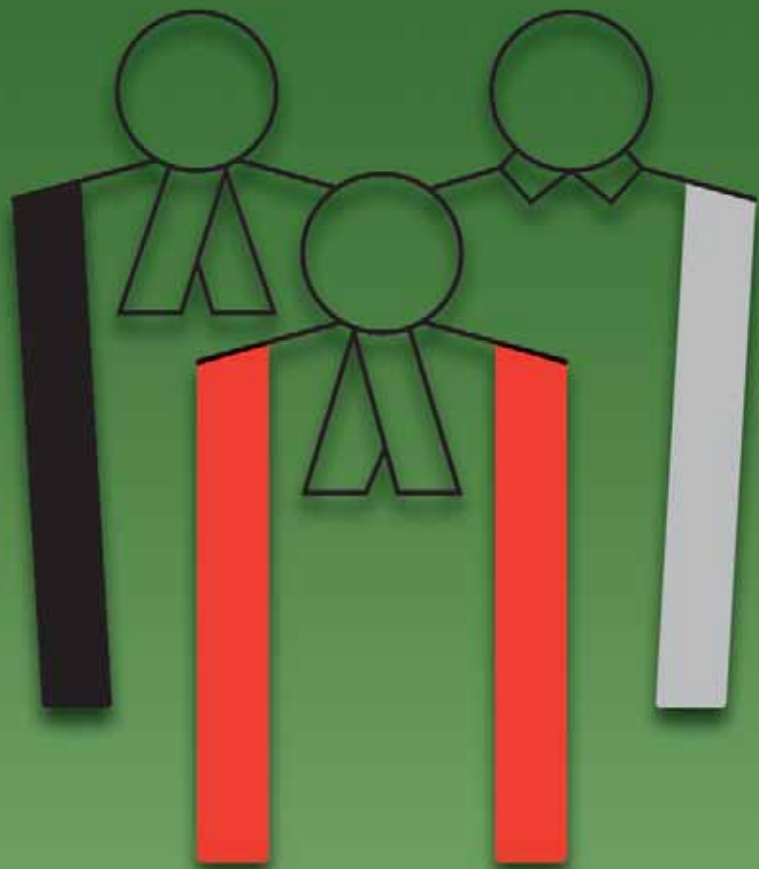


ACTIVITY REPORT

2003-2004



CONSEIL **DE LA**
MAGISTRATURE
DU QUÉBEC

2003-2004

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ACTIVITY report

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Message

from the president

I am pleased to present the activity report of the *Conseil de la magistrature du Québec* for 2003-2004.

This is the first report that I have had the opportunity to submit since my appointment as Chief Judge of the Court of Québec and Chairman of the *Conseil de la magistrature* on September 24, 2003.

This report covers the *Conseil's* main activities, which allow it to ensure compliance with judicial ethics and to see that the judges have the appropriate ways and means of maintaining and developing their competence.

In order to ensure compliance with judicial ethics, the *Conseil* is called upon to examine all complaints relating to a judge's conduct. It must then evaluate whether the judge has abided by the rules and duties incumbent on him by the *Courts of Justice Act* and the judicial code of ethics applicable to him.

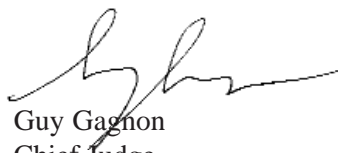
Over the years, the *Conseil*, the committees of inquiry that it has set up as well as the courts have developed jurisprudence. This is an invaluable source of reference.

In this respect, I believe that it is important for the *Conseil's* code of ethics history to be discussed and understood. A project has therefore been undertaken to develop an annotated code of ethics.

It will be designed to provide food for thought for the judges on the various aspects of the principles set forth in the code of ethics, and it will be distributed to the public as well. The judiciary, the justice community and the public will no doubt benefit from the important lessons that this publication will have to offer.

Although my experience on the *Conseil* is still recent, I can affirm that it has an essential role to play in maintaining public confidence in the judicial system and in the judiciary, in particular.

In closing, I would like to thank the *Conseil's* members and staff for their cooperation, dedication and significant contributions toward carrying out the mandate of the *Conseil de la magistrature*.



Guy Gagnon
Chief Judge
Court of Québec

Québec city, November 2004

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

The Act instituting the Conseil de la magistrature was proclaimed on July 19, 1978. As at March 31, 2004, the Act stipulated that the Conseil shall consist of 15 members, plus a lawyer who acts as Secretary. Three additional employees assist the Secretary in its functions. The list of Conseil members and staff is presented in Appendix I.

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

1.1 Jurisdiction

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

The Conseil's functions are as follows:

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

With respect to continuing education and ethics, the Conseil has jurisdiction over all provincially appointed judges, namely, the judges of the Court of Québec, the Human Rights Tribunal, the Professions Tribunal, and the municipal courts. As at March 31, 2004, about 400 judges were under the jurisdiction of the Conseil.

As for justices of the peace with expanded judicial powers¹, the Conseil has jurisdiction over ethical matters only. However, the government provides the Conseil with the necessary funds for the purchase of their legal documentation.

¹ National Assembly of Québec adopted an *Act to amend the Courts of Justice Act and other legislative provisions as regards the status of justices of the peace* (2004, c. 12) concerning in particular the status of presiding justices of the peace. The chapter five of the activity report treats these modifications.

1.2 Composition of the Conseil and Appointment of Members

As at March 31, 2004, the Conseil was composed of the following 15 members:

- the Chief Judge of the Court of Québec;
- the Senior Associate Chief Judge of the Court of Québec;
- four Associate Chief Judges of the Court of Québec;
- one Judge-President of a municipal court;
- one judge chosen among persons performing the functions of President of the Human Rights Tribunal or Chairman of the Professions Tribunal;
- two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- one judge chosen among municipal court judges and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
- two lawyers appointed upon the recommendation of the Barreau du Québec;
- two persons who are neither judges nor lawyers.

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

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

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

1.3 Operating Structure

The members of the Conseil do not serve on a full-time basis. They meet approximately once every five weeks, as convened by the President. During their meetings, the members examine complaints and any other matters brought to their attention. The quorum of the Conseil is eight members, including either the President or the Vice-President. The Conseil may hold its meetings in camera anywhere in Québec. During the 2003-2004 budgetary year, the members of the Conseil met nine times.

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

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

The Executive Committee has the following mandate:

- to examine issues brought before it and to execute the mandates entrusted to it by the Conseil and then to report back to the Conseil;
- to examine certain issues when requested by the President of the Conseil, in order to present recommendations to the Conseil;
- to examine and make decisions regarding administrative matters between meetings of the Conseil, and to submit its decisions for approval at the next meeting of the Conseil.

The quorum of the Executive Committee is three members, including the President or the Vice-President. The Secretary of the Conseil also acts as the Secretary of the Executive Committee. He prepares the notice of meeting and writes up and signs the minutes of the meetings, which are then tabled at the meetings of the Conseil. During the 2003-2004 budgetary year, the Executive Committee met once.

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

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

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

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

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

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

1.4 Financing Method

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

In its operating activities and those related to judicial ethics, the Conseil therefore enjoys total financial independence. Since its budget is not pre-determined, the Conseil should not be influenced by budgetary constraints in its decision-making.

However, the government determines the budget pertaining to the training and continuing education of judges. If the Conseil wishes to change this budget, it must seek the approval of the Minister of Justice. During the 2003-2004 budgetary year, the training and continuing education budget was established at \$1,112,300.

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

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

2.1 Legal Documentation

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

In 2003-2004, the Conseil allocated close to \$550,000 for the purchase of legal documentation.

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

The Conseil entrusts the organization of training and continuing education activities to the courts and tribunals.

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

The funds for the participation of judges in seminars and conferences not organized by the courts and tribunals are paid to each court or tribunal. The Conseil has established a rule that no more than 20% of the budget which has been so allocated to a court or tribunal can be used for such external training.

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

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

The following sections present the various training and continuing education programs implemented during the 2003-2004 budgetary year.

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

2.2.1 Court of Québec

Jurisdiction

The Court of Québec is composed of no more than 270 judges, including the Chief Judge, the Senior Associate Chief Judge and four Associate Chief Judges: one for the Civil Division, one for the Criminal and Penal Division, one for the Youth Division and one responsible for the municipal courts, whose status will be examined later in this report. In addition, the Chief Judge designates, from among the judges of the Court and with the approval of the government, ten coordinating judges to assist the Chief Judge in the various regions and, when circumstances warrant, a maximum of eight associate coordinating judges.

The Senior Associate Chief Judge assists and advises the Chief Judge and performs the functions of the latter, but under his authority. The three Associate Chief Judges assist the Chief Judge and the judges in the matters within the jurisdiction of their Division.

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

Civil Division

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

In the Civil Division, judges also exercise the powers granted to them by the law in administrative matters. They have exclusive jurisdiction to hear appeals of certain decisions, such as those rendered by the Commission d'accès à l'information, the Régie du logement, the Tribunal administratif du Québec, the Comité de déontologie policière and the ethics committees formed under the *Act respecting the distribution of financial products and services and the Real Estate Brokerage Act*. This appeal jurisdiction also applies to decisions rendered by the Minister of Revenue in provincial tax matters and is exerted without regard to the money sums concerned.

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

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

Criminal and Penal Division

Judges who sit in the Criminal and Penal Division have jurisdiction over proceedings brought under various federal and provincial statutes.

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

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

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

Youth Division

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

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

In criminal matter, the judges of the Youth Division apply the *Youth Criminal Justice Act*. They also hear, in first instance, offences under the *Criminal Code* (except the murder), a federal or provincial statute in which persons less than 18 years of age but over 12 years.

In penal matter, they have jurisdiction to hear offences under the *Code of Penal Procedure* when the defendant is old 14 to 18 years.

Québec municipal courts and their judges fall under the authority of a fourth Associate Chief Judge of the Court of Québec, who is responsible for municipal courts. Under the authority of the Chief Judge of the Court of Québec, he performs the functions of the Chief Judge with respect to municipal courts.

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

At March 31, 2004, this court was composed of 286 judges including 24 temporary judges chosen among the judges with the retirement. The latter were authorized by the government to continue to exert, for one fixed period, the judicial functions that the judge as a head assigns to them.

Training and Continuing Education

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

In addition, the Chief Judge is counselled by a ten-member advisory committee. This committee is composed of the three associate chief judges, six judges who deal with different subjects (two for civil matters, two for youth affairs and two for criminal and penal issues), and the judge responsible for training, who chairs the committee. This committee advises the Chief Judge on all matters concerning training and assists the judge responsible for training in carrying out his functions.

During the 2003-2004 budgetary year, the Court of Québec organized numerous training activities, including:

- two seminars on the formulation of judgments;
- two training sessions for newly appointed judges;
- one seminar on conducting a trial;
- one seminar on retirement planning;
- one seminar on administrative law;
- one seminar on tax law;
- one seminar on social realities;
- one introductory session on youth law;
- one session on computer training;
- one training session on judicial conciliation in civil matters;
- one training session on judicial conciliation in youth matters;
- one training session on criminal law;
- one training session on youth law;
- eight periodic training sessions given on a regional basis.

The periodic training sessions focused on the following topics:

- access to information;
- assessment of compensatory, conventional, exemplary or punitive damages;
- correlation between criminal acts and insurance law;
- cognitive development of children;
- DNA profiling;

- unrepresented persons and aggressive persons;
- persons with an intellectual deficiency and the judicial system;
- housing construction systems, identification of possible shortcomings and their causes.

2.2.2 Human Rights Tribunal

Jurisdiction

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

The Commission des droits de la personne et des droits de la jeunesse can go before the tribunal to defend a victim of discrimination or exploitation. It is therefore the Commission that pleads the case and pays the legal fees. The Charter also states that individuals may bring action before the Tribunal when the Commission ceases to act on their behalf.

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

As at March 31, 2004, not including the President, the Tribunal was composed of two judges and ten assessors selected according to a procedure established by government regulation. These two judges perform their duties concurrently with those of the Court of Québec.

Training and Continuing Education

During the 2003-2004 budgetary year, the Human Rights Tribunal held one summit that addressed the following topics:

- discrimination in the housing sector and certain forms of exclusion of people belonging to more vulnerable social groups;
- burden of proof on violation of a fundamental right before the Human Rights Tribunal;
- difficulties faced by persons with a criminal record.

2.2.3 Professions Tribunal

Jurisdiction

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

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

As at March 31, 2004, this Tribunal was composed of eleven judges, including a President and a Vice-President, who perform their duties concurrently with those of the Court of Québec.

Training and Continuing Education

During the 2003-2004 budgetary year, the Professions Tribunal held a study session where the following subjects were discussed:

- acts that undermine the honour and dignity of the profession;
- right to demand a hearing in English;
- quorum for disciplinary committees;

2.2.4 Municipal Courts

Structure of Municipal Courts

There are 87 municipal courts in Québec serving the population of 798 municipalities. These courts are governed by the *Act respecting municipal courts* (R.S.Q., c. C-72.01).

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

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

Jurisdiction

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

In civil matters, municipal courts have jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000, with the exception of residential properties.

As at March 31, 2004, in addition to the Associate Chief Judge, these courts were composed of 95 judges, including one judge-president in the cities of Laval, Québec and Montréal, and one judge responsible for the courts located in the cities of Gatineau and Longueuil.

Training and Continuing Education

In 2003-2004, the Municipal Courts held several training activities that included the following:

- five regional seminars;

- two study sessions;
- one seminar on criminal law;
- one seminar on the writing of judgments;
- one seminar on oral judgment;
- one seminar on social realities;
- one symposium;
- one training session for teaching judges.

These activities addressed the following issues:

- expert witnesses and assessment of witness credibility;
- mentally retarded defendants: aptitude and criminal responsibility;
- rules of evidence in Québec criminal law;
- obligations of the driver of a motor vehicle in case of accident;
- parameters for determining blood alcohol levels;
- probation and victim compensation, specific orders and inquests upon sentencing.

2.3 Other Training and Continuing Education Activities

2.3.1 Specialized Training in Criminal Matters for Newly Appointed Judges

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

During the 2003-2004 budgetary year, the training session was held in Québec City, from May 2 to May 9, 2003, with the participation of eight judges from the Court of Québec, three from the Municipal Court of Montréal and two from the Municipal Court of Québec City. During this event, the following topics were discussed:

- impartial judgment: myth or reality;
- conditional sentence of imprisonment;
- evaluation of facts and credibility;
- judicial independence and provincial courts;
- the breathalyzer;
- conducting a trial;
- sentencing adults and teenagers;
- *Youth Criminal Justice Act*;

- writing judgments;
- alcohol-related traffic offences;
- drug-related offences.

2.3.2 Second Language Courses

The Conseil oversees second language training for judges. In the fall of 2003, it had to interrupt the semi-private courses given to judges, due to a lack of funds.

Moreover, following negotiations with the federal Department of Justice, the latter agreed to participate in the funding of second language courses as part of the program of the Access to Justice in Both Official Languages Support Fund. The Conseil has signed a three-year agreement setting the federal contribution at \$90,000 per year. The amounts to be paid to the Conseil have been increased considerably compared with the \$20,000 grant paid by Heritage Canada until 2001.

The amounts paid by the federal government, along with those allocated by the Conseil from its budget, are used to fund the organization of semi-private courses and participation in immersion sessions.

The Conseil had entered into an agreement with the Office of the Commissioner for Federal Judicial Affairs for the organization of these activities.

Finally, when this report was being written, the Conseil learned that the Office of the Commissioner for Federal Judicial Affairs will no longer be responsible for organizing semi-private second language courses as it had been doing since 1997. It will also continue to collaborate in the immersion sessions.

2.3.3 Participation in External Seminars

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

The Conseil has established the criteria for selecting the judges who want to participate in such activities. These criteria can be found in Appendix V.

During the 2003-2004 budgetary year, 17 judges participated in the following activities:

- Seminar organized by the National Judicial Institute, entitled “Civil Law Seminar”, Halifax, May 2003 (one judge);
- Seminar organized by the Federation of Law Societies of Canada, entitled “2003 National Criminal Law Program”, Vancouver, July 2003 (two judges);
- Seminar organized by the American Judges Association, entitled “Annual Training Conference”, Montreal, September 2003 (one judge);
- Seminar organized by the Canadian Association of Provincial Court Judges, entitled “Annual Conference”, Newfoundland, September 2003 (one judge);
- Seminar organized by the Chambre des notaires, entitled “Le Code civil du Québec: bilan d’une première décennie”, Quebec City, October 2003 (two judges);

Seminar organized by Ste-Justine Hospital, entitled “Colloque sur la maltraitance envers les enfants et les adolescents”, Montreal, October 2003 (two judges);

- Seminar organized by the Canadian Institute for the Administration of Justice, entitled “Participatory Justice in a Global Economy: The New Rule of Law”, Banff, October 2003 (one judge);
- Seminar organized by the National Judicial Institute, entitled “Managing the Trial Process”, Montebello, November 2003 (one judge);
- Seminar organized by the National Judicial Institute, entitled “Frailties in the Criminal Justice Process: The Judge’s Role”, Banff, December 2003 (two judges);
- Seminar organized by the National Judicial Institute, entitled “Judicial Ethics: The Judge’s Role in Ensuring Ethical Decision-Making In and Out of the Courtroom”, Quebec City, February 2004 (three judges);
- Seminar organized by the National Judicial Institute, entitled “Criminal Law Seminar”, Toronto, March 2004 (one judge).

2.3.4 Conseil de la magistrature Seminar

The Conseil organized a seminar held in Québec City on October 30-31, 2003. The seminar’s program was developed by a committee set up by the Conseil and chaired by Associate Chief Judge François Doyon, recently appointed to the Québec Court of Appeal.

During the seminar, some 200 judges attended workshops facilitated by distinguished speakers, on the theme of judicial ethics.

The topic of the opening presentation was: “Moral Pluralism: The Shifting Ethical Benchmarks”. The judges were then informed about the results of a survey conducted for the seminar on public expectations regarding the behaviour of judges. Afterwards, four panelists – two jurists, one of whom is a former judge, a journalist and a sociologist - were able to present their opinions on the subject.

The second presentation was entitled “Rules of Judicial Ethics in Québec and Canada: Two Structures, One Spirit”. Afterwards, the participants were invited to attend workshops on the following theme: “If ethical standards are to change ... they should be discussed”.

Finally, the guest speaker invited to close the seminar addressed the theme of “judicial ethics for tomorrow”. He asked judges to reflect on the nature of judicial ethics based on the future requirements of an ever-changing society, but also the ethics of men and women of today who express the richness of a heritage that has embodied the strengths - and sometimes the weaknesses – of the judiciary, while examining judges’ powers and their attendant responsibilities.

The different speeches are published in the 2003 conference proceedings. This document can be consulted on the Conseil’s Web site.

2.3.5 Visiting Trainee Judge

From February to April 2004, the Conseil welcomed a trainee judge from the École nationale de la Magistrature de France, for an internship organized by the judge responsible for training at the Court of Québec.

The internship focused mainly on the impact of the jurisdictional system on the role of the judge.

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

3 Ethics

3.1 Codes of Ethics

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

The codes of ethics were developed for an independent judiciary, in that they do not dictate standards to judges, but simply establish general principles relating to their conduct. They are therefore intended as a reference tool for judges. The Conseil evaluates the conduct of judges according to these general principles.

The Conseil and, where applicable, its inquiry committees, are periodically called upon to clarify these principles when examining complaints.

3.2 Complaints Process

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

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

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

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

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

An inquiry committee can be made up of current and past members of the Conseil. However, this committee must include at least three members of the Conseil, one of whom is designated as Chair, and no more than two past members. The quorum of the committee is three members.

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

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

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

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

Although the Act uses the word “parties”, it is important to note that the Supreme Court of Canada stated, in the *Ruffo*¹ case, that the process before the inquiry committee is not an adversarial one.

In fact, the committee’s inquiry is intended to be the expression of purely investigative functions in search of the truth. Its primary goal is to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. The function of the inquiry committee is to maintain public order.

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

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

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

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

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

The Supreme Court of Canada has ruled on the role of the inquiry committee:

The Comité’s mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflect the objectives underlying the Comité’s establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.²

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

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

3.3 Confidentiality of the Complaints Process

The entire complaints process prior to the holding of the first hearing of the inquiry committee is in camera. This procedure was upheld by the Superior Court, which concluded, in July 1993¹, that the pre-inquiry stage is not a judicial or quasi-judicial procedure.

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

3.4 Statistics

3.4.1 Complaints Received Since the Creation of the Conseil

From its creation in 1978 until March 31, 2004, the Conseil received 1,177 complaints.

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

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

3.4.2 Data for the 2003–2004 Budgetary Year

During the 2003-2004 budgetary year, the Conseil continued the examination of 19 complaints that were at the examination stage as at March 31, 2003 and received 70 new complaints, 17 fewer than last year. The 70 complaints were filed by 92 complainants.

The results of the 19 complaints that were being examined as at March 31, 2003 are as follows: 12 complaints were deemed unfounded, including nine that required additional information; three were deemed not of a nature or significance as to warrant an inquiry; three were the subject of an inquiry; and one was still being examined at as March 31, 2004.

Of the 70 complaints received in 2003-2004, 55 were deemed unfounded, one was deemed not of a nature or significance as to warrant an inquiry, one complaint was the subject of an inquiry, and 13 were at the examination stage by the end of the budgetary year.

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

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

The following table shows the complaints received during the 2003-2004 budgetary year according to the jurisdiction exercised by the courts.

Jurisdiction	Number of Complaints
Small Claims Division	27
Criminal and Penal Division	18
Youth Division	9
Municipal Courts	6
Civil Division (excluding the Small Claims Division)	7
Other	4*

* One of the four complaints also concerned the Civil Division

The breakdown by jurisdiction has been fairly constant over the past few years, with about 35% of complaints relating to the Small Claims Division, while 25% involve the Criminal and Penal Division.

According to the data collected, 59 out of the 92 complainants were men (64.1%), 78 were parties to the case (84.8%), and 72 were not represented by a lawyer (78.3%).

The regional origins of the complaints are presented in a table in Appendix VIII, which shows that 54.3% of the complaints originated from three regions in particular: Montréal (25%), Montérégie (19.6%), and Capitale-Nationale (9.8%).

The allegations raised by the complainants can be sub-divided into two groups: those concerning the behaviour of a judge inside the courtroom, and those involving his behaviour outside the courtroom. It should be noted that very few complaints concern the behaviour of a judge outside the courtroom. In fact, four complaints were filed on this subject, finding fault with a judge's participation in a social event, or involvement of another in family affairs, or with certain things a judge allegedly did while he was a lawyer.

With respect to the behaviour of a judge during court proceedings, the complaints raised usually pertain to the judge's comments and attitude in court, or to his failure to apply the rules of law, including the fact that the decision was unfounded or erroneous. However, this theoretical division is not etched in stone, since many complaints frequently involve several allegations. For instance, a complaint may be brought against a judge for both his attitude during court proceedings and the fact that his decision was erroneous. As an illustration of this point, out of the 67 complaints received concerning a judge's behaviour in the courtroom, 16 had to do with the judge's comments, 46 criticized the judge's attitude in the courtroom, and 53 pertained to the judge's application of the rules of law. Indeed, more than six cases out of ten involved multiple complaints.

As for the criticisms themselves, the complaints summarized in section 3.5.1 give an overview of the allegations raised by complainants.

It should also be noted that, during the 2003-2004 budgetary year, the Conseil received five reports from inquiry committees. In four cases, the report concluded that the judge had to be reprimanded, while the other concluded that the complaints were unfounded. These reports are summarized in section 3.5.2.

3.5 Decisions of the Conseil

This section contains abstracts of all decisions of the Conseil at the examination stage that required the gathering of additional information as well as all inquiry reports submitted in 2003-2004.

3.5.1 Decisions of the Conseil at the Examination Stage

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

Allegation of aggressive attitude

In his complaint, the complainant maintained that the judge was very aggressive on several occasions during the hearing and responded to her dryly.

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

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

Allegation of aggressive attitude and discrimination

In his complaint, the complainant maintained that, during the hearing, the judge said the following to him: “You homosexual over there, I don’t want to hear anything more from you.” [Translation]

The court recordings showed that comments were indeed made about the complainant being homosexual. Four people spoke, including the complainant himself, but at no time did the judge use the words quoted above, contrary to the complainant’s allegation. Nothing in the judge’s conduct could suggest any ethical misconduct whatsoever.

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

Allegation of aggressive attitude and disrespectful language

In his complaint, the complainant maintained that, during the hearing, the judge laughed at his son while the latter was testifying, which resulted in a burst of laughter in the courtroom. In addition, the judge was allegedly aggressive toward the complainant by pointing his forefinger toward her and saying out loud: “You let him speak!”

The court recordings showed that the hearing lasted eight minutes, during which only one witness was heard, namely the complainant’s son. During his testimony, he used the word “like” many times, an expression frequently used by teenagers. After a few minutes, the judge asked, without ever raising his voice: “Like, what is that? You always say like.” It is the complainant who replied as follows: “Like, it’s their slang” and, turning to his son, she said: “O.K., speak properly”. The only laughter heard at that time was that of the complainant. A little later, the complainant addressed his son during his testimony. The judge did not react. The complainant spoke once again to his son while the latter was relating the events, indicating to him what he should say. This time, the judge intervened: “Look, madam, let him testify, O.K.?” The judge was not aggressive at all, only ensuring that the rules of law and decorum were respected. He never raised his voice.

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

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

In his complaint, the complainant maintained that, during the hearing, the judge “cut him off” from the outset, indicating to him, in an arrogant manner, that it is the judge who asks the questions.

The court recordings showed that at no time was the judge discourteous or arrogant or did he interrupt anybody whatsoever, except at the beginning of the complainant’s testimony, because he had launched into his arguments rather than just relate the facts.

Finally, when the complainant wanted to cross-examine the other party, the judge refused, reminding him that it is the role of the judge to ask the questions. However, he asked the complainant to tell him the question he would like to ask so that he, the judge, could put it to the witness.

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

In their complaint, the complainants criticized the judge for the way in which he presided over the proceedings, for his lack of objectivity and competence, and for the fact that he did not ask relevant questions. Finally, they complained that the decision rendered was inconsistent with the evidence adduced.

The court recordings showed that the witnesses were heard in a calm and serene atmosphere. The complainants were able to express themselves freely and abundantly, just like the other people who were called to testify.

At times, the judge intervened to ask questions in order to clarify a point in the dispute. Nothing in the judge’s conduct could suggest any ethical misconduct whatsoever.

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

Allegation of disrespectful attitude and comments

In his complaint, the complainant maintained that the judge made fun of him.

The court recordings showed that the judge intervened only to inquire about facts relevant to the case. He made certain comments regarding the exhibits produced by the complainant, while addressing the parties in a calm, neutral, moderate and objective tone of voice. The judge rendered his decision from the bench and indicated to the complainant the reasons why he dismissed his petition, but without ever making fun of the complainant in any way whatsoever.

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

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

In his complaint, the complainant alleged that, during the hearings, he and his spouse were ridiculed by the judge because they were not represented by counsel and that the judge allowed a witness to commit perjury.

The court recordings showed that the judge was, at all times, calm, pleasant, very courteous and extremely measured, even when the complainant became aggressive toward him. He took great care to explain court proceedings to the complainant and his spouse, who were not represented. He allowed them to ask witnesses all the questions they wanted, even pointing out to them that he would ask the questions on their behalf if necessary, which is precisely what he did.

As for the allegation of perjury, the complainant mainly wanted to denounce the involvement of a social worker from the Direction de la protection de la jeunesse in his case.

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

Allegation of connivance and falsification

In their complaint, the complainants alleged that the judge had discussed their case with the other party before the hearing began and that he falsified the court record.

The complaint concerned two hearings. In the first hearing, the complainants were being sued and in the second, they were seeking damages for expenses incurred and the prejudice they suffered as a result of this lawsuit. The revelations from the court recordings as well as the explanations given by the complainants and the judge are presented below.

The complainants affirmed that, on the morning of the hearing, they saw a lawyer, who was a friend of the other party, go to the corridor reserved for judges. He then came out and talked to the other party as he was walking away so that he could not be overheard. The complainants acknowledged that the person identified as a lawyer was rather a judge of the Superior Court. They also admitted that they were not able to establish that this judge went into the office of the judge who was the subject of this complaint to discuss the case.

The judge stated categorically that he did not know the ins and outs of this case when he came into the courtroom. He also declared that he did not meet with a judge in his office to discuss the case. He added that, after rendering his decision and in order to clean up the file, he removed certain documents from it that were tabled, not as evidence, but for jurisprudence and reference purposes.

The court recordings showed that the two cases had been conducted in an atmosphere where all the parties were able to express themselves and to voice their claims, without any bias on the part of the judge. The complainants' deductions were clearly unfounded.

As for the documents which the judge admitted having destroyed after rendering his decision in order to clean up the file and that were not entered into evidence, they were used solely to support arguments. In this case, the decision rendered could not be appealed. This could not cause any prejudice to the complainants.

Finally, although the complainants were clearly not satisfied with the decision rendered, the Conseil cannot in any way act as an appellate body to review rulings issued by judges.

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

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

Allegation of discrimination

In his complaint, the complainant maintained that the judge had a racist attitude toward him and his children because of their Muslim culture and religion. He added that the judge treated him like garbage.

The court recordings showed that no reference was made by the court or anyone else to the complainant's religion or nationality, except the complainant himself. The judge was polite yet firm and nothing supported the complaint as presented. Clearly, the complainant was not satisfied with the orders issued, but the Conseil cannot act as an appeals tribunal.

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

Allegation of discrimination and failure to apply the rules of law

In his complaint, the complainant maintained that the judge conducted a portion of the hearing in English, even though he had indicated that he had difficulty understanding the language, and alleged that the judge said “We do not have the right to do that here in Canada” [Translation].

The court recordings showed that a portion of the hearing did indeed take place in English and that the alleged statement was actually made by the judge.

English and French are official languages and our judicial system allows parties to express themselves in court using either language. Furthermore, the judge made sure that no allegation that could be prejudicial to one party went unanswered.

As for the alleged statement, it was not made in an aggressive manner, but in order to criticize the complainant’s actions.

When asked to provide explanations, the judge said he had no intention whatsoever of hurting the complainant and was sorry that his words were taken so badly. When notified about these explanations, the complainant said he understood the situation and said he was reassured.

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

Allegation of failure to apply the rules of law

In his complaint, the complainant maintained that the judge had a duty to read all the documents at his disposal in order to render a decision.

The court recordings showed that two exhibits had been entered. During the hearing, the judge asked the complainant to show, in a document produced, the specific location of certain indications involved in the dispute. The complainant was not able to find them on-the-spot, even though he insisted that they were in the document produced.

In his rather succinct decision, condemns the complainant.

The complainant asked that the decision be retracted, but his request was rejected. He then filed a complaint with the Conseil. He appended various documents to his complaint, including elements of a decision rendered by another judge under similar circumstances involving the same corporation. In a long decision, the judge dismissed the corporation’s action.

Since it is not an appeals tribunal, the Conseil did not have to comment on the two decisions, even though they appear to be contradictory. The Conseil found only that the judge, in his very short ruling, maintained that he had read the exhibits produced.

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

In their complaint, the complainants made eight allegations against the judge concerning his behaviour during the pre-hearing conference:

- 1) Exclusion of the accused;

- 2) Interventions in the courtroom in the absence of the accused;
- 3) Inclusion of the accused;
- 4) Expulsion of the accused when issuing arrest warrants;
- 5) Expulsion of two defence lawyers;
- 6) Sequestration of lawyers;
- 7) Little knowledge by the judge of summary criminal trials;
- 8) Decision that defied common sense.

The court recordings of the pre-hearing conference showed that nearly 250 people, including the complainants, were accused of participating in an illegal gathering. All these people were convened into a room that has about 20 seats.

For purposes of examining the complaint, the Conseil grouped the complaints against the judge under four themes.

1. Exclusion of people not represented by lawyer and the public

The judge wanted to act efficiently and firmly in managing these cases involving 250 defendants, which meant long trial hours for the court in time frames that risked being long. In addition, due to the narrowness of the hearing room, it was impossible to ensure that all the defendants and the public were present at all times.

It would certainly have been better for the judge to explain the reasons for his decision to the people present, which would undoubtedly have reassured the defendants and avoided the frustration of extended waiting times outside the courtroom without explanation. It appeared to the Conseil, however, that the judge's decision did not undermine the defendant's rights or the integrity of the judicial process.

2. Judge's decision to hear only one lawyer at a time for the respective cases and expulsion of defence lawyers who did not follow this directive

The judge first decided to hear the lawyers who had the largest number of cases and refused to hear the submissions of the other lawyers, even expelling those who did not abide by this decision. It should be noted that since each charge was distinct, only the lawyer involved in the case was legally authorized to address the judge.

The judge followed his own directive firmly, but without being discourteous. Even though it may seem drastic, the expulsion of lawyers does not constitute unethical conduct, given the special circumstances involved.

3. Judge's judicial decisions

As for combining a number of cases for the purpose of the trial, this was a judicial decision taken to ensure that the trial was managed adequately and that it was conducted rapidly and fairly. The Conseil does not have to judge such a decision.

Likewise, the Conseil does not have to rule on the legality of issuing an arrest warrant against a defendant who is absent when his name is called, nor can it rule on the value of the opinion expressed by the judge as to the possibility for a lawyer representing an absent defendant. These are judicial decisions whose evaluation falls outside the Conseil's jurisdiction.

4. Judge's behaviour

The judge acted calmly and firmly, without being discourteous. Of course, he could have first explained the purpose of the pre-hearing conference, the grounds for his decision, and the process he planned to follow throughout the conference.

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

Allegation of bias

In his complaint, the complainant alleged that the judge was biased because he had failed to reveal to the parties that he had a friendly relationship with one of the experts in a case she was hearing, even though the latter had to testify before him. Also, the judge allegedly met with this person alone in his office just before one of the hearing days.

The court recordings, the stenographic transcription and information obtained from the complainant, witnesses and the judge showed possible ethical misconduct.

For these reasons, the Conseil decided to hold an inquiry¹

In his complaint, the complainant alleged that the judge was biased because he refused to hear his version of the facts in a case in which the complainant was a witness.

The court recordings of the various days of hearing showed that the complainant had the opportunity to testify and there was no evidence that his testimony was shortened or that the judge refused to hear him.

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

In their complaint, the complainants alleged that the judge was biased because she did not recuse himself even though he knew the other party.

The information obtained during a telephone inquiry with one of the complainants showed that it was only after receiving a copy of the decision that the complainants were informed of the fact that the judge probably knew the other party, considering the ties she had with a friend of the judge's husband.

The complainants contended that the facts revealed by the discovery of the information may explain the conclusions of the decision rendered, which they found very unsatisfactory.

As for the judge, he affirmed that she did not know the parties at the time of the hearing. The complainants' contentions were based solely on suppositions that were not corroborated by the facts. Clearly, they were merely dissatisfied with the decision.

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

In his complaint, the complainant contended that the judge was biased because he was prejudiced against his profession, that the judge did not listen and that he was convicted before even being heard.

The court recordings showed that the exchanges between the judge and the complainant were at times energetic, but polite, and that the complainant was able to express himself abundantly and freely.

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

In his complaint, the complainant maintained that the judge was biased because, unlike the other party, he did not have the time to explain his point of view.

The court recordings showed that the trial took place in an atmosphere where all the parties were able to express and defend their positions, without any bias on the part of the judge. The judge also explained the reasons for his decision to the complainant.

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

Allegation of bias and disrespectful attitude and comments

In his complaint, the complainant alleged that the judge “was biased from the outset of the proceedings.” She added that he was not heard, as well as other people who wanted to testify. The last contention was that the judge made comments that were designed to discredit the complainant.

In this case, the court was seized with an application for review and extension of an order concerning the complainant’s child. The judge had been handling this child’s case since she was first introduced into the judicial system maybe since four years.

The hearing took place over several days. The examination did not reveal any ethical misconduct. On the contrary, the judge acted with moderation, objectivity and without bias.

The analysis of the file, particularly the evocation and appeal lodged by the complainant, merely showed that the latter was dissatisfied with the decisions rendered. The Conseil therefore had no jurisdiction to modify any decision rendered by the judge.

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

In his complaint, the complainant maintained that the judge was biased in favour of the other party and that he made vexatious comments against the complainant.

The court recordings showed that the judge listened to the parties and their lawyers with attention and respect throughout the trial. He intervened a few times in the proceedings to summarize his understanding of the testimony and, each time, he asked for the consent of the lawyers on his comments to verify whether they corresponded to the evidence. The judge behaved at all times in an impartial, objective, polite and courteous manner toward the parties.

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

¹ The inquiry started on November 14, 2003. When this report was being written, the committee was in deliberation. The committee’s report will be summarized in the 2004-2005 activity report.

Allegation of bias, aggressive attitude and failure to apply the rules of law

In his complaint, the complainant alleged that he was deprived of a fair and equitable trial, that the judge was aggressive toward him, and that the judge had him undergo a second examination.

The court recordings did not show any aggressive behaviour on the part of the judge. On the contrary, the recordings showed that the judge was objective, impartial and patient.

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

In his complaint, the complainant alleged that the judge was not impartial in her case and that he was very arrogant.

The court recordings did not show that the judge had an arrogant attitude or that he was at all biased. At certain times, the discussion between the judge and the complainant was quite heated, without either side being disrespectful of the other.

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

Allegation of bias and disrespectful attitude

In his complaint, the complainant maintained that the judge was biased in excluding evidence, that she had an inappropriate and extremely cosy relationship with a lawyer for one of the parties, and that she acted poorly by insisting that the complainant sit down during the hearing, despite a physical handicap that made this position painful and damaging for her. Finally, he complained about the way in which the judge spoke to her.

The court recordings, the stenographic transcription and information obtained from the complainant, witnesses and the judge showed that this case took up several days of hearing.

There were no facts to support the allegation that the judge excluded evidence. There was no proof that the judge was biased in this case. The complainant could have appealed the decision if she was dissatisfied, but this aspect is not within the Conseil's jurisdiction.

As for the allegation concerning an inappropriate relationship with a lawyer, it is based on the fact that the lawyer allegedly called the judge by her first name during the hearing. The court recordings showed nothing to support this allegation. The other lawyers present during the hearing were questioned and they all indicated that, to the best of their knowledge, this did not occur.

As regards the final element of the complaint, the complainant was able to testify standing up during the first two days of hearing, but on the third day, the judge insisted that she sit down during the hearing. This was done firmly and unequivocally, even though the complainant had indicated that there was simply no chair that would be acceptable to her. The judge informed her that if she wanted to remain in the courtroom, she had to sit down. The only alternative was for her to wait outside the courtroom, which was not a realistic solution.

To start off, the judge checked with the complainant's son to determine her situation. While there may be some difference of opinion as to the appropriateness of questioning the son, who was clearly in conflict with the complainant, the judge cannot be criticized for taking this matter lightly. In fact, the judge even suspended the hearing to allow court staff to find a comfortable chair for the complainant and even offered her a pillow.

It appeared to the Conseil that, although the judge made a decision that was not acceptable to the complainant, she made the decision after inquiring, and tried to come up with what she thought was a reasonable accommodation.

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

In his complaint, the complainant alleged that the judge was biased by letting the other party threaten him. He also found fault with the judge for “sleeping and not being quite attentive in court”.

The court recordings showed that the trial was conducted in an atmosphere where all the parties were able to express themselves and to state their claims without bias on the part of the judge, who appeared always attentive to the discussion before him, based on the questions he asked and the interventions he made. Throughout the hearing, he allowed the complainant to intervene and to make representations which he deemed appropriate.

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

Allegation of bias and sexism

In his complaint, the complainant alleged that the judge shouted at the accused and her lawyer when adjourning the hearing for lunch, suggesting to them to use this break to discuss the possibility of making an undertaking. She also maintained “that if a judge’s sexist bias against women or against a woman is inadmissible, that of a female judge against a man or against men is just as inadmissible”. [Translation] The complainant also made a critical analysis of the decision rendered, although she was aware that it is not the Conseil’s role to review rulings.

The facts showed that the process was ongoing and that the examination of the victim by the prosecution was almost completed when the session was adjourned for lunch. Before leaving, the judge asked the parties to think about the possibility of issuing an undertaking by the defendant not to disturb the public peace. In this case, it would appear that this suggestion was meant to avoid a trial where the parties and the witnesses will obviously have to reveal aspects of their private lives in public. The judge is responsible for conducting the trial. In this regard, he may make a suggestion that puts an end to the trial and that ensures an outcome that is known to the parties.

Moreover, the court recordings showed that the trial was conducted in an atmosphere where all the parties were able to express themselves and to state their claims without bias on the part of the judge, who behaved at all times toward the parties in an impartial, polite and courteous manner.

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

Allegation of bias and failure to apply the rules of law

In his complaint, the complainant alleged that the judge refused to recuse herself, that she heard his case in his absence, and that she was threatened with contempt of court.

The hearing reports showed that the complainant was represented during the first days of the hearing, until he informed the court that he no longer wished to be represented by lawyer. Thereafter, he did not show up for the hearing that had been set, without providing any justification to the court.

The analysis of the stenographic transcript showed that the judge adjourned the session in order to try to locate the complainant or to obtain more information on the reasons of his absence.

The judge then decided to hear two witnesses who had travelled to get to the hearing, only to then postpone the case to another date, ordering the clerk to forward a new notice to the complainant through a bailiff. She also asked that the tape recording of the two testimonies be forwarded to the complainant.

The day before the inquiry continued, the complainant filed a motion for recusal, which was dismissed by the judge the same day, by way of a written decision with reasons.

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

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

Allegation of bias and failure to act in a reserved manner

In his complaint, the complainant alleged that the judge was biased and that she did not fulfill her duty to act in a reserved manner because of comments she made during a radio interview.

The transcript of the interview showed that the judge was answering questions posed by the host following the publication of a book. These were followed by more general questions where the judge stated her opinion about existing services in the region where she held office.

The Conseil also found that the complainant used the judicial route and that motions had been filed for the judge's recusal.

From an ethical standpoint, the Conseil felt that the judge should have refrained from commenting on prevailing practices within certain services.

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

Allegation of unjustified comments

In their complaint, the complainants maintained that the judge's comments were totally unjustified and were absolutely out-of-place in a decision he rendered.

The court recordings showed that the two parties submitted their points of view respectfully and that the judge presided over the hearing in an exemplary manner.

It is true that he made some observations in his decision without giving the complainants the opportunity to hear them. He decided, within the context of what can be termed an *obiter dictum*, to express his views as to the conduct of the entire case. In so doing, the judge was acting within the confines of the discretionary powers conferred on him to express his comments on issues of law related to the case he is handling.

Moreover, it should be recognized that if he had heard the complainants, he would perhaps have discovered elements that could have provided another dimension to his written intervention.

Clearly, the judge did not act in bad faith to hurt the complainants. He wanted to establish a balance between the defendant's situation and that of the prosecution, by giving the reasons of his intervention. In so doing, he had to hurt the complainants. Therefore, the judge has to be careful when making comments regarding interveners in a case.

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

In his complaint, the complainant maintained that the judge ruled on his civil liability while he was in the Criminal and Penal Division, with the result that the complainant's reputation was besmirched, even though he was acquitted.

An exhaustive analysis of the hearing transcripts showed that the judge's interventions were limited to the basics and were meant at all times to ensure that the trial ran smoothly. The judge did not make any civil ruling against the complainant. Even if she had done so, the appropriate remedy would have been to appeal the ruling.

The judge gave the reasons for her decision, explaining to the parties that it is by applying the reasonable doubt test that she was able to acquit the complainant. She informed the parties about her understanding of the evidence presented by outlining the elements that she had taken into consideration. Obviously, the subsequent comments from various media and their interpretation of the evidence remained their full responsibility.

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

Allegation of disrespectful comments

In his complaint, the complainant alleged that the judge swore at him when he said the following: "Are we going to take five years for this damn trial?" [Translation]

The court recordings for the three days of hearing showed that the judge acted in a moderate, objective, impartial and patient manner.

More specifically, as regard the complainant's allegation of "swearing" mentioned above, the Conseil asked an official stenographer to listen to and analyze a portion of the sound recording. Under oath, the stenographer transcribed the official text of the judge's comments as follows:

Judge: "Well, now, Sir [...] I must tell you right away that I'm going to set a date, you're going to give me your list of witnesses, all the witnesses that you will call."

Complainant: "All the witnesses?"

Judge: "All the witnesses that you want to call because this trial is not going to take five (5) years, because ..." [Translation]

In light of this transcript, it appears clearly that the judge did not "swear" at the complainant.

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

In his complaint, the complainant alleged that the judge abused his powers by calling him a liar and a manipulator during the hearing.

The court recordings showed that the judge, in pronouncing the sentence, characterized the complainant's personality as "controlling and manipulative", in light of a pre-sentencing report of the complainant's criminal record. The judge took these factors into consideration, and exposed them in a calm, measured and clear manner.

All the facts examined did not reveal any ethical misconduct on the part of the judge.

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

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

In his complaint, the complainant alleged that the judge called him a “belated adolescent” and that he acquitted a notorious repeat offender.

The court recordings showed that the judge did not call the complainant or another witness a “belated adolescent”. He concluded that spraying someone by surprise with a water gun is the sort of game teenagers play. He added that when adults engage in teenage play, they have a responsibility to ensure that the game remains reasonable. He characterized the game in which the complainant engaged as stupid.

Moreover, the judge had to rule on the case that was presented to him. He had assessed and weighed the evidence submitted and had come to the conclusion that the defendant should be acquitted. In so doing, he was within his jurisdiction, which was to assess the evidence and rule on the offence that the defendant was alleged to have committed.

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

3.5.2 Inquiry Committee Reports

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

Complaint Against Judge Claude Hamann

The Conseil received two complaints against a municipal judge who also worked concurrently as a lawyer on a part-time basis. The complainants alleged that the judge faced criminal charges when he was working as a lawyer. Since the Minister of Justice was one of the complainants, the Conseil was bound to hold an inquiry, in accordance with section 268 of the *Courts of Justice Act*.

Chronology of Events

On March 25, 1998, Mr. Hamann was charged with voluntarily attempting to obstruct, divert or block the course of justice during a judicial proceeding by encouraging two people to get his client to give false testimony or to refuse to testify.

On August 27, 1998, the inquiry committee held its first session. At the request of the judge, it suspended its inquiry, to allow the Superior Court to rule on the payment of the judge’s lawyer’s fees.

On February 17, 1999, the Superior Court allowed the judge’s motion. This decision was appealed.

On September 20, 2000, the trial judge found the accused guilty. This decision was appealed.

On April 30, 2001, the Court of Appeal upheld the Superior Court’s decision alleging that the Attorney General must pay the judge’s extrajudicial fees.

On September 23, 2002, the Court of Appeal issued a verdict of acquittal, reversing the trial judge's decision.

Inquiry Committee

The committee's work was suspended for slightly more than four years to allow the judge and the prosecution to pursue various remedies before the courts.

On April 2, 2003, the committee conducted its inquiry into the complaint, claiming that it had a duty to carry on with the mandate conferred by the Conseil, although the judge had been acquitted. According to the committee, the objectives of judicial ethics are different from those of penal justice, and that the burden of proof based on the balance of probabilities rather than the absence of reasonable doubt could lead to a different conclusion.

The evidence filed before the committee was the same as that produced before the Court of Appeal. The committee examined the transcript of the testimonies and found that the evidence did not support the allegations contained in the complaints.

The only witness who could have enlightened the committee was Mr. Hamann's client. During the preliminary inquiry, it turned out that he had no credibility, which is why the prosecution decided to withdraw one of the charges. It is for this very reason that he was not heard by the committee.

Judge Hamann testified during his trial. He formally contradicted the witnesses' statements, denying the allegations of obstruction and explained his behaviour. It appeared that his testimony was generally credible and plausible.

Decision

The inquiry committee concluded that the complaints were unfounded.

Complaint Against Judge Andrée Ruffo

The Conseil received a complaint in which the complainant criticized the judge for appearing in a company's television commercial, where she touted the comfort of new train cars and listed the advantages of this mode of transportation.

Chronology of Events

At the first session on March 21, 2002, and before the hearing of witnesses began, the judge filed a motion for the proceedings to be stayed and the complaint dismissed, on the grounds that certain provisions of the *Courts of Justice Act* had not been respected and that the complaint had nothing to do with the relevant provisions concerning ethics. In addition, she maintained that the disciplinary procedure had been irretrievably damaged by the public statements of a representative of the Conseil de la magistrature. Finally, she contested the jurisdiction of the committee on the grounds that the judicial *Code of Ethics* had not been validly adopted and that the decision to form a committee had not been taken pursuant to a resolution under the *Internal Bylaws of the Conseil de la magistrature*.

At the end of the hearing on this motion, the committee informed the interveners that it was taking the different objections without prejudice and that it would dispose of them in its report.

On July 24, 2002, the Superior Court dismissed the motion for judicial review and mandamus filed by the judge concerning the committee's preliminary decision.

On October 9, 2002, the Court of Appeal dismissed the judge's motion seeking leave to appeal the Superior Court's ruling.

On May 22, 2003, the Supreme Court of Canada dismissed the motion for leave to appeal filed by the judge.

Inquiry Committee

The committee's work was suspended during nearly one year to allow the judge to pursue various remedies before the courts

Decision on the preliminaries objections

Sections 263 and 264 of the Act do not prescribe any specific formality for the drafting of a complaint. The complainant's letter referred to facts corroborated by advertising videos. It mentioned the name of the sponsor as well as the period when this commercial ran on certain television networks. It also called for the holding of an inquiry to examine the judge's conduct under sections 263 *et seq.* of the Act. The complaint was written in accordance with the principles established by the Supreme Court of Canada in *Ruffo v. Conseil de la magistrature*¹. Furthermore, the Conseil and its inquiry committee are not bound by articles of the *Code of Ethics* that could have been invoked in the complaint. If, after examining the complaint, the Conseil decides to conduct an inquiry, it is up to the Conseil to determine the legislative provisions concerned, provided it informs the judge so that he can prepare an appropriate response. This situation stems from the fact that the present procedure is an investigative and not an adversarial process (*Ruffo v. Conseil de la magistrature*).

Moreover, it is during one of its meetings that the Conseil decided to form an inquiry committee to examine the complaint. Prior to this, the members of the Conseil had read the complainant's letter, watched the advertising videos and discussed them among themselves. This does not square with the judge's contention that the present complaint was not examined by the Conseil.

The judge also invoked the provisions of section 56 of the *Administrative Regulation of the Canadian Judicial Council*, which forbid members of the committee who examined the complaint from participating "in another examination". However, this provision does not apply in Québec. The only restriction concerning the participation of members of the Conseil in examining a complaint is found in section 265 of the Act. The conclusion, therefore, is that the legislator wanted the decision to hold an inquiry to be taken by all members of the Conseil.

The judge further claimed that the notification time frame set forth in section 271 of the Act was not respected. The committee is not restricted to a specific time frame for forwarding the complaint and sending out the relevant notices. The complaint was dated October 19, 2001 and was brought to the attention of the judge four days later. It was examined on November 14 and, two days later, the judge was advised of the Conseil's decision to hold an inquiry and to form a committee to this end. On February 21, 2002, the judge received a copy of the complaint and she was summoned to an inquiry to be held one month later.

The purpose of section 19 of the Conseil's internal bylaws is not to establish a method for proving the existence of a decision by the Conseil. The President is not obliged to declare that a decision has been taken, but if he does so, this declaration constitutes *prima facie* evidence that this decision exists. The bylaw, which has not been published in the *Gazette officielle du Québec*, does not have force of law on third parties and does not create a substantive right. Nothing in this bylaw forces the Secretary to record the name of the person who

¹ *Ruffo v. Conseil de la magistrature* [1995] 4 R.C.S. 326

proposed the resolution, nor the result of the vote. Once the minutes of the meeting of November 14 were adopted, they became an authentic document on December 6.

The public statements of the Conseil's information officer were made before the complaint was filed. Since the Conseil performs ethical functions related to public protection, answering questions from journalists is part of its information mission. These statements do not contain any position that may affect the appearance of impartiality on the part of the Conseil and its members. A reasonable person who is well informed about all the circumstances of this case would arrive at the same conclusion.

The *Code of Ethics* of the Conseil de la magistrature was adopted on January 13, 1981. The draft bylaw was published in the *Gazette officielle du Québec* on March 11, 1981 and was adopted by the government on March 17, 1982. However, the word "adopt" has the same meaning as the word "approve", which is used in section 261. By using a synonym, the legislator did not commit an error that would invalidate the decree. Besides, there is a presumption of validity of this decree, which could only be set aside by following the procedure set forth in section 95 of the *Code of Civil Procedure*. The present committee was also not the appropriate forum for discussing the judge's claims that the code was *ultra vires*, given its imprecision. Furthermore, this very argument was dismissed by the Supreme Court in *Ruffo v. Conseil de la magistrature*.

The Inquiry of the Committee

The commercials that gave rise to this complaint contained the name and title of the judge, as well as the place and court where she held office. They were broadcast on a number of occasions.

The judge did not take any measure to verify the quality of the commercials in which she appeared and did not even try to find out when the commercials will air. She did not consult anyone before participating in this advertising campaign. She stated that she appeared in the commercial because she loves and uses the train. As well, at the time of filming, the new cars she was touting were not yet in service.

After receiving a copy of the complaint, the judge did not contact the carrier to take the commercial off the air. As at January 30, 2003, the carrier was involved in 130 lawsuits brought before the Court of Québec like plaintiff or defendant. These lawsuits involved citizens, governmental and para-governmental agencies, as well as local and national corporations. This meant, of course, that judges of the Court of Québec of which the judge forms part, would be called upon regularly to hear and dispose of cases concerning the carrier.

The judge supports that several judges devote themselves to activities of advertising nature at lucrative ends and that they are associated to products and services without no one being phocked.

The evidence presented by the judge as to the statements of certain judges and the publicity made when they publish books had no bearing on the case at hand, considering that the committee had no jurisdiction over these actions which, in any case, should be assessed on a case-by-case basis.

The judge did not receive any remuneration for participating in the advertising campaign. She refused the offer she received of a free ticket to travel by train anywhere in Canada. However, this refusal was not a mitigating factor because, at the very least, she derived a personal benefit in that she appeared on several occasions on television, an important medium that can help raise her profile.

The judge behaved as if her title belonged to her exclusively, without worrying about the repercussions of its use on judicial independence.

Decision

The committee concluded unanimously that the judge violated sections 7 and 10 of the *Code of Ethics* and recommended to the Conseil de la magistrature that Judge Ruffo be reprimanded for her ethical misconduct.

Complaint Against Judge Guy Houle

The Conseil received a complaint in which the complainants alleged that the judge threatened to file a personal lawsuit against them for damaging his reputation. The alleged facts occurred in court, when one of the complainants appeared once again before the judge following a first complaint filed with the Conseil regarding the same judge, a complaint that turned out to be unfounded.

Inquiry Committee

The judge admitted having made the following comments during the appearance of one of the complainants:

So, in this case, I wanted the appearance to be postponed to another date before another judge. Let me explain. Mrs. [...] had appeared before me on many occasions for cases on similar matters and only one of these cases led to a guilty verdict. In the other cases, the complaint was withdrawn for humanitarian reasons or unconditional absolutions.

After the last case where she was declared – she pled guilty and I convicted her – there was a complaint to the Conseil de la magistrature. The Conseil disposed of this complaint and dismissed it in a judgement with reasons. So, I think it would be inappropriate for me to hear even the arguments, because we could wind up in the same situation as I had last time, where my behaviour was deemed to have been ethically inappropriate and that is not what the Conseil de la magistrature decided after listening to the tapes and examining the case, the complaint.

Moreover, as far as I am concerned, I feel that I reserve my personal recourses for the violation of my integrity and the personal difficulties resulting from a complaint like this one, after thirty-six (36) years of sessions as a judge, whereas my record is absolutely intact, and forty-two (42) years as a lawyer, whereas my record is absolutely intact, I plan to examine all the recourses, the personal recourses that are at my disposal. So, I think it is consequently clear that the appearance itself should be postponed before another judge. [Translation]

The complainants were profoundly affected by what they felt were threats of lawsuit against them.

Before the committee, the judge explained extensively the reasons that led him to make those statements, as well as the impact that the two complaints to the Conseil de la magistrature had on him:

I always make myself familiar with my rolls, whether for pro forma appearances, trials or others. On the second page of my roll, I see the name of [...] that was the fifth time that the lady was appearing before me in as many years.

At that time, I asked myself the following question in my office: “What do I do? There had been a complaint, which was dismissed. Do I want to handle the appearance, given what happened the last time at the appearance?”

[...]

The comments that had surrounded the complaint were hurtful and I thought they were hard to accept and that, notwithstanding the complaint, there was an additional reason for me not to handle the appearance this fifth time, that is in the month of July. And I asked myself the question: “How are you going to present this to the court during session?” And I felt that I had to refer to the complaint, on the one hand, but for me, more importantly, to what I had perceived to be something that undermined my integrity and that of the judiciary, which I would certainly

not want to hurt through my actions and that, to be perfectly honest, I had to express these two reasons to the court.

[...]

Having said this, I also asked myself that, since this was an appearance session and that there were many people in the courtroom, what kind of reaction could be generated in the room. The answer I gave to myself was that the people in the courtroom will say: Well, the judge does not think that he is infallible, he is able to admit that he is not in a situation where he could be independent, impartial and completely detached for the reasons that he just gave. It's not so bad, it's a guarantee for us that the lady will not suffer any prejudice and perhaps we too, when we go before him for our appearance, for a plea or ultimately for an argued case, justice will be done. [Translation]

When questioned by his lawyer on the testimony of one of the complainants who perceived his comments as threats and who was quite upset, the judge said:

I have two comments to make about that. The first is that I am very confident that the committee will be able to determine the link between my words and what the lady said and whether they were threatening words. Secondly, to the extent that I could believe that the complainants were acting in good faith, had perceived, because of their particular problem, because of the tense situation in which they found themselves, if they had perceived, despite the nature of my comments which I felt were non-threatening, that it was a threat, then I regret it. But I believe that most people would not have perceived it as a threat. [Translation]

The committee felt that it would have been preferable for the judge to recuse himself from the complainant's appearance due to the impact of her previous appearances, her health condition and the first complaint, as well as his own state of mind and serenity. The judge could have simply pointed to the number of appearances by the complainant before him and added that, under the circumstances, he found it preferable to recuse himself. This would have sufficed. As a result, the comments made by the judge regarding a previous complaint were completely unnecessary.

There is nothing to suggest that other people who attended the hearing were aware of the first complaint. It was not necessarily in the public interest to publicly refer to this situation. It was a private affair. But these comments, even though unnecessary, would not have justified the holding of an inquiry to examine the judge's conduct.

In this case, the problem that arose was with certain comments made by the judge when he decided to recuse himself and decided to explain his reasons:

Moreover, as far as I am concerned, I feel that I reserve my personal recourses for the violation of my integrity and the personal difficulties resulting from a complaint like this one, after thirty-six (36) years of sessions as a judge, whereas my record is absolutely intact, and forty-two (42) years as a lawyer, whereas my record is absolutely intact, I plan to examine all the recourses, the personal recourses that are at my disposal. [Translation]

Here, the judge confused the issues. On the pretext of preserving his integrity and that of the judiciary, of being completely impartial, and ultimately of maintaining judicial independence, the judge invoked purely subjective reasons that are not related to any rule of law applicable in the area of recusal. In a way, the judge "settled his accounts" with the complainants, because he had been profoundly upset by the comments contained in their first complaint.

To avoid any criticism, the judge stated that his comments constituted valid grounds for recusal and submitted that this was part of the "sphere of independence of a municipal judge".

Yet, the concept of judicial independence "is not a right that belongs to each judge, but is the foundation of judicial impartiality and a constitutional right held by each citizen!". This independence therefore protects the

courts against any outside interference in exercising their judicial powers, and allows them to maintain their freedom of action.

The committee took into consideration the comments made by Judge André Cloutier of the Court of Québec during a seminar on conducting a trial, when he said the following on the attitude that the judge against whom a complaint is lodged must adopt with respect to complaints examined by the Conseil :

Most often, the judge against whom a complaint is lodged has only one desire, namely to explain the alleged misconduct in order to put a quick end to the proceedings brought against him. Unfortunately, things rarely unfold this way. The duty to act in a reserved manner makes it impossible for us to be able to respond to criticisms levelled against us by either the media or the public. Moreover, our judgement of the situation is not objective. We must, therefore, be careful about our spontaneous reactions in such circumstances. [Translation]

It goes without saying this is what happens to a disciplinary complaint dismissed after examination, as with the present case. In our opinion, when he was still in office, the judge did not abide by his duty to act in a reserved manner when he expressed himself in an inappropriate manner to a citizen going through the court system who had exercised a right conferred on him.

Decision

The committee concluded unanimously that Judge Houle had failed in his duty to act in a reserved manner, which may be of such nature as to undermine the confidence that the public must have in the judicial system and the judiciary.

Moreover, the sanction must be proportionate to the sanctioned act, considering the specific circumstances of each case, the fact that the judge had been a municipal court judge since 1966, and the fact that the judge had no record of ethical misconduct.

For these reasons, the committee recommended unanimously to the Conseil de la magistrature that judge Houle be reprimanded.

Complaint Against Judge Jocelyn Crête

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

Inquiry Committee

The committee was able to reconstitute the trial process. Firstly, the judge summarized the documentary evidence adduced by the prosecution, namely, the police report which stated that the complainant had driven a vehicle with an expired probation license.

The judge then invited the complainant to give his version of the facts, at which time the judge said the following: "You did [not] know that your license had expired, sir? [...] Who will do it if you don't know? You are 19 years old. [...] Are you still wearing diapers? [...] You are no longer in diapers? [...] You are 19 years old, sir, you are the one who takes your driver's license, [...] who knows when it expires [not] someone else." [Translation]

¹ Canadian Judicial Council, *Principes de déontologie judiciaire*, 1998, p.8

Before the committee, the complainant stated that he felt insulted by the judge's comments. He maintained that the judge ridiculed him before the five to seven people present in the courtroom. He did not hear bouts of laughter but, when he turned around, he saw one person smiling. This smile destabilized him right away.

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

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

Madam : "Me, I am not wearing diapers."

Judge : "I hope you are not wearing diapers."

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

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

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

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

Madam : "It's always easier to criticize other people's children than our own." [Translation]

For her part, the complainant's mother said she had decided to go all the way with this complaint, because she had to endure humiliating words and laughter, which made her lose her hearings. She felt that the case had not been judged appropriately by the court.

As for the judge, he stated that he was surprised by the complainant's attitude, because he did not know anything and he was blaming everybody else for his shortcomings:

[...] And it was ... I wanted to help the lady; it was not to laugh at them; on the contrary, it was to trigger a reaction from the gentleman because he seemed to me to be soft; he seemed to be transferring his responsibility to his mother, to the woman from the SAAQ, to everybody else. So I spoke to him, well, a little bit like how a father would speak to his children whom he's trying to bring in line.

I regret it; of course today I've changed my stance on that ... I understand that my words were perhaps inappropriate in terms of justice, that doesn't help advance justice, but on the other hand, we are in ... popular courts, of course, where we are close to the people, you see that the conversations are not conversations among jurists, it's the minimum, the judge tries to shed some light of justice, but as it relates to what people go through everyday. [Translation]

He added that he welcomes people to the court in an open manner. He intervenes to help people. He reacted like a father. He did not want to ridicule the complainant. He recognized, however, that he used inappropriate language when he asked the complainant if he was still in diapers.

The committee found that the judge made his comments before the complainant had completed stating the facts, and that he had not the opportunity to fully express his opinion on legal responsibility under the circumstances. It is hard to imagine a judge making such comments in a hearing room regarding a defendant who is still presenting his claims.

The same is true for the testimony of the mother, who was outraged at how the trial was being run. She gave her version of events. The judge interrupted her to make moralizing comments by invoking his status as a father in order to judge the defendant's behaviour.

The committee had no reason for finding that the feeling of humiliation expressed by the complainants was not real. The judge did not allow the parties to express themselves by erecting barriers through his questions and comments.

Before the committee, the judge affirmed on two occasions that he acted as a father. By adopting such conduct, he was straying away from his mandate as a judge. The judge's behaviour ended up creating a negative image of the judicial process.

Decision

The committee took note of the judge's comments. He acknowledged that the way he intervened in the discussions and the content of his comments could have helped create a negative perception of the justice system and that he had taken measures to correct the situation.

However, the committee felt that the judge's conduct constituted ethical misconduct. Consequently, the committee recommended to the Conseil de la magistrature that Judge Crête be reprimanded.

Complaint against Judge André C. Cartier

The Conseil received a complaint in which the complainant found fault with the judge for his attitude and comments as well as for being sexist and prejudiced during three hearings.

Inquiry Committee

During the hearing before the committee, the judge decided to provide his comments and explanations in a letter, rather than be heard in person.

Firstly, he denied being a sexist or having sexist prejudices against men, even corroborating this denial by citing experiences from his professional life before he became a judge. He gave explanations for each of the three cases without hiding behind any type of justification.

Secondly, he admitted his mistakes:

I'm not claiming to have acted perfectly in every respect in all these cases. With hindsight, I even found and I humbly recognize today, that I acted incorrectly with respect to certain aspects that I will describe later.

[...]

I recognize, indeed, that I made some faux pas, which could also be considered blunders.

[...]

I recognize right away that some of my interventions were inopportune (in the case of [...]), that certain terms chosen to summarize the evidence heard were somewhat unfortunate (in the case of [...]), and that certain comments could have seemed sarcastic and certain terms too harsh (in the case of [...]).

[...]

With hindsight, I recognize, however, that I should not have talked about “imbecility”, which was not necessary. I should also have avoided certain somewhat sarcastic comments, which were not necessary either.

[...]

In the case of [...], I agreed to recuse myself because I recognized then, and still recognize today, that I should not have made such comments regarding the evidence that the defence was presumably going to present.

[...]

With hindsight, I recognize, however, that certain terms that I used to summarize the evidence were not of the best choice. [Translation].

Thirdly, the judge apologized in all three (3) cases:

I sincerely apologize if such comments were interpreted by some as an indication that I had a discriminatory prejudice against men. I repeat that this is not the case.

Finally, at the hearing before the committee, the judge made a commitment to register for a seminar on conducting a trial during the current year.

It should be said that, in one of the three cases, the Québec Court of Appeal had severely criticized the judge for the formulation adopted in his oral judgement, including the comments he made during the hearing.

Given the position taken by the judge and his admissions contained in his written statement, his lawyers and that which assisting the committee agreed to suggest that the judge be reprimanded. This joint suggestion of a sanction meant very clearly that the judge acknowledged his failure to fulfill his ethical obligations.

As for the complainant, who was asked by the committee to comment on the scope of this joint suggestion, he said he was satisfied with its timing and effect, and that he had no feelings of revenge against the judge and that all he wanted to do was improve the image of the judiciary.

The objective of judicial ethics is not to contest or criticize the legal validity of a judicial decision, nor to evaluate issues of law or facts to be adjudicated by the trial judge.

Conversely, judicial independence does not constitute a safe-conduct, protection or immunity for the judge to say anything, without discernment, reflection or moderation.

The primary mission of the committee is remedial in nature for all the judiciary. By recommending a sanction against a judge, the committee plays an educational and preventive role to protect the integrity of the judiciary.

Decision

An inquiry committee must not be bound by a joint suggestion if the proposed sanction is patently unreasonable or disproportionate to the nature and scope of a judge’s misconduct, considering all the circumstances presented in evidence in a case.

Removal becomes an appropriate measure if public confidence in the justice system has been irretrievably compromised, making it impossible for the judge to continue performing the duties of his office. This measure will follow automatically in order to protect the judicial system and the image of the judiciary.

However, a reprimand constitutes a formal blame to correct or make amends for a behaviour, while repairing the harm done to the judiciary.

In the present case, several factors were considered by the committee:

- absence of a previous sanction recommended by an inquiry committee against Judge Cartier;
- acknowledgement of his errors and blunders;
- his explanations;
- his regret and apologies;
- his recognition and greater awareness of the image of justice, by being doubly cautious;
- his concern for improving his knowledge, skills and aptitudes in order to be a good judge, by making a commitment to participate in three continuous training activities during the current year, a commitment that was acknowledged by the committee;
- his cooperation and good faith.

Considering all the circumstances, the committee recommended to the Conseil de la magistrature that Judge André C. Cartier be reprimanded.

During the 2003-2004 budgetary year, the Office of the Secretary carried out its regular activities along with other work arising from the specific files of the Conseil.

4.1 Enquiries

Given the Conseil's mandate, the Office of the Secretary receives many enquiries, mostly via telephone. The majority of these enquiries come from individuals who have gone through the court system and who want to know whether they are addressing their complaints to the right place, how they can lodge a complaint, and what is the ensuing process after a complaint is filed. This offers an ideal opportunity to explain the mission and operating structure of the Conseil.

To make its mission better known, the Office of the Secretary has developed a Web site that can be visited at <http://www.cm.gouv.qc.ca>. It provides information on the jurisdiction of the Conseil, the complaints process, publications of the Conseil and useful links.

4.2 Handling of Complaints

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

4.3 Training and Continuing Education

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

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

4.4 Welcoming of Newly-Appointed Court of Québec Judges

As part of the training activities organized by the Court of Québec, the Conseil's Secretary takes part in the induction of newly-appointed judges. These responsibilities include presenting the Conseil's mission, its operating structure and the activities of the Secretary's Office.

5.1 Presiding Justices of the Peace

During the last parliamentary session, the National Assembly passed the *Act to amend the Courts of Justice Act and other legislative provisions as regards the status of justices of the peace*, which was assented to on June 16, 2004. The Act makes a distinction between two types of justices of the peace, presiding and administrative justices of the peace. Appendix II, which contains extracts of the *Courts of Justice Act*, takes into account the new provisions introduced by this new Act.

Presiding justices of the peace are part of the judicial system and are therefore appointed by the government to hold office based on good behaviour. They are under the authority of the Chief Judge of the Court of Québec and fall under the jurisdiction of the Conseil on matters of ethics. Moreover, the Conseil must organize training programs for these presiding justices of the peace.

5.2 Composition of the Conseil

The Conseil is made up of 11 judges, eight of whom hold managerial or executive positions, and four people who are not judges.

During previous discussions within the Conseil, the issue of the composition of the Conseil was raised concerning the nature and exercise of the mandate conferred on the Conseil.

In April 2003, the Conseil decided to appoint a committee to examine the issue of its composition. The committee was charged with studying, among other things:

- the composition of other existing judicial councils in relation to their mandates;
- the current composition of the Council in regard to its mandates, more particularly ethics and continuing education;
- the link to be established between ethics and professional development; the maintenance or non-maintenance of these two functions within the same organization, and its impact on the composition of the Conseil;
- the presence of judges with a role in matters of ethics based on their managerial functions;
- the presence and the number of puisne judges, lawyers or persons neither judges nor lawyers.

The committee is made up of the following persons:

- Judge François Doyon, Chairman
- Judge Anne Laberge;

- Judge Louis-Charles Fournier;
- Judge Rémi Bouchard;
- Judge Guy Saulnier;
- Mr. Pierre Noreau;

The committee submitted its report this spring and its recommendations will be studied by the Conseil.

5.3 Second Language Courses

As has already been indicated, the Conseil and the federal Department of Justice have concluded a three-year agreement for the second-language training of judges. Under this agreement, the Conseil will receive \$90,000 per year.

The Conseil has formed a committee to examine the entire second-language training program, which was adopted in November 2001, in light of available budgets.

The committee is made up of the following persons:

- Judge Gilles Gaumont,
- Judge Jean-Pierre Lortie;
- Judge Guy Saulnier.

For the time being, the Conseil has recruited teachers to continue the semi-private courses that were offered to judges before being interrupted in the fall of 2003. Some 41 judges will start their courses next September.

5.4 Legal Documentation

During the 2003-2004 budgetary year, the Conseil continued its efforts to facilitate the transition from hard-copy documentation to new technologies and to pool works that are not available on-line in community libraries.

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

The general agreement calls for the signing of specific agreements designed to meet the specific needs of judges in the regions where they exercise their jurisdiction. During the past year, the Conseil and the CAIJ entered into four agreements concerning libraries located in the Chambre de la jeunesse de Montréal and in the cities of Hull, Sherbrooke and St-Jérôme.

5.5 Creation of a Special Web Site for the Judiciary

The Conseil has made access to legal documentation a priority. Indeed, one of the recommendations made by a committee set up to reevaluate the means of access to legal documentation was to look into the possibility of creating a special Web site for the judiciary.

This tool will encourage the pooling of documentary resources, exchanges and discussions in different forms, and the centralization of electronic research tools.

To achieve this objective of modernization, the Office of the Secretary hired a private firm for advice.

Since this is primarily a tool for judges and it is therefore essential that the judiciary be closely involved in carrying out such a project, the Conseil has asked the courts and tribunals to form specific committees made up of judges in management situations and puisne judges.

The Conseil decided to entrust at a committee the mandate to coordinate work of the specific committees.

The committee is made up of the following persons:

- Judge Jacques Lachapelle, Chairman
- Judge Maurice Galarneau;
- Judge Gilles Gaumont;
- Judge Paule Gaumont;
- Judge Michel Simard.

Finally, an agreement has been concluded with the Ministère de la Justice for the latter to supply hosting services for this system. Hence, the technological infrastructure is deployed in keeping with high security standards.

Appendix I

Members and Staff of the Conseil de la magistrature as at march 31, 2004

Members and Staff of the Conseil de la magistrature as at March 31, 2004

Members¹

Honourable Guy Gagnon, Chief Judge of the Court of Québec, President

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

Honourable Maurice Galarneau, Associate Chief Judge of the Court of Québec

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

Honourable Michel Simard, Associate Chief Judge of the Court of Québec

Honourable Paule Lafontaine, President of the Professions Tribunal

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

Honourable Gilles Gaumond, President-Judge of the Municipal Court of Québec City

Honourable Jean-François Gosselin, Judge of the Court of Québec

Honourable Jean-Pierre Lortie, Judge of the Court of Québec

Judge Guy Saulnier

Henri Grondin, Lawyer, Grondin, Poudrier, Bernier

Alain Létourneau, Lawyer, Cain, Lamarre, Casgrain, Wells

Jean-François Masse, Dentist

Robert L. Véronneau, Consultant

Staff

Jean-Pierre Marcotte, Lawyer, Secretary of the Council

Michelle Blanchet, Secretary

Liliane Gouge, Desk Officer

Carolle Richard, Administrative Assistant

¹ A position has been vacant since the resignation of Mr Jean-François Masse on June 30, 2004.

Appendix II

Jurisdiction of the Conseil de la magistrature

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

PART VII

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

CHAPTER I THE CONSEIL DE LA MAGISTRATURE

DIVISION I ESTABLISHMENT

Constitution.

247. A body, hereinafter called the “council”, is established under the name of Conseil de la magistrature.
1978, c. 19, s. 33.

Composition.

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

- a) the chief judge of the Court of Québec who shall be the chairman of the council;
- b) the senior associate chief judge of the Court of Québec;
- c) the four associate chief judges of the Court of Québec;
- d) a president judge of a municipal court;
- d.1) one judge chosen among the persons exercising the functions of president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
- e) two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
- f) one judge chosen among the judges of the Municipal Courts and appointed upon the recommendation of the Conférence des juges municipaux du Québec;

- g) two advocates appointed upon the recommendation of the Barreau du Québec;
- h) two persons who are neither judges nor advocates.

1978, c. 19, s. 33; 1986, c. 48, s. 4; 1986, c. 61, s. 47; 1987, c. 50, s. 8; 1988, c. 21, s. 53; 1991, c. 70, s. 4; 1995, c. 42, s. 42; 1998, c. 30, s. 40; 2002, c. 21, s. 48; 2001, c. 26, s. 172.

Appointment of members.

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

Vice-chairman.

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

Term of office.

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

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

Remuneration and expenses.

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

Indemnity.

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

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

Quorum.

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

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

Meetings.

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

Sittings *in camera*.

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

Head office.

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

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

Internal management.

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

1978, c. 19, s. 33.

Minutes.

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

1978, c. 19, s. 33.

Secretary.

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

Leave.

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

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

Functions.

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

Oath.

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

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

Expiry of term.

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

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

Appointment.

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

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

DIVISION II

FUNCTIONS OF THE COUNCIL

Functions.

256. The functions of the council are:

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

g) to hear and decide appeals under section 112.

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

CHAPTER II

REFRESHER PROGRAMMES FOR JUDGES

Programmes.

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

1978, c. 19, s. 33; 2004, c. 12, s. 9.

Preparation.

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

1978, c. 19, s. 33; 1987, c. 50, s. 9; 2004, c. 12, s. 10.

Authorization for expenditures.

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

1978, c. 19, s. 33.

CHAPTER III JUDICIAL ETHICS

DIVISION I GENERAL PROVISION

Applicability.

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

The provisions of this chapter applicable to judges also apply to the judges of the municipal courts and to presiding justices of the peace.

1978, c. 19, s. 33; 1980, c. 11, s. 98; 1995, c. 42, s. 44; 2004, c. 12, s. 11.

DIVISION II CODE OF ETHICS

Code of ethics.

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

Meeting of the judges.

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

Approval. Coming into force.

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

1978, c. 19, s. 33.

Contents.

262. The code of ethics determines the rules of conduct and the duties of the judges towards the public, the parties to an action and the advocates, and it indicates in particular which acts or omissions are derogatory to the honour, dignity or integrity of the judiciary and the functions or activities that a judge may exercise without remuneration notwithstanding section 129 or 171 of this Act or section 45.1 of the Act respecting municipal courts (chapter C-72.01).

Special provisions.

It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts, or special provisions may be established for those judges. For the purposes of this chapter, the rules set out in section 45 of the Act respecting municipal courts are deemed to be special provisions of the code of ethics applicable to municipal judges. The provisions of the code of ethics applicable to municipal judges may vary according to whether they apply to judges exercising their functions on a part-time basis or to judges exercising their functions on a full-time and exclusive basis. Special provisions for presiding justices of the peace may also be stipulated in the code.

1978, c. 19, s. 33; 1980, c. 11, s. 99; 1988, c. 21, s. 57; 1988, c. 74, s. 8; 1989, c. 52, s. 138; 1998, c. 30, s. 42; 2002, c. 21, s. 49; 2004, c. 12, s. 12.

DIVISION III EXAMINATION OF COMPLAINTS

Object of complaints.

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

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

Contents.

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

1978, c. 19, s. 33.

Necessary information.

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

Conflict.

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

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

Copy to judge.

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

1978, c. 19, s. 33.

Complaint not justified.

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

1978, c. 19, s. 33.

Inquiry.

268. The council may, after examining a complaint, decide to make an inquiry. It must make an inquiry, however, if the complaint is lodged by the Minister of Justice or if the latter requests it pursuant to the third paragraph of section 93.1 or the third paragraph of section 168.

1978, c. 19, s. 33; 1988, c. 21, s. 60; 1990, c. 44, s. 24; 2004, c. 12, s. 13.

DIVISION IV INQUIRY

Committee.

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

Quorum.

Three persons are a quorum of the committee.

1978, c. 19, s. 33.

Composition.

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

Composition.

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

1991, c. 70, s. 5.

Oath.

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

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

Inquiry.

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

1991, c. 70, s. 5.

Remuneration and indemnities.

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

1991, c. 70, s. 5.

Presiding justice of the peace.

269.5 When it establishes a committee to conduct an inquiry into a complaint made against a presiding justice of the peace, the council must designate at least one person who is a presiding justice of the peace to sit on the committee.

Oath.

Before taking up committee functions, that person must make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.

Indemnity.

The person so designated is entitled for the time the person is a member of a committee to no indemnity other than the indemnity a council member who is a judge is entitled to receive under section 250.

2004, c. 12, s. 14.

Meetings.

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

1978, c. 19, s. 33.

Copy of complaint, or request.

271. The committee communicates to the judge a copy of the complaint or of the request of the Minister of Justice made pursuant to the third paragraph of section 93.1 or the third paragraph of section 168.

Calling by committee.

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

1978, c. 19, s. 33; 1988, c. 21, s. 61; 1990, c. 44, s. 24, 2004, c. 12, s. 15.

Hearing.

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

Facts and testimonies.

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

Examination.

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

1978, c.19, s. 33.

Powers and immunity.

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

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

Prohibition.

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

1980, c. 11, s. 100.

Recusation of a member of the committee.

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

Obligation to declare.

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

1978, c. 19, s. 33.

Rules of procedure or practice.

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

Orders of procedure.

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

1978, c. 19, s. 33.

Suspension of a judge.

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

1978, c. 19, s. 33.

Report of inquiry and recommendations.

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

1978, c. 19, s. 33.

Complaint not justified.

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

1978, c. 19, s. 33.

Complaint justified.

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

- a) reprimands the judge; or
- b) recommends that the Minister of Justice and Attorney General file a motion with the Court of Appeal in accordance with section 95 or section 167.

Suspension.

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

1978, c. 19, s. 33; 1980, c. 11, s. 101; 1988, c. 21, s. 62; 1988, c. 74, s. 9, 2004, c.12, s. 16.

Motion to Court of Appeal.

280. If the Minister of Justice and Attorney General, in accordance with section 95 or section 167, files a motion with the Court of Appeal, the judge is suspended from office until the report of the Court.

1978, c. 19, s. 33; 1988, c. 21, s. 63, 2004, c. 12, s. 17.

Services of an advocate.

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

1978, c. 19, s. 33.

CHAPTER IV MISCELLANEOUS PROVISIONS

Amounts required.

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

1978, c. 19, s. 33.

PART VIII FINAL PROVISIONS

Minister responsible.

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

1988, c. 21, a. 64.

Disability.

93.1. A judge suffering from a permanent physical or mental disability which, in the opinion of the Government, prevents the judge from effectively performing the duties. Unless the judge resumes judicial duties under the second paragraph, the judge is deemed to have ceased to hold office on the day preceding the day on which the judge satisfies any of the requirements set out in section 224.3, 228 or 246.3, as the case may be, for eligibility for a pension.

Resumption of judicial duties.

If the judge recovers, the Government may permit the judge to resume judicial duties at the same court, even if all the posts in that court are already filled.

Disability.

The permanent disability is established, after inquiry, by the Conseil de la magistrature, at the request of the Minister of Justice. Termination of permanent disability is established in the same manner.

1990, c. 44, s. 4; 2001, c. 8, s. 3.

Disability.

168. A presiding justice of the peace who is suffering from permanent physical or mental disability which, in the opinion of the Government, prevents the justice of the peace from effectively performing the duties of the office shall be relieved from duties. Unless the justice of the peace resumes duties under the second paragraph, the justice of the peace is deemed to have ceased to hold office on the day preceding the day on which the justice of the peace satisfies the requirements for eligibility for his or her pension.

Resumption of duties.

If the justice of the peace recovers, the Government may permit him or her to resume duties.

Inquiry.

Permanent disability is established, at the request of the Minister of Justice, after inquiry by the Conseil de la magistrature. Termination of permanent disability is established in the same manner.

R. S. 1964, c. 20, s. 178; 1992, c. 61, s. 617; 2004, c. 12, s. 1.

Removal.

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

R. S. 1964, c. 20, s. 86; 1988, c. 21, s. 30.

Modification to a notice of appointment.

108. Any modification to the notice of appointment of a judge concerning his place of residence shall be decided by the Government on the recommendation of the chief judge. The Government may make such a decision only if the period prescribed in section 112 for filing an appeal is expired or, where an appeal is filed, if the recommendation of the chief judge is confirmed.

R. S. 1964, c. 20, s. 100; 1965 (1st sess.), c. 17, s. 16; 1982, c. 17, s. 76; 1987, c. 50, s. 5; 1988, c. 21, s. 30; 1995, c. 42, s. 26.

Assignment to another division.

111. The chief judge may, where the administration of justice so requires and after consultation with the associate chief judges concerned, assign a judge to another division after the judge concerned has been given the opportunity to present his views in that respect.

R. S. 1964, c. 20, s. 103; 1965 (1st sess.), c. 16, s. 21; 1965 (1st sess.), c. 17, s. 18; 1978, c. 19, s. 15; 1988, c. 21, s. 30; 1995, c. 42, s. 29.

Notice of decision.

112. The chief judge who makes a recommendation under section 108 or a decision respecting the permanent assignment of a judge to another division under section 111 shall notify the judge concerned. The latter may, within fifteen days, appeal to the Conseil de la magistrature which may confirm or quash the recommendation or the decision of the chief judge.

R. S. 1964, c. 20, s. 104; 1974, c. 11, s. 30; 1977, c. 20, s. 138; 1978, c. 19, s. 16; 1986, c. 95, s. 334; 1988, c. 21, s. 30.

Exclusive office.

129. Subject to the provisions of this subdivision, the office of judge shall be exclusive.

Incompatibility.

The office of judge is incompatible, in particular, with the office of director or manager of a legal person or any other constituted body, or with the conduct, even indirect, of commercial activities.

R. S. 1964, c. 20, s. 121; 1965 (1st sess.), c. 17, s. 2; 1978, c. 19, s. 25; 1988, c. 21, s. 30.

Exclusivity.

171. Presiding justices of the peace shall devote their time exclusively to duties of the office.

Incompatibility.

The office of presiding justice of the peace is incompatible, in particular, with the office of director or manager of a legal person or any other constituted body, or with the conduct, even indirect, of commercial activities.

R. S. 1964, c. 20, s. 181; 1990, c. 4, s. 888; 2004, c. 12, s. 1.

Appendix III

Internal Bylaws of the Conseil de la magistrature

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

DIVISION I : GENERAL PROVISIONS

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

DIVISION II : FUNCTIONS AND POWERS

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

- e) assign responsibilities to the members of the Council as well as to the Secretary.
- 5. The Vice-President, elected by the Council from among its members, shall assume the functions and responsibilities of the President of the Council in the event of the latter's absence or inability to act.
- 6. Under the authority of the President, the Secretary of the Council shall carry out the general functions pertaining to his position and those that may be assigned to him by the President or by the Council.

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

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

DIVISION III : COUNCIL MEETINGS

- 7. The Council shall hold its meetings at the head office of the Council or at any other location specified in the notice of meeting.
- 8. The number of meetings of the Council shall be determined by the latter in accordance with a timetable that it shall establish.
- 9. In addition to the regular meetings, the Council may hold special meetings as often as it deems necessary.
- 10. Meetings of the Council shall be convened by a written notice from the Secretary at the request of the President. The President shall arrange for a special meeting to be convened at the written request of two members of the Council.
- 11. The Secretary shall forward to the members of the Council, at least three days before the meeting, a written notice of meeting which shall specify the date, time and place of the meeting. This notice of meeting shall be accompanied by an agenda.

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

12. The Council may dispense with notice of meeting formalities if all members of the Council consent to it. A member may, before or after a meeting, waive the notice of meeting. The presence of a member at a meeting constitutes a waiver on his part to a notice of meeting.
13. The members of the Council may participate in a meeting by means that enable all participants to communicate verbally, notably by telephone.
14. The meetings of the Council shall be presided over by the President or, in his absence, the Vice-President.
15. The quorum of the Council shall consist of eight members, including either the President or the Vice-President. If a quorum is not present one half-hour after the time specified in the notice of meeting, the meeting shall be adjourned and a new notice of meeting must be issued. However, the President may extend the deadline before adjourning the meeting.
16. A meeting may, by a majority vote, be adjourned to another time or to a later date and a new notice of meeting shall not be required.
17. The decisions of the Council shall be made by a majority vote of the members present.
18. Votes shall be cast orally or by a show of hands unless the President or two members of the Council request a secret ballot.
19. In the absence of a secret ballot, the declaration by the President that a decision has been made unanimously or by a majority and the recording of this declaration in the minutes of the meeting shall constitute proof of the Council's decision, without the need to divulge the specific way in which members voted, except if a request is expressed to this effect by one of the members of the Council.
20. In case of a tie vote, the President, or the Vice-President in the absence of the President, shall have a deciding vote on any matter submitted to the Council regardless of whether the votes are cast orally, by a show of hands, or by secret ballot. The President or the Vice-President may or may not exercise his right to a deciding vote.
21. The decision to hold all or part of a meeting in camera shall be made by a majority of the members present.
22. The Council shall exercise its powers by means of decisions, except in matters that must be settled by way of a regulation, as prescribed under the Act. A decision signed by all of the members of the Council shall have the same value as a decision made during a Council meeting which was duly convened and held. This decision shall be recorded in the minutes of the meeting following the date on which it was signed.
23. The Secretary of the Council shall draft and sign the minutes of each meeting. The minutes shall contain a summary of the deliberations of the Council as well as the decisions made at each meeting.
24. Apart from the President of the Council, the Secretary may also certify the minutes, excerpts from the minutes and other documents and copies emanating from the Council or forming any part of its records.
25. In the event that the Secretary is not able to attend any of the meetings, the Council may designate a member of the Council or a member of the staff of the Council to draft the minutes. These minutes shall be signed by such person and by the Secretary of the Council.

DIVISION IV COMMITTEES OF THE COUNCIL

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

DIVISION V FINAL PROVISIONS

34. These bylaws shall not be amended without the prior notification of members of the Council of such amendment in a notice of meeting. The text of the proposed amendment must accompany the notice of meeting.
35. The internal bylaws of the Council shall be effective at the time of their adoption by the Council and shall replace any other internal bylaws previously adopted by the Council.

Effective: 15-12-99

Appendix IV

Members of the Executive Committee
as at March 31, 2003

Honourable Guy Gagnon, Chief Judge of the Court of Québec, President

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

Honourable Gilles Charest, Associate Chief Judge of the Court of Québec

Honourable Jean-François Gosselin, Judge of the Court of Québec

Henri Grondin, Lawyer, Grondin, Poudrier, Bernier

Appendix V

Criteria for Selecting Judges to Participate in External Symposiums

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

I GENERAL TRAINING SYMPOSIUMS

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

II SPECIALIZED TRAINING SYMPOSIUMS

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

June 1999

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

Appendix VI

Codes of Ethics (T-16, r. 4.1)

Code of Ethics for Judges¹

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

¹ At March 31, 2004 this code is applicable to the following courts and tribunals: Court of Québec, municipal courts of Laval, Montreal and Québec City, the Human Rights Tribunal, the Professions Tribunal, and presiding justices of the peace (section 260 of the *Courts of Justice act*).

Code of Ethics for Part-Time Municipal Judges

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

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

Rules of conduct.

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

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

1989, c. 52, s. 45.

Functions.

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

Applicability.

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

2002, c. 21, s. 14.

Appendix VII

Summary of Complaints Handled Since 1979

RESULTS FROM THE EXAMINATION STAGE

Years	Complaints Received	Complaints Unfounded Without Additional Information	Complaints Unfounded After Additional Information	Complaints That Led to the Application of Section 267 ^a	Others ^b	Complaints Under Examination ^c	Complaints Warranting an Inquiry
1979-1980	5	1	2	1			1
1980-1981	1			1			
1981-1982	5		4				1
1982-1983	5		4				1
1983-1984	6		4	1	1		
1984-1985	10		5	1			4
1985-1986	10	1	4	3			2
1986-1987	18	1	12	2	1		2
1987-1988	24	2	17	1	1		3
1988-1989	37	4	26	1	3		3
1989-1990	41	16	13	2	5		5
1990-1991	56	33	17	2	2		2
1991-1992	65	50	13				2
1992-1993	51	34	14		3		
1993-1994	81	39	20		3		19
1994-1995	88	63	21		1		3
1995-1996	89	66	13	1	2		7
1996-1997	68	48	18				2
1997-1998 ^d	70	32	27	1			10
1998-1999	68	44	20	1	1		2
1999-2000	76	53	19		2		2
2000-2001	59	37	16	2			4
2001-2002	87	48	32	1			6
2002-2003	87	49	29	5		1	3
2003-2004	70	38	17	1		13	1
TOTAL	1 177	659	367	27	25	14	85

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

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

c. In all, 59 committees were set up to inquire 85 complaints.

d. Two open files comprised several letters and petitions respectively and were calculated like two complaints.

RESULTS OF THE INQUIRIES

Years	Complaints Unfounded After Inquiry	Complaints That Led to a Reprimand ^a	Complaints That Led to a Recommendation of Destitution	Others ^b	Complaints Under Inquiry ^c
1979-1980		1			
1980-1981					
1981-1982	1				
1982-1983	1				
1983-1984					
1984-1985	2	2			
1985-1986	2				
1986-1987	1	1			
1987-1988	2			1	
1988-1989		3			
1989-1990		2		3	
1990-1991	1	1			
1991-1992	1	1			
1992-1993					
1993-1994	13	6			
1994-1995	1	1		1	
1995-1996	3	2		2	
1996-1997		1	1		
1997-1998	1	9			
1998-1999	2				
1999-2000	1		1		
2000-2001	2	2			
2001-2002		4			2
2002-2003		3			
2003-2004		1			1
TOTAL	34	39	2	7	3

a. The 39 complaints gave rise to 26 reprimands.

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

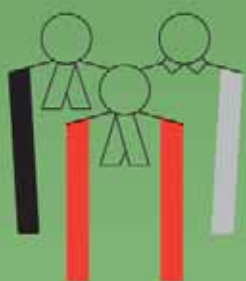
c. Three committees were set up to inquire the three complaints.

Appendix VIII

Regional Origin of Complainants

Regional Origin	Number
Abitibi-Témiscamingue	3
Bas-Saint-Laurent	3
Capitale-Nationale	9
Centre-du-Québec	1
Chaudière-Appalaches	0
Côte-Nord	1
Estrie	2
Gaspésie — Îles-de-la-Madeleine	0
Lanaudière	6
Laurentides	2
Laval	8
Mauricie	7
Montérégie	18
Montréal	23
Nord-du-Québec	0
Outaouais	4
Saguenay — Lac-Saint-Jean	2
Extérieur du Québec	3
TOTAL	92





CONSEIL **DE LA**
MAGISTRATURE
DU QUÉBEC