

ACTIVITY REPORT

2004-2005



CONSEIL **DE LA**
MAGISTRATURE
DU QUÉBEC

2004-2005

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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 the 2004-2005 budgetary year.

This document covers the main activities through which the Conseil oversees compliance with judicial ethics and ensures that judges have the appropriate means to maintain and upgrade their skills.

To ensure compliance with judicial ethics, the Conseil is called upon to examine any complaint relating to a judge's conduct. In such case, it must determine whether the judge followed the rules and fulfilled the duties imposed on him by the *Courts of Justice Act* and the relevant *Code of Ethics*.

Having made access to legal documentation a priority, the Conseil embarked on a process to modernize and structure documentary information needed by judges in Québec. This process led to the development of an Intranet that is accessible only to judges who fall under the jurisdiction of the Conseil and who work exclusively as judges. Indeed, it had become essential to design a work space and discussion forum exclusively for judges. The Intranet allows for the pooling together of documentary resources, centralization of electronic research tools and consultation of data over the Internet.

These measures will increase the amount of information available to judges and help establish a better balance between the funds allocated to documentation and those set aside for training and continuing education activities under the responsibility of the Conseil.

In conclusion, I would like to thank the members and staff of the Conseil for their availability, devotion and substantial contribution toward the fulfillment of the mandate of the Conseil de la magistrature.



Guy Gagnon
Président of the Conseil de la magistrature
Chief Judge, Court of Québec

Québec City, October 2005

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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, 2005, the Act stipulated that the Conseil shall consist of 15 members, plus a lawyer who acts as Secretary. Three additional employees assist the Conseil in its functions.

The list of Conseil members and staff is presented in Appendix I.

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

1.1 Jurisdiction

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

The Conseil's functions are as follows:

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

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 municipal courts as well as presiding justices of the peace. As at March 31, 2005, about 400 judges were under the jurisdiction of the Conseil.

1.2 Composition of the Conseil and Appointment of Members

As at March 31, 2005, 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 2004-2005 budgetary year, the members of the Conseil met 11 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 2004-2005 budgetary year, the Executive Committee met two times.

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 2004-2005 budgetary year, the training and continuing education budget was established at \$1,137,300.

2 Training and Continuing Education

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 2004-2005, the Conseil allocated slightly more than \$600,000 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, seminar organized by the Conseil and the training session on criminal matters for newly appointed judges 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.

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 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 2004-2005 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 and 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 municipal courts. 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 performs the same functions as the Chief Judge but under his authority. The three associate chief judges assist the Chief Judge and the judges in each matter under the Court's jurisdiction.

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

Civil Division

The judges who sit in the Civil Division hear cases where the sum involved in the litigation is less than \$70,000, except for applications for support falling under the jurisdiction of the Superior Court and matters reserved for the Federal Court of Canada. They also have jurisdiction over applications for the rescinding or cancellation of contracts or reduction of obligations when the amount involved in the litigation is less than \$70,000 as well as over applications for cancellation of lease when the amounts claimed for rent and damages total less than \$70,000.

The Civil Division also handles applications for the collection of municipal or school taxes or for a review of property assessment rolls. It can also hear petitions concerning usurpation, detention or illegal exercise of a function in a municipality or school board, as stipulated in the *Code of Civil Procedure*.

The Civil Division also has jurisdiction to hear appeals of decisions rendered by various administrative tribunals, such as the Tribunal administratif du Québec, the Régie du logement or the Commission d'accès à l'information. This appeal jurisdiction also applies to certain decisions rendered by the Québec Minister of Revenue.

When sitting in the Small Claims Division of the Civil Division, judges now hear any claims not exceed \$7,000 submitted by individuals, companies or associations which, during the 12-month period preceding the application, had no more than five people under their direction. The same applies to any application concerning the resolution, rescinding or cancellation of a contract when the value of the contract and the amount claimed do not exceed \$7,000 in each case.

In this Division, the procedure is simple and informal. The person submitting a claim is not represented by counsel, unless authorized to do so due to the complexity of the case. It is the judge who directs debate, examines witnesses and hears the parties. Judgments are without appeal.

Summary appeals in tax matters can also be filed in the Small Claims Division.

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 capacity, 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 by 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 matter related to young people. They deliver their judgment in civil and criminal and penal matters.

In civil matters, they hear, in the main, any proceeding regarding the security and development of children (0-18 years) under the *Youth Protection Act*, which makes it possible to intervene in cases where the security and development of a child may be compromised. They also hear cases in matters of adoption, in accordance with the *Civil Code of Québec*.

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

In penal matters, these judges hear cases in which persons between 14 and 18 years of age are accused of infractions under the *Code of Penal Procedure*.

Presiding Justices of the Peace

On May 4, 2005, the government appointed 27 presiding justices of the peace. These judges were appointed after the *Act to amend the Courts of Justice Act and Other Legislative Provisions Concerning the Status of Justices of the Peace* came into force on June 30, 2004. This Act creates a category of presiding justices of the peace who will have the guarantees of independence enshrined in a decision of the Supreme Court of Canada¹ and a decision of the Québec Court of Appeal². These new judges are in addition to the six presiding justices of the peace that have been in office since June 30, 2004.

The functions of the presiding justices of the peace are to hear cases brought under part XXVII of the *Criminal Code* concerning violations of federal laws other than the *Criminal Code*, as well as cases concerning infractions of Québec and federal laws to which the *Code of Penal Procedure* applies.

¹ *Ell v. Alberta*, [2003] 1 S.C.R. 857.

² *R. v. Pomerleau, J.E.* 2004-219.

These judges also preside over hearings, order remands in custody and issue orders, warrants of arrest and other types of authorizations for searches, frisks, seizures, access to premises and other means of investigation under the *Criminal Code* as well as other federal and provincial laws over which justices of the peace have jurisdiction.

Finally, these judges grant certain authorizations concerning youth protection.

Québec municipal courts and their judges fall under the authority of a fourth associate chief judge at the Court of Québec, who is responsible for municipal courts. This judge is under the authority of the Chief Judge of the Court of Québec and performs the functions of the Chief Judge in respect of municipal courts.

As at March 31, 2005, the Court of Québec was composed of 263 judges and 25 supplying judges chosen from among retired judges. These supplying judges have been authorized by the government to continue, for a fixed period, to perform the judicial functions assigned to them by the Chief Judge.

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 assisted by a ten-member advisory committee. This committee is composed of the three associate chief judges responsible for the civil, youth and criminal and penal divisions, six judges who deal with these matters (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 2004-2005 budgetary year, the Court of Québec organized numerous training activities, including :

- one introductory session on youth law;
- one seminar on administrative law
- one seminar on conducting a trial;
- one seminar on Native justice;
- one seminar on property evaluation, municipal taxation and expropriation;
- one seminar on retirement planning;
- one seminar on social realities;
- one training session for newly appointed judges;
- one training session on civil law;
- one training session on criminal law;
- one training session on youth law;
- six periodic training sessions given on a regional basis;
- two seminars on the formulation of judgments.

The periodic training sessions focused on the following topics:

- “Gangs: between myth and reality”;
- ancestral rights;
- application of exemplary damages under the charter system;
- custody orders: medical and legal aspects;
- homelessness;
- housing construction systems;
- new drugs and their effects;
- police ethics;
- psychological evaluation in a legal context.

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. In that case, it is 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, 2005, 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 2004-2005 budgetary year, the Human Rights Tribunal held one summit and training session that addressed the following topics:

- jurisprudence of the Human Rights Committee;
- psychological and discriminatory harassment at the workplace;
- street gangs;
- the “stranger” in the city: philosophical and sociological perspectives.

2.2.3 Professions Tribunal

Jurisdiction

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

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

As at March 31, 2005, 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 2004-2005 budgetary year, the Professions Tribunal held a study session where the following subjects were discussed:

- compellability of the professional;
- jurisdiction of disciplinary committees;
- review of the Tribunal's decisions;
- standards of review in appeal.

2.2.4 Municipal Courts

Structure of Municipal Courts

There are 88 municipal courts in Québec serving about 90% of the population of Québec. 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 Montréal, Laval and Québec City, 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, 2005, in addition to the Associate Chief Judge, these courts were composed of 95 judges, including one judge-president in the municipal courts of Laval, Montréal and Québec City, and one coordinating judge in the cities of Gatineau and Longueuil.

Training and Continuing Education

In 2004-2005, the municipal courts held several training activities that included the following:

- five regional seminars;
- one seminar on criminal law;
- one seminar on oral judgment;
- one seminar on social realities;
- one symposium;
- two study sessions.

These activities addressed the following issues:

- assessment of witness credibility;
- driving under the influence: arrest upon leaving the station;
- duty of reserve of judges;
- municipal bylaws;
- road rage;
- the *Highway Safety Code*;
- vested rights;
- violence in society.

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 2004-2005 budgetary year, the training session was held in Québec City, from April 23 to April 30, 2004, with the participation of ten judges from the Court of Québec.

During this event, the following topics were discussed:

- conditional sentence and innovative conditions of the order;
- conducting a trial;
- evaluation of facts and credibility;
- justice applicable to teenagers;
- procedure in criminal matters;
- rules of evidence;
- sentencing adults;
- the breathalyzer;

- the *Canadian Charter of Rights and Freedoms*;
- writing judgments.

2.3.2 Second Language Courses

The Conseil oversees second language training for judges. Following negotiations with the federal Department of Justice, the latter has agreed to participate in the funding of second language courses as part of the Access to Justice in Both Official Languages Support Fund program. The Conseil has signed a three-year agreement setting the federal contribution at \$90,000 per year.

The amounts paid by the federal government, along with those earmarked for second language training by the Conseil from its own budget, are used to finance the organization of semi-private courses and the participation of judges in immersion sessions.

This year, the Conseil mandated a firm to organize semi-private courses and delegated ten judges to participate in the immersion session organized by the Office of the Commissioner for Federal Judicial Affairs.

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 2004-2005 budgetary year, 32 judges participated in the following activities:

- Seminar organized by the National Judicial Institute, entitled “Security and Protection of Personal Information”, Toronto, April 2004 (one judge);
- Seminar organized by the Université de Sherbrooke, entitled “Journées pluridisciplinaires Charles-Coderre”, Sherbrooke, May 2004 (three judges);
- Seminar organized by the Federation of Law Societies of Canada, entitled “National Criminal Law Program”, Halifax, July 2004 (two judges);
- Seminar organized by the National Judicial Institute, entitled “Hearing and Deciding Charter Issues”, Malbaie, July 2004 (three judges);
- Seminar organized by the Canadian Legal Information Institute, entitled “Journées strasbourgeoises”, Strasbourg, July 2004 (three judges);
- Seminar organized by the Canadian Institute for the Administration of Justice, entitled “Judgment Writing Seminar”, Montréal, July 2004 (one judge);
- Seminar organized by the Association of Canadian Court Administrators, entitled “Justice: Social Mission to Pursue”, Québec City, September 2004 (one judge);
- Seminar organized by the École nationale de la magistrature, entitled “Séminaire franco-québécois: mode alternatif de règlement des conflits”, Paris, September 2004 (six judges);
- Seminar organized by the Université de Montréal, entitled “L’indemnisation”, Montréal, September 2004 (one judge);
- Seminar organized by the Université Laval, entitled “Codes et codification”, Québec City, September 2004 (two judges);
- Seminar organized by the Canadian Institute for the Administration of Justice, entitled “Governance of Public Institutions, Professions, Corporations, Tribunals and Courts: Ethics, Responsibility and Independence”, Malbaie, October 2004 (three judges);

- Seminar organized by the American Judges Association, entitled “Annual Educational Conference”, San Francisco, October 2004 (one judge);
- Seminar organized by the International Bureau for Children’s Rights, entitled “Making Children’s Rights Work”, Montréal, November 2004 (three judges);
- Seminar organized by the National Judicial Institute, entitled “Newly Appointed Provincial and Territorial Judges Skills Seminar”, Niagara, November 2004 (one judge);
- Seminar organized by the National Judicial Institute, entitled “Training the Judiciary in a World of Challenges and Changes”, Ottawa, November 2004 (one judge).

2.3.4 Conseil de la magistrature Seminar

The Conseil organized a seminar held in Québec City on November 4 and 5, 2004. The seminar’s program was developed by a committee set up by the Conseil.

The committee was made up of the following persons :

- Associate Chief Judge Paule Gaumont, q.c.j., as chairperson;
- Associate Chief Judge Maurice Galarneau, q.c.j.;
- Judge-President Gilles Gaumont, m.c.j.;
- President Paule Lafontaine, q.c.j.;
- Associate Chief Judge Michel Simard, q.c.j.;
- Judge Denis Saulnier, q.c.j.;
- Judge Suzanne Villeneuve, q.c.j.

During the seminar, some 200 judges attended workshops facilitated by distinguished speakers, on the following theme: “Courts of First Instance: Vision of the Future”.

The opening presentation discussed the judicial system and how it deals with the realities of Québec society. This was followed by a speech on Canadian experiences with court unification and another on citizens’ expectations concerning the organization of the justice system in the 21st century.

Afterwards, the participants met in breakout groups to discuss their views respecting courts of first instance.

Finally, the guest speakers invited to close the seminar agreed on the need to reflect on the future of administration of justice in Québec and to ensure that this action focuses on the interests of citizens.

The different presentations were published in the 2004 conference proceedings. This document can be consulted on the Conseil’s Web site.

2.3.5 Visiting Trainee Judge

From February to April 2005, 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 specificities of the judicial system in Québec. During this period, the trainee judge was able to interact with judges working in the various divisions of the Court of Québec and to attend hearings.

3 Ethics

3.1 Codes of Ethics

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

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

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

3.2 Complaints Process

Anyone can file a complaint against a judge. The complaint must be made in writing to the Secretary of the Conseil, and must state the facts relating to the judge's 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. 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, he 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 persons. 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 chairman, 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 public inquiry commissions*, except the power to order 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 calls 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 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 whole².

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

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

3.3 Confidentiality of the Complaints Process

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

However, the hearings of an inquiry committee are public, subject to a specific order to the contrary².

3.4 Statistics

3.4.1 Complaints Received Since the Creation of the Conseil

From its creation in 1978 until March 31, 2005, the Conseil received 1,246 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 2004–2005 Budgetary Year

During the 2004-2005 budgetary year, the Conseil continued the examination of 14 complaints that were at the examination stage as at March 31, 2004 and received 69 new complaints, one less than in 2003-2004. The 69 complaints were filed by 72 complainants.

The results of the 14 complaints that were being examined as at March 31, 2004 are as follows: 13 complaints were deemed unfounded, including nine that required additional information; one complaint was deemed not of a nature or significance as to warrant an inquiry.

Of the 69 complaints received in 2004-2005, 53 were deemed unfounded, two were deemed not of a nature or significance as to warrant an inquiry, four were the subject of an inquiry, and ten were at the examination stage by the end of the budgetary year.

The following table shows the complaints received during the 2004-2005 budgetary year according to the jurisdiction exercised by the courts.

Jurisdiction	Number of Complaints
Small Claims Division	30
Criminal and Penal Division	14
Youth Division	12
Municipal Courts	6
Civil Division (excluding the Small Claims Division)	3
Specialized tribunals	3
Other	1*

* This complaint did not concern any jurisdiction in particular.

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 breakdown by jurisdiction exercised by the courts 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. It should be noted that, in 2004-2005, the percentage of complaints concerning the Small Claims Division rose to 43.5% of complaints received.

According to the data collected, 52 out of the 72 complainants were men (72.2%), 62 were parties to the case (86.1%), and 61 were not represented by a lawyer (84.7%).

The regional origins of the complaints are presented in a table in Appendix VIII, which shows that 54.1% of the complaints originated from two regions in particular: Montréal (38.8%) and Montréal (15.3%).

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, only one complaint was filed on this subject, regarding a judge's conduct in respect of contributions not paid to his *Conférence des juges*.

As for the behaviour of a judge during court proceedings, the complaints raised 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 68 complaints received concerning a judge's behaviour in the courtroom, 15 had to do with the judge's comments, 40 criticized the judge's attitude in the courtroom, and 58 pertained to the judge's application of the rules of law. Indeed, more than five cases out of ten involved multiple criticisms.

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

Also, during the 2004-2005 budgetary year, the Conseil received four reports from inquiry committees. In two cases, the report concluded that the Minister of Justice should file a motion in the Court of Appeal under section 95 of the *Courts of Justice Act*. In another case, it concluded that the judge had to be reprimanded, while in the final case the committee decided to terminate the inquiry proceedings. These reports are summarized in section 3.5.2.

Finally, it is interesting to consider the time frames in which complaints are handled. A distinction is made between cases that are at the examination stage and those that are the subject of an inquiry. At the examination stage, it is possible to provide complete data for the cases of 2003-2004 because they have been closed.

Hence, for the 70 complaints of 2003-2004, the results are as follows:

- for the 43 complaints that did not require additional information, the average processing time was 33 days¹;
- for the 27 complaints that required additional information, the average processing time was 105 days²;
- for all 70 complaints, the average processing time was 62 days³.

Moreover, still in terms of time frames, for cases that were the subject of an inquiry since the existence of the Conseil and where the reports were transmitted before March 31, 2005, a distinction should be made between cases where common law courts intervened and those where they did not :

¹ This is the period between the date when the complaint is received at the Office of the Secretary of the Conseil and the date when the decision of the Conseil is released.

² See note 1.

³ See note 1.

- for the 48 cases where common law courts did not intervene, the average processing time was 6.5 months¹;
- for the 11 cases where common law courts intervened, the average processing time was 30.3 months²;
- for all 59 cases, the average processing time was 11 months³.

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 2004-2005.

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 and unreasoned decision

In his complaint, the complainant alleged that the judge was aggressive toward him and that the judge was too old to practice his profession. He also questioned the manner in which the judge conducted the trial and alleged that the judge did not provide the reasons for his decision.

The court recordings showed that the hearing was conducted calmly and harmoniously. At no time was the judge threatening to the complainant. As for the allegations relating to the judge's "tenuous grasp" of the case or the lack of sufficient reasons for his decision, the Conseil does not have to comment because these are grounds for appeal of the judge's decision.

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

Allegation of aggressive attitude, disrespectful comments and bias

In his complaint, the complainant alleged that, during the hearing, the judge was aggressive, made disrespectful comments against his lawyer and was unfavorably prejudiced against him.

The court recordings showed that the comments and attitude held against the judge occurred on three occasions, at the beginning of the hearing. The Conseil found that the judge showed signs of impatience at the start of the hearing and even raised his voice. He also used an inappropriate expression against the complainant's lawyer.

The Conseil felt that the judge should have toned down his comments to allow the parties to discuss in a more civilized manner. However, these inappropriate comments took up very little time when compared with the total duration of the representations, which lasted slightly more than four hours. Following these events, the judge was much more reserved throughout the rest of the hearing.

Finally, the Conseil examined the content of a ruling by the Court of Appeal which was called upon to intervene in the case. The Court concluded that the comments made by the judge could not give rise to a reasonable fear of bias.

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

¹ This is the period between the establishment of the committee and the date when the report was transmitted.

² See note 4.

³ See note 4.

Allegation of unfair behaviour

In his complaint, the complainant alleged that the judge was unfair and “flouted the rules of justice”.

The complainant blamed the judge for, among other things, an administrative error in the documents filed with the Court. However, the judge’s decision in this regard falls under his jurisdiction and cannot give rise to a breach of the Code of Ethics.

The court recordings showed that the judge behaved in a serene and moderate manner. At no time did he violate his Code of Ethics.

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

* * *

In his complaint, the complainant alleged that the judge behaved in an unfair manner. He criticized the judge for refusing to read certain documents and for hearing an unauthorized witness.

The court recordings showed that the judge disallowed certain documents from being entered into evidence, because he felt that they were not relevant to the case. The judge allowed someone to speak, but informed the individual that he could not testify for another person.

The Conseil found no ethical misconduct.

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

Allegation of disrespectful attitude

In their complaint, the complainants maintained that the judge did not respect them. They believed that the judge was impatient with them during the hearing.

The court recordings showed that the use of English by all the interveners – which was not their mother tongue – probably contributed to the discomfort felt by the complainants, whose mother tongue was English.

The Conseil found that the judge politely explained the complex legal situation in which they found themselves. At no time was he discourteous toward the complainants.

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

Allegation of disrespectful comments

In his complaint, the complainant alleged that, during the hearing, the judge made some disgraceful and hurtful comments about him. Referring to a hearing at which he was not present, the complainant claimed that the judge made some unjustified comments without full knowledge of the facts, thereby unjustly undermining his professional integrity.

The Conseil listened to the court recordings of the hearing in question as well as those of the previous hearing. It found that the judge did indeed make the comments alleged by the complainant. However, the judge pointed out to the Conseil that the comments for which he was being taken to task were made based on the information obtained at the first hearing. The Conseil found that, in this context, it would have been preferable for the judge to check the facts, but that the comments made did not constitute ethical misconduct in this particular case.

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

Allegation of disrespectful comments and bias

In his complaint, the complainant alleged that, in writing his judgment, the judge made disrespectful comments about the organization he represented. He maintained that the judge made inaccurate comments about the organization without giving it the chance to express its opinion.

The Conseil found that the judge made some harsh comments about the organization represented by the complainant. The statements and questions were made without the clarifications that the organization could have provided to the Court.

The Conseil pointed out that judges can denounce a situation. It acknowledged, however, that judges must be vigilant and prudent when making comments, noting that any judge can have an influence on the image of the judiciary.

The Conseil noted that the judge should have been more restrained in his comments about the organization in question.

In this context, 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, in writing his decision, the judge made disrespectful comments about the organization he represented. He maintained that the judge made accusatory comments toward the organization without giving it the chance to express its position.

The complainant referred to *the Code of Ethics* adopted by the Conseil and alleged that the judge did not respect the obligations of objectivity, impartiality and reserve.

The Conseil examined the complaint, the decision in question and the judge's comments.

After considering all the information, the Conseil decided to hold an inquiry¹.

* * *

In his complaint, the complainant alleged that the judge harassed him and treated him with contempt by making derogatory comments on at least three occasions during separate hearings.

The court recordings of the hearings did not reveal the comments that the complainant alleged were made by the judge, nor did they show that the judge used inappropriate language or had an inappropriate attitude toward the complainant.

The Conseil found that the judge behaved at all times in a calm and impartial manner, without any animosity toward the complainant.

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

Allegation of inappropriate behaviour

In his complaint, the complainant alleged that the judge behaved in an inappropriate manner during the trial. He said that the judge was not in a normal state, that he appeared drunk, and that he was therefore not attentive during the trial.

¹ An inquiry committee was formed on November 17, 2004. At the time that this report was written, the committee's work was still ongoing.

The court recordings showed that, contrary to the complainant's allegations, the judge understood everything said by prosecution. The Conseil met with prosecution lawyers and the clerk on duty during the hearing. Their testimony corroborated the conclusions drawn from the court recordings and attested that the complainant's allegations were outright lies.

The Conseil found that the judge listened to the parties and paid attention to the evidence adduced before him.

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

* * *

In his complaint, the complainant criticized the manner in which the judge conducted the hearing. She alleged that the judge showed signs of impatience and favoured her opponent by prohibiting certain testimonies.

The court recordings showed that the judge presided over the hearing calmly, impartially and fairly. He treated the two sides equitably and did not reject any testimony, except for irrelevant facts. The Conseil also found that the complainant had the opportunity to exercise all her rights during the hearing.

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

Allegation of discrimination

In his complaint, the complainant alleged that, during the hearing, the judge was impatient and treated him in a discriminatory manner.

The court recordings showed that the judge was objective and impartial. At no time could the judge's comments be taken to be racist toward the complainant.

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

Allegation of abuse of power or bias

In his complaint, the complainant alleged that, during the hearing, the judge abused his power. The complainant also felt that the judge acted in an unprofessional manner.

The information collected and the documents consulted during the examination of the complaint showed that, during hearings on two matters, the judge acted politely and respectfully. When the complainant represented himself, the judge clearly explained the procedure to him and allowed him to make his representations.

The Conseil found that the judge did not abuse his power or act in an unprofessional manner. Instead, the court recordings showed that the judge was patient and impartial.

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, during the hearing, the judge did not allow him to present a defence, refused to examine documents related to his defence, ignored his witness, and made disrespectful comments toward the complainant on two occasions.

The court recordings showed that the judge was composed and courteous. At the start of the hearing, the judge pointed out to the complainant that he could have his witness heard. At no time did the complainant express

the desire to produce documents, nor was he prevented from doing so by the judge. Finally, the hurtful comments that the complainant attributed to the judge were not made.

The Conseil found the judge's conduct to have been at all times impartial, objective, polite and courteous.

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

Allegation of failure to apply the rules of law

In his complaint, the complainant maintained that a lawyer represented his opponent in the Small Claims Division without authorization. He also alleged that the judge refused to consider documents that he wanted to present.

The court recordings showed that the trial was conducted in a context where all the parties expressed themselves and laid out their claims.

The court recordings also showed that the judge did not allow certain documents to be produced, because she felt they were not relevant to the case. She was therefore well within her jurisdiction in ruling on the relevance or irrelevance of evidence.

The lawyer present during the hearing acted as a witness only. He helped shed some light on a previous case that was at the origin of the claim at bar. At no time did he act as a representative of one of the parties.

After examining the manner in which the hearing was conducted, the Conseil concluded that the judge did not violate the provisions of the judicial Code of Ethics.

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

Allegation of bias

In her complaint, the complainant alleged that, during the hearing, the judge did not act in a neutral manner and that he was biased. She maintained that the judge spoke to her in a dry tone of voice and in a sarcastic manner and also showed signs of impatience. In addition, she suggested that the judge was more attentive to the comments made by the defendant.

The court recordings showed that the judge expressed himself in a neutral and polite tone of voice. The Conseil did not find that the judge listened more attentively to one of the parties. The judge considered the witnesses for both sides and questioned them in order to understand the situation. It appeared, therefore, that the judge was impartial, objective, polite and courteous toward the parties and their witnesses.

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

* * *

In his complaint, the complainant alleged that the judge "harassed" him and that he was biased in favour of the other party.

The court recordings showed that the judge was courteous when addressing both parties. He intervened in the discussion to obtain some clarification on the testimony heard. In all circumstances, the judge was patient and impartial.

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

* * *

In their complaint, the complainants alleged that the judge rendered an erroneous decision and that he was biased. They maintained that the judge intervened abruptly during the reading of their testimony.

The court recordings showed that the judge allowed the four witnesses to express themselves. The complainants had the opportunity to present their point of view. After one of the complainants finished reading his notes, the judge intervened calmly to ask him to present the facts without reading them in full, to give the judge a chance to intervene and ask questions during the testimony. However, the judge had to intervene frequently to get the opposing side to better circumscribe their evidence.

At no time did the judge show signs of impatience or aggressiveness toward the complainants.

As for the assertion that the judgment was erroneous, the Conseil noted that it has no jurisdiction to appeal a judge's decision.

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

* * *

Two complaints were filed concerning the same case and containing the same allegations.

In their complaints, the complainants maintained that the judge was biased because, at the end of the hearing, he made comments regarding the evidence presented.

The court recordings showed that the judge was patient, expressed himself politely, listened attentively to the testimonies of the different witnesses, and allowed one of the complainants to submit certain questions to be asked to the witnesses. It appeared that the judge treated the complainants fairly and respectfully. The Conseil established that there was no ethical misconduct on the part of the judge.

For these reasons, the Conseil found that the complaints were unfounded.

Allegation of bias and abuse of authority

In his complaint, the complainant alleged that the judge treated him unjustly and indicated that he was seeking "neutral and impartial" justice from the Conseil.

The Conseil did a thorough review of all the documents forwarded by the complainant as well as the court report. The Conseil also invited the complainant to clarify his complaint.

The complainant felt that he was the "victim of abuse of authority and bias". He alleged that the judge behaved in a "discriminatory, abusive and very humiliating" manner. He also claimed that the judge participated in a conspiracy with other authorities.

The complainant asked for the disqualification of the judge, a review of the evidence and previous decisions rendered by the judge, and the holding of an inquiry to denounce the "abuse of power and authority".

The Conseil pointed out that it has no jurisdiction over the disqualification of a judge. With respect to the evidence that the complainant wanted to have reviewed, the Conseil indicated that the evidence was presented for consideration by the judge in exercising her jurisdiction. The Conseil then referred to the issue of judicial independence, noting that the disciplinary process cannot call into question the decisions rendered by a judge.

As for the general allegation of "abuse of power and authority", the Conseil found that it was not based on any facts, indications or grounds. Indeed, section 264 of the *Courts of Justice Act* stipulates that the complaint must "state the facts with which the judge is charged and the other relevant circumstances".

A careful examination of all the relevant documents relating to the complaint did not reveal any fact or indication to justify the complainant's perception that the judge abused her power.

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

* * *

In her complaint, the complainant criticized the attitude that the judge exhibited toward her before issuing her ruling from the bench. She maintained that the judge gave more consideration to the plaintiffs' version and failed to question the defendants.

The court recordings showed that the judge read the pleadings submitted by both parties at the beginning of the trial. She also asked the defendants' representative whether he wanted to testify after hearing the plaintiffs' statements.

The Conseil found that the atmosphere at the trial was serene and that all the parties had the opportunity to express themselves. The judge behaved at all times impartially, objectively and courteously toward the parties.

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

* * *

In his complaint, the complainant alleged that the judge acted "abusively" by failing to consider a document that dispensed him from showing up in court.

The facts held against the judge were subject to the judge's full discretion. Moreover, the court recordings showed that the judge did not violate any provision of the judicial Code of Ethics.

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

* * *

In her complaint, the complainant alleged that the judge did not give her the opportunity to have her witness heard, did not allow her to complete her testimony, and did not allow her grounds of defense.

The court recordings showed that at no time did the complainant ask the judge to have her witness heard, a fact corroborated by the witness. After testifying for some time, the complainant was interrupted abruptly by the judge, who pointed out to her that her claims could not be allowed. The judge then rendered his decision orally. In so doing, the judge could have left the complainant with the impression that he did not listen to her.

The Conseil reminded the judge that it is important to remain vigilant as to the perception that the parties to a case may have following such conduct.

The Conseil found that the nature and significance of the complaint did not warrant the holding of an inquiry.

Allegation of failure to fulfill judicial duties

In his complaint, the complainant alleged that, without valid reasons, the judge refused to consider a request for a search warrant outside business hours, claiming that the grounds listed by the police officer ran many pages. The complainant criticized the judge for demanding that the police officer shorten the list of the grounds to support the search warrant, before even reading them.

The Conseil read a circumstantiated police report and heard the judge's explanations.

The Conseil felt that the behaviour held against the judge could constitute ethical misconduct under section 6 of the judicial Code of Ethics concerning a judge's judicial duties. The information gathered and the documents consulted during the examination of the complaint led the Conseil to conclude that an inquiry should be held.

For these reasons, the Conseil decided to hold an inquiry¹.

3.5.2 Inquiry Committee Reports

Complaint Against Judge Gilles Gagnon

The Conseil received a complaint against Judge Gilles Gagnon concerning two separate incidents. In the first incident, the complainant criticized the judge for his inappropriate conduct during a party, where the judge participated in a play in which he portrayed a judge presiding over a hearing in a morality case.

In the second incident, the judge was criticized for having an unacceptable attitude, showing bias and making inappropriate comments during a trial.

Inquiry Committee

The party the judge attended was filmed and photographs of the judge's performance also existed on diskette. The committee therefore had video cassettes and diskettes in conducting its inquiry.

At the beginning of the hearing, the committee was seized with a preliminary application from the judge's lawyer seeking to prohibit access to and dissemination and publication of the video cassettes showing the party that the judge attended and the diskette containing certain photographs taken on that occasion. The committee heard the application without prejudice and ordered that the cassettes and diskettes be sealed until the inquiry report was issued.

The judge was criticized for having parodied a trial while wearing clothing that was in bad taste and using inappropriate language.

On this issue, the committee referred to a text published by the Canadian Judicial Council entitled: *Ethical Principles for Judges*. The article deals with, among other things, the importance for judges to *cultivate an image of integrity, impartiality and good judgment*.

The second criticism concerned the judge's inappropriate conduct and comments during a trial. The committee members listened to audio tapes and read the transcripts of the hearing. They found that the judge cursed and blasphemed when addressing counsel.

The committee found the judge's intervention inappropriate, especially in a case of jurisprudence. He showed some bias in this instance. As well, the judge made inappropriate comments regarding his "status" as a judge of the Court of Quebec.

Decision

As for the preliminary request from the judge's lawyer, the committee allowed it in part. It is forbidden to disseminate and publish video cassettes and diskettes. These materials may be consulted and viewed at the Office of the Secretary of the Conseil.

¹ The committee's report will be summarized in the 2005-2006 activity report.

The committee felt that the judge cannot be condemned simply for participating or playing a role in a parody. However, the context, as depicted in the video cassette, was certainly reprehensible in this case. The judge therefore violated the obligations of reserve, integrity, serenity, courtesy and dignity outlined in, among other things, sections 2 and 8 of the judicial Code of Ethics. The committee also noted that the judge must respect these obligations at all times, even outside the courtroom.

As regards the second part of the complaint, the committee felt that Judge Gagnon's attitude, his impatience, the way in which he intervened in the case, some of the comments he made and the inappropriate opinions he expressed during the trial, constituted violations of the obligations of dignity, objectivity, courtesy, moderation and serenity that befall judges in the performance of their duties.

In order to determine the appropriate sanction, the inquiry committee considered different factors. Some of them were mitigating circumstances for the judge:

- no record of disciplinary or ethical infractions;
- his participation in training courses given by the Court of Québec;
- his recognition that the two events were inappropriate;
- his apologies;
- his collaboration with the inquiry committee;
- absence of the risk of a repeat offence;
- impact of a reprimand.

Other factors represented aggravating circumstances:

- the public nature of the party;
- the judge's participation in the play, which was both disgraceful and in bad taste;
- the lack of discernment and maturity by the judge at that time;
- the criticisms and inappropriate opinions expressed by the judge during the trial;
- the inappropriate language, tone and words used during the trial.

Considering all the circumstances, the inquiry committee recommended to the Conseil to reprimand Judge Gilles Gagnon.

* * *

Complaint Against Judge Pierre A. Cloutier

The Conseil received a complaint in respect of Judge Pierre A. Cloutier's conduct concerning unpaid contributions to the Conférence des juges municipaux du Québec.

Chronology of Events

From 2001 to 2004, Judge Cloutier billed the cities of East Angus and Coaticook for contributions to be paid to the Conférence. Yet, until September 17, 2004, Judge Cloutier failed to reimburse the Conférence.

On June 30, 2004, the treasurer of the Conférence reported the situation to the Associate Chief Judge of the Court of Québec responsible for municipal courts.

On May 18, 2004, Judge Cloutier acknowledged the facts. The Associate Chief Judge of the Court of Québec then urged him to reflect upon his professional future as a judge.

On May 31, 2004, Judge Cloutier sent his response to the Associate Chief Judge. In his letter, signed by a lawyer, Judge Cloutier informed the Associate Chief Judge that he intended to tender his resignation from his position as a judge.

After examining the complaint, the Conseil decided to conduct an inquiry.

Inquiry Committee

The committee had access to the following documents:

- copies of invoices sent by the Conférence to Judge Cloutier for his annual contributions from 2001 to 2004 and for a special contribution in 2001;
- copies of invoices sent by Judge Cloutier to the two municipalities in question;
- proof of payment by the municipalities.

The committee was informed about the procedure followed by the Conférence in collecting unpaid contributions. It appeared that a written reminder was first sent to Judge Cloutier, then a member of the Conférence contacted him to remind him to pay his contributions. However, the Conférence did not initiate any legal action against him.

Judge Cloutier cited the professional and personal difficulties he had from 2001 to 2004 as the reason why he was late in reimbursing the amounts due to the Conférence. He testified before the committee members that he was clearly a bad debtor, but that he was not a fraud. In his view, his behaviour did not amount to judicial misconduct in any way.

The committee analyzed the legislative and regulatory texts as well as the decree concerning the working conditions and fringe benefits of municipal judges.

As Judge Cloutier himself acknowledged, the amounts he claimed were in accordance with the requirements of the decree. However, the committee found that he used these funds for purposes other than those set forth in the decree. He therefore deprived the cities of funds that he used for his own personal purposes, thereby stripping the Conférence of contributions. The committee found that this appropriation was not accidental, because it occurred on two occasions.

The committee concluded that, from 2001 to 2004, Judge Cloutier appropriated, for his personal benefit, sums billed to and collected from two municipalities as regular annual contributions and a special contribution. He therefore failed to pay these sums to the Conférence. Judge Cloutier did not act with integrity and honesty, thereby undermining his oath and contravening section 2 of the Code of Ethics for Québec Municipal Judges.

Decision

The committee recognized that the complaint was founded. It felt that a reprimand was the appropriate measure under the circumstances, since the integrity of both Judge Cloutier and the judicial system were at stake. Although it undermines the principle of judicial independence, the recommendation of removal can become necessary to preserve the image of the judiciary as a whole.

The committee recommended to the Conseil to recommend to the Minister of Justice and Attorney General of Québec to file a motion in the Court of Appeal under section 95 of the *Courts of Justice Act*.

When this activity report was being written, the Conseil was informed that the judge had tendered his resignation.

* * *

Complaint Against Judge Gilles Plante

In his complaint, the complainant criticized the judge “for violating the most elementary rules of justice and fundamental rights guaranteed by the Charter of Rights and Freedoms, for not rendering justice under the law, and for not performing his role with dignity, honour, impartiality, objectivity and courtesy”.

Chronology of Events

In July 2002, a former police officer of the City of Montréal filed a complaint against the Fraternité des policiers et policières de Montréal under the *Labour Code*. Dismissed from the Police Department due to a disability, the former police officer believed that he could have been able to assume an administrative position.

After delays for various reasons, the case was set for June 29, 2004.

On June 28, 2004, counsel for the former police officer filed a motion for postponement due to his client’s ill-health.

The case was then submitted to Judge Gilles Plante of the Labour Court. Before the start of the hearing scheduled for 9:30 a.m. on June 29, 2004, Judge Plante allowed the motion for postponement without meeting with the lawyers for the parties.

The complainant maintained that Judge Plante’s behaviour was “careless and daring”.

After review, the Conseil decided, in October 2004, to conduct an inquiry.

Inquiry Committee

The inquiry and hearing of the committee were initially scheduled for November 8 and 9, 2004, but were postponed to January 17, 2005. On January 14, 2005, the committee members met via conference call. They were then informed that the complainant was withdrawing the complaint because Judge Plante was soon going to retire. This retirement was confirmed by a written note from the office of the Deputy Minister of Justice.

The committee took note of the written documents concerning the retirement of Judge Plante and the withdrawal of the complaint by the complainant.

Decision

The committee decided to terminate the inquiry proceedings because such proceedings were, and will continue to be, inapplicable due to the withdrawal of the complaint by the complainant and the retirement of Judge Plante.

* * *

Complaint Against Judge Andrée Ruffo

The Conseil received a complaint in which the complainant criticized Judge Andrée Ruffo for her behaviour in a case she presided. According to the complaint, the judge violated her ethical obligations by not revealing to the parties that she had a friendly relationship with experts in the case and by meeting with those experts alone before a hearing.

Chronology of Events

From June 19, 2001 until February 5, 2002, Judge Ruffo presided over an inquiry concerning the youth protection agency, the *Chambre de la jeunesse*. This inquiry dealt with the renewal of an order to place a child in foster care.

On January 18, 2002, before the hearing, the court usher accompanied the expert witness from the hearing room to Judge Ruffo's office. According to the information provided by interveners in the case, Judge Ruffo then allegedly asked the witness to make a second surprise visit to the foster home.

Informed of this situation, the complainant sought leave to file a motion for recusal based on these grounds. This motion was allowed by Judge Ruffo due to the breakdown in the relationship of trust between the court and the parties.

This recusal meant the resumption of an inquiry that had been going on for several days spread over several months.

Inquiry Committee

Counsel for Judge Ruffo presented six written motions at the start and during the course of the hearing.

On December 19, 2003, the committee partially allowed an initial motion for disclosure of evidence and production of documents.

On March 15, 2004, the committee partially allowed a second motion on the same subjects.

On March 16, 2004, two members of the committee dismissed a motion seeking their recusal.

Judgment was reserved for three other applications, to allow the committee members to address them in their report: the first motion involved the loss of quorum on the committee; the second motion asked for a nonsuit and a dismissal of the complaint; the third and last claim sought a stay of proceedings and dismissal of the complaint.

The motion alleging the loss of quorum on the inquiry committee was dismissed. The committee examined the changes made to the status of its appointed members and concluded that, according to the provisions of the *Courts of Justice Act*, it had not lost its quorum.

As for the motion for nonsuit and dismissal of the complaint for lack of evidence, the committee pointed out that the motion for nonsuit was intricately linked to concepts unique to penal procedure and "accusatory" justice. The committee found that the nonsuit rule cannot apply to judicial ethics. The motion for nonsuit was therefore dismissed.

The third motion concerning the stay of proceedings raised eight grounds:

- 1) failure to comply with the provisions of section 263 of the *Courts of Justice Act*;
- 2) failure to comply with the provisions of section 265 of this Act;
- 3) absence of the appearance of impartiality;
- 4) absence of a decision in accordance with the internal governance bylaws;
- 5) absence of a linkage factor and refusal of the right to a full and complete defence;
- 6) lack of jurisdiction by the inquiry committee;
- 7) composition of the Conseil;
- 8) the pre-inquiry.

As regards grounds 1 and 5, Judge Ruffo submitted that the complaint did not invoke any violation of the Code of Ethics, because it did not identify any ethical provision that would constitute a ground for an inquiry. However, the committee noted that sections 263 and 264 of the *Courts of Justice Act* do not oblige the complainant to specify the provision of the Code of Ethics that is allegedly violated. This law does not prescribe any formalities for the presentation and drafting of a complaint. It is the committee, during the inquiry, that will spell out which section has allegedly been violated and that will allow the judge to express his or her point of view, as the case may be. These grounds were dismissed.

Ground 2 concerning the failure to comply with section 265 of the Act suggested that the Conseil did not examine the complaint because the resolution formulated after a review of the complaint did not indicate any real examination. Section 265 states that *the Conseil shall examine the complaint*. The decision of the latter indeed referred to the examination of various sources of information and established that people were contacted. The committee dismissed this ground.

Ground 3 dealt with the absence of the appearance of impartiality. Counsel for Judge Ruffo alleged that the members of the inquiry committee participated in the decision concerning their appointment. He added that the committee was not validly constituted. As Mr. Justice Gonthier noted in a decision of the Supreme Court of Canada, the only restriction regarding the participation of members is found in section 265: “If the complaint is lodged by a member of the Conseil, he cannot participate in the examination of the complaint by the Conseil”. The legislator did not prescribe any other exclusion. The Supreme Court also pointed out in 1995 that judges make the commitment to fulfill their duties faithfully and impartially. The committee dismissed this ground.

Ground 4 concerned the lack of a decision in accordance with the Internal Bylaws. Counsel for Judge Ruffo alleged that the minutes of the meeting at which the complaint was examined did not contain any summary of the deliberations of the Conseil, and that there were some irregularities with the drafting procedure. The committee noted that a document entitled *Décision à la suite de l'examen d'une plainte* (Decision Following the Examination of the Complaint) accompanied the extract of the minutes. This document contained a brief summary of the allegations of the complaint as well as a list of the sources of information and persons contacted in this regard. The decision was authenticated by the Secretary of the Conseil. The committee dismissed this ground.

Ground 6 dealt with the lack of jurisdiction of the inquiry committee. Counsel for Judge Ruffo said the purpose of the inquiry was not clearly defined and that, as a result, the inquiry was going to deal with the grounds for the judge's recusal, something that is beyond the jurisdiction of the inquiry committee. He pointed out that the facts related in the complaint refer to a conduct that gave rise to the motion for recusal and that allegedly undermined the integrity of the judiciary. However, this situation falls within the ambit of judicial ethics. The committee dismissed this ground.

Ground 7 concerned the composition of the Conseil. Counsel for Judge Ruffo alleged that the Conseil was not formed in accordance with the Act when the decisions were rendered in the present case. The committee maintained that the Conseil does not have to be dissolved following a vacancy among its membership, and since the existence of the Conseil is not affected by a vacancy, its decisions are valid if there is a quorum. The committee dismissed this ground.

Ground 8 dealt with the pre-inquiry. Counsel for Judge Ruffo claimed that a pre-inquiry was held in the case and that the judge did not receive the documents collected during the pre-inquiry. However, the Conseil noted that this was an examination rather than a pre-inquiry and that the law does not prescribe any right of consultation by the judge in the case of the information collected during the examination. It is the committee that will ensure that the rights of the parties are respected during the inquiry. The committee dismissed this ground.

The Inquiry

In its report, the committee analyzed the three charges brought against Judge Ruffo.

The first charge concerning Judge Ruffo was that she failed to disclose to the parties a friendly relationship she had with an expert witness called to testify.

The committee distinguished two important elements in this case: the nature of the relationship between Judge Ruffo and the expert witness, and failure to disclose the friendly relationship to the parties.

After studying the statements made by Judge Ruffo and the expert witness, the committee felt that the evidence presented established the existence of a friendly relationship between Judge Ruffo and the expert witness.

The witness was selected as an expert by all the parties to the inquiry that was being held before Judge Ruffo. The judge did not make any statement concerning her relationship with the expert witness. She submitted that she did not have to make any such statement because, in her view, this friendly relationship was known by all the case workers working with her.

However, the committee found that some of these case workers were not informed about this friendly relationship.

The committee felt that Judge Ruffo had to reveal to the parties that she had a friendly relationship with the expert.

The committee therefore ruled that Judge Ruffo had contravened sections 2, 4 and 5 of the Code of Ethics by deciding not to reveal her friendly relationship with the expert witness.

As regards the second point of criticism, namely the allegation of a private meeting between the judge and the expert witness before a hearing, the facts were established. The expert witness did indeed go to the office of Judge Ruffo at the latter's invitation.

The committee pointed out that a meeting between a judge and a witness in the absence of the parties or their lawyers undermines the image of impartiality of the judge in charge of the case.

This behaviour by Judge Ruffo contravened sections 2, 4 and 5 of the Code of Ethics.

The third criticism concerned the fact that Judge Ruffo allegedly suggested to the expert witness to make a second surprise visit to the foster home involved in the case. The judge apparently made this suggestion to the expert witness during their private meeting.

Two people confirmed this information, which was denied by the judge and the expert witness. The committee dismissed this allegation.

Televised Interview Given During the Inquiry

On March 29, 2004, while the committee was holding a public hearing, Judge Ruffo asked for permission to leave the meeting room due to a health problem. The hearing continued in her absence. However, Judge Ruffo then gave television interviews while still at the courthouse. She was also able to comment on the work of the committee when she gave another television interview later that evening. She commented on previous decisions of the Conseil concerning her and condemned the ongoing inquiry.

The committee had received a copy of the transcript of the television interview and ruled that this interview was admissible as evidence. It said it would take into account this additional piece of evidence when making its recommendation to the Conseil as to the appropriate sanction.

Previous Decisions of the Conseil and Inquiry Reports

The lawyer assisting the committee felt that the committee “must take into account” the previous decisions of the Conseil rendered following inquiry reports which concluded that Judge Ruffo had violated the Code of Ethics. These reports recommended that Judge Ruffo be reprimanded by the Conseil.

Counsel for Judge Ruffo objected to the production of these reports, alleging inter alia that this would be tantamount to “introducing new evidence and elements that are beyond the jurisdiction of the current inquiry committee”.

The committee ruled that the production of these reports was admissible. It indicated that it would refer to these documents in determining the appropriate sanction. After reviewing the underlying goals of the principles of judicial ethics, the role of the judge and ethical constraints associated with the performance of judicial functions, the committee analyzed the appropriate sanction in the present case.

The committee considered Judge Ruffo’s ethical “antecedents”. In the four inquiry cases studied by the committee, the judge contravened a provision of the Code of Ethics on 12 occasions, in addition to the two cases of ethical misconduct found in the present case.

In the case at bar, Judge Ruffo presided over an inquiry concerning the renewal of an order placing a child in a foster home. This inquiry went on for five days (from June 19, 2001 to February 18, 2002). Due to the recusal of Judge Ruffo, which occurred on February 5, 2002, the inquiry resumed before another judge, causing the child and the parties to suffer an immediate prejudice. The Conseil noted that this fact hurt the image of justice as a whole in the eyes of the parties and the public.

Judge Ruffo felt that she did not have to report the friendly relationship because she had already done so in another case. However, upon her recusal, she admitted the friendly relationship publicly, making this fact widely known and thereby dispensing her from the obligation to report the situation a second time.

The committee pointed out that Judge Ruffo had the obligation to report the situation on each occasion when the expert witness was called as a witness in a case that she was presiding. It also noted that this obligation to report the situation was obviously for the benefit of the lawyers and case workers from the Direction de la protection de la jeunesse, but also for the benefit of all those associated with the case: child, parents or any other party to the case.

Conclusion

Judge Ruffo had been reprimanded on several occasions in the past for violations of the Code of Ethics. The case at bar only added more violations. The Committee found that the reprimands issued against Judge Ruffo should have led her to change her conduct. Yet, the faults found in this case still went to the heart of the judicial function.

Decision

Considering all these circumstances, the inquiry committee recommended to the Minister of Justice and Attorney General to file a motion in the Court of Appeal under section 95 of the Courts of Justice Act.

4 Administrative Activities

During the 2004-2005 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 and useful links. Publications of the Conseil can also be consulted on the site.

4.2 Handling of Complaints

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

4.3 Training and Continuing Education

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

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

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

As part of the training activities organized by the Court of Québec, the Secretary of the Conseil participates in training sessions for newly appointed judges. During this session, the Secretary presents the mission of the Conseil, its operating structure and the activities of the Office of the Secretary to the newly appointed judges.

5.1 Presiding Justices of the Peace

One of the highlights of the 2004-2005 budgetary year was the preparation for the arrival of new presiding justices of the peace.

The Act creating the position of presiding justices of the peace gives the Conseil the power to determine whether specific provisions should be included in the Code of Ethics for these judges. For the time being, they remain subject to the judicial Code of Ethics until the Conseil adopts specific provisions, if it deems this appropriate. The Conseil has set up a committee to examine this issue.

The committee is made up of the following persons:

- Judge-President Gilles Gaumont, m.c.j., as chairman;
- Associate Chief Judge Maurice Galarneau, q.c.j.;
- Judge Jacques Lachapelle, q.c.j.

In the area of training, the Associate Chief Judge of the Court of Quebec responsible for the Criminal and Penal Division organized an introductory session.

5.2 Legal Documentation and Intranet for the Judiciary

During the 2004-2005 budgetary year, the Conseil continued its efforts to implement the policy regarding access to legal information. The focus of this policy is to establish a partnership with the Centre d'accès à l'information juridique (CAIJ), negotiate licenses for access to information that can be consulted electronically, and creating a site for the exclusive use of the judiciary.

Following a call for tenders in January 2005, the firm Irosoft was selected to design the site. The Office of the Secretary of the Conseil coordinated the entire operation, including the segment with the Ministère de la Justice for the hosting of the site and with publishing houses for the negotiation of licenses to make legal documentation available online.

In early April 2005, an initial section for online documentation became operational. Efforts are continuing presently to complete the design of the other sections and to provide information and training to judges.

It should be noted that the 2005 Seminar of the Conseil will be devoted to new technologies and the Intranet for the judiciary.

5.3 Second Language Courses

The Conseil has given the mandate to a committee to review its eligibility criteria for the semi-private courses and immersion sessions.

The committee is made up of:

- Judge-President Gilles Gaumont, m.c.j.;
- Judge Jean-Pierre Lortie, q.c.j.;
- Judge Guy Saulnier, m.c.j.

When this report was being written, the Conseil had adopted a new program for second language courses.

5.4 Annotated Code of Ethics

A few years ago, the Conseil decided to join forces with the Société québécoise d'information juridique (SOQUIJ) to develop jurisprudence data banks of the Conseil.

An annotated code is an excellent tool to help publicize the decisions of the Conseil. The Conseil has given the mandate to the Centre de recherche en droit public of the Université de Montréal to develop an annotated code from the information contained in the banks of the SOQUIJ.

In 2004, efforts were made in this regard that led to the examination of the decisions of the Conseil and committees rendered until 1998. In 2005, decisions from 1998 to 2005 will also be examined as well as the decisions of common law tribunals.

A paper version as well as an electronic version of the annotated code will be published.

Under the established schedule, the code is expected to be published in the fall of 2005.

5.5 Consolidated Record of Legislative Amendments

During the year, the Conseil examined proposed legislative amendments concerning the complaints handling process, activities and functions that are incompatible with the office of judge, and various other subjects pertaining to the Conseil. The Conseil also studied the report of the committee on its composition which was presented in the spring of 2004.

A consolidated record was prepared in this regard and a position was established by the Conseil.

Furthermore, the Conférences des juges were consulted and their positions will be examined by the Conseil.

Still in relation to this file, two initiatives of the Conseil are worth noting: the creation of a judicial training centre and the establishment of an advisory committee on ethical issues.

The committee on the creation of a judicial training centre is made up of the following persons:

- Associate Chief Judge Paule Gaumont, q.c.j., as chair person;
- Judge-President Gilles Gaumont, m.c.j.;
- President Paule Lafontaine, q.c.j.;
- Judge Jean-Pierre Lortie, q.c.j.

This committee produced an interim report in June 2005 which will be examined in the fall.

As for the advisory committee on ethical issues, the Conseil has mandated the following people to set up the committee:

- Associate Chief Judge René de la Sablonnière, q.c.j.;
- Judge Hubert Couture, q.c.j.;
- Judge Paulin Cloutier, m.c.j.

Independent from the Conseil, the advisory committee was created to provide judges with advice on any ethical concerns they may have. The committee should start working in the fall of 2005.

Appendix I

Members and Staff of the Conseil de la magistrature as at march 31, 2005

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

Honourable Paule Lafontaine, President of the Professions Tribunal

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

Honourable Guy Saulnier

Henri Grondin, Lawyer, Grondin, Poudrier, Bernier

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

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 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, s. 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, 2005

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

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, 2005 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.

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 AT THE EXAMINATION STAGE

Years	Complaints Received	Complaints Unfounded Without Additional Information	Complaints Unfounded After Additional Information	Others Complaints Not justifying an Inquiry ^a	Others ^b	Complaints Under Examination	Complaints Warranting an Inquiry ^c
1979-1980	5	1	2	1			1
1980-1981	1			1			
1981-1982	5		4				1
1982-1983	5		4				1
1983-1984	6		4	1	1		
1984-1985	10		5	1			4
1985-1986	10	1	4	3			2
1986-1987	18	1	12	2	1		2
1987-1988	24	2	17	1	1		3
1988-1989	37	4	26	1	3		3
1989-1990	41	16	13	2	5		5
1990-1991	56	33	17	2	2		2
1991-1992	65	50	13				2
1992-1993	51	34	14		3		
1993-1994	81	39	20		3		19
1994-1995	88	63	21		1		3
1995-1996	89	66	13	1	2		7
1996-1997	68	48	18				2
1997-1998 ^d	70	32	27	1			10
1998-1999	68	44	20	1	1		2
1999-2000	76	53	19		2		2
2000-2001	59	37	16	2			4
2001-2002	87	48	32	1			6
2002-2003	87	49	29	6			3
2003-2004	70	42	26	1			1
2004-2005	69	46	11	2		6	4
TOTAL	1 246	699	387	30	25	6	89

^a These are complaints whose nature and significance did not justify an inquiry (sec. 267 of the *Courts of Justice Act*).

^b These are closed files (complaints no longer applicable).

^c In all, 63 committees were established to examine 89 complaints.

^d Two open files involved several letters and petitions respectively and were counted as two complaints.

RESULTS OF THE INQUIRIES

Years	Complaints Unfounded After Inquiry	Complaints That Led to a Reprimand ^a	Complaints That Led to a Recommendation of Destitution	Others ^b	Complaints Under Inquiry ^c
1979-1980		1			
1980-1981					
1981-1982	1				
1982-1983	1				
1983-1984					
1984-1985	2	2			
1985-1986	2				
1986-1987	1	1			
1987-1988	2			1	
1988-1989		3			
1989-1990		2		3	
1990-1991	1	1			
1991-1992	1	1			
1992-1993					
1993-1994	13	6			
1994-1995	1	1		1	
1995-1996	3	2		2	
1996-1997		1	1		
1997-1998	1	9			
1998-1999	2				
1999-2000	1		1		
2000-2001	2	2			
2001-2002		4	1		1
2002-2003		3			
2003-2004		1			
2004-2005			1	1	2
TOTAL	34	40	4	8	3

^a The 40 complaints gave rise to 27 reprimands.

^b These are files closed by the inquiry committees due to the retirement or resignation of the judge.

^c Three committees were established to examine three complaints.

Appendix VIII

Regional Origin of Complainants

Regional Origin	Number
Abitibi-Témiscamingue	6
Bas-Saint-Laurent	2
Capitale-Nationale	8
Centre-du-Québec	0
Chaudière-Appalaches	1
Estrie	3
Gaspésie — Îles-de-la-Madeleine	0
Lanaudière	1
Laurentides	4
Laval	3
Mauricie	2
Montérégie	11
Montréal	28
Nord-du-Québec	0
Outaouais	3
Saguenay — Lac-Saint-Jean	0
Extérieur du Québec	0
TOTAL	72





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