



# MESSAGE FROM THE PRESIDENT

## SHARING OUR VISION

When I was appointed chief judge of the Court of Québec, I also became President of the Conseil de la magistrature. As such, I swore an oath before the chief justice of Québec in the presence of the judges under the Council's jurisdiction.

That oath before the judges of the Court of Québec, the Human Rights Tribunal, the Professions Tribunal, and the municipal courts as well as the presiding justices of the peace signaled my commitment to and respect for the office of the chair of the Conseil de la magistrature.

The Council is independent of the courts and government, relying on its own structure and powers to fulfill its many responsibilities. Over the next seven years, I intend to devote a great deal of energy to the Council, focusing on three key areas closely tied to its legal mandate.



## REVISING OUR ONGOING TRAINING PROCESS

We believe that a better informed judiciary is more likely to behave in an irreproachable manner.

Everyone agrees that the primary responsibility for ongoing training falls on judges themselves. As part of their professional code of ethics, judges are required to maintain their professional skills. It is, nonetheless, a shared responsibility. Indeed, the Courts of Justice Act clearly states that the functions of the chief judge responsible for municipal courts include overseeing complementary training and those of the associate chief judges of municipal courts include promoting that training.

The role of supervisor, however, is conferred upon the Council, which has the legal obligation to organize refresher programs for judges. In practice, the Council delegates much of this responsibility to courts and tribunals while working closely with their training committee. For instance, the Council pre-approves the courses to be offered during the year and requires an end-of-year report to be submitted. The Council and its secretariat also organize the annual seminar, a major event that brings together all judges under its jurisdiction.

This year, because of the financial conditions in Québec, we have required spending from the training budget to be strictly controlled. All training was carefully revised in order to make any necessary cuts to the costs of refresher programs for judges, without of course affecting the quality of that training.

Fortunately the Council has been collaborating with judges for many years in order to carry out the ongoing training sessions. This type of collaboration provides undeniable advantages, and we are very grateful for the dedication shown by these judges.

Like any organization, the Council must periodically review its operating procedures in order to remain effective and efficient. It's a simple question of keeping up with modern management methods.

By recommending a new method of funding to the government, the Council wants to redefine the ongoing training of judges. The crisis in public finances has, of course, affected the budgets allocated to the judiciary, and like so many others, we must do more with less. That is the challenge we face. Council members will be asked to weigh in on topics like rethinking our ongoing training, identifying the topics to address, promoting and using information technology, and taking cost-cutting measures like eliminating overlapping spending.

Some have insisted that the solution is to create a training institute for the judiciary. It is an interesting idea and a worthy goal to set for some point in the future, but for now I intend to devote my energy to improving our current system.

## AN IRREPROACHABLE JUDICIARY AND AN INFORMED CITIZENRY

Aim for perfection. That isn't a slogan. It's a powerful statement used by Mr. Justice Gonthier of the Supreme Court of Canada to describe his expectations regarding the conduct of judges.

That level of expectation is ambitious—some might even say unrealistic—but the goal of the judiciary code of ethics is to maintain public trust in our legal institutions by ensuring that judges behave irreproachably at all times and in every situation.

As such, newly appointed judges are immediately informed of their ethical responsibilities. Certain steps have already been taken and reinforced in this area. The president and secretary inform new judges about ethics from the very first day, sending a strong message regarding its importance.

Judicial ethics is about more than just words. Whether the rules are codified like in Québec, stated as principles as at the federal level, or described in detail like in the U.S., there is a common denominator: public demands and expectations with regard to the judiciary are high. It is the price we pay in exchange for their trust.

During my term, I intend to use every platform available to remind judges of the importance of high-quality relations with persons appearing before the court.

Furthermore, a certain amount of confusion remains in the public mind. We must rectify this problem. The Conseil de la magistrature is not a court of appeal and it cannot reverse a decision by a judge. As the secretary states below, new measures are being taken to explain the role of the Council and avoid creating unrealistic expectations, particularly when there is no possibility of appeal, as in the Small Claims Division of the Court of Québec.

### SHARING EXPERTISE

The law clearly states that the mandate of the Council includes cooperating with any organization pursuing similar goals outside Québec. Therefore, the government has recognized that the Council could benefit from and contribute to its network of contacts beyond its borders.

To date, the Council has been consulted on numerous occasions for its expertise, which is exactly as it should be according to its functions. During my mandate, I intend not only to support, but also increase collaboration with organizations outside Québec, which can only serve to help all parties involved.

### OUTLOOK

The Council is composed of 15 members from different backgrounds. Based on the guidelines defined by law when the organization was created, teamwork must be the basis of all its choices and decisions.

Through this cooperation, the Council will remain adaptable and proactive. As a recognized leader, Conseil de la magistrature du Québec has a responsibility to continually revise its practices, act as an advisor to the government, and recommend measures to help it reach its goals when necessary.

Ultimately, that means the Council will have to reexamine itself in order to recommend changes to its incorporating act, adapt to the realities of the 21st century and help find solutions that improve the administration of justice in Québec. Our project is ambitious, yet realistic, as my first months with the Council and my initial work with the Secretariat have shown.

### ACCOUNTABILITY

The Council publishes an annual activity report, even though it is not officially required to do so. This major project is made possible by the hard work of the members and staff of the Secretariat. I'd like to take this opportunity to thank them for all their effort and support.

By providing a summary of the decisions handed down during the year, the Council shows judges and citizens how seriously it takes the complaints it receives. Judges can read this report to learn from the complaints—even those deemed unfounded—and citizens will see that complaints are treated equitably, professionally, and efficiently.



Elizabeth Corte



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TRIBUTE TO THE HONOURABLE GUY GAGNON



## MESSAGE FROM THE SECRETARY

THE YEAR 2008 AND SUBSEQUENT YEARS WILL BE MARKED BY CHANGE, MOVEMENT, AND REPOSITIONING. PUBLICATION OF THE 2008–2011 STRATEGIC PLAN IS PART OF THIS PERIOD OF TRANSFORMATION.

That is how the President at the time described the challenges that lay ahead and the basis for the course described in the 2008–2011 Strategic Plan.

Those words certainly proved to be prophetic. In 2009–2010, the Council underwent a profound change. Including the new President and Vice President, seven of the Council's fifteen members have been replaced. In the next few years, it is likely that two more changes will occur.

The arrival of new members is an opportunity—especially for the Secretariat—to look at what lies ahead, make sure we are staying the course, and make any necessary adjustments. As the final year of the Strategic Plan begins, it is incumbent upon us to seize that opportunity.

But publication of this year's activity report is first and foremost an opportunity to look back at what was accomplished in the last year.

## BETTER INFORMED CITIZENS

It has been said before, but well informed citizens are better able to exercise their rights. In the age of information, that almost goes without saying. For an organization like the Conseil de la magistrature, the challenge is relatively straightforward. We must reach people who appear before the court and provide accurate information on the role of the Council without creating unrealistic expectations or opening the way for complaints motivated purely by a desire to settle scores rather than improve the judiciary.

Information can be shared with the public in a number of ways. Government organizations often use flyers and inserts, but those options aren't quite as useful for an organization that receives relatively few complaints. Fortunately, modern technological tools make it easy to reach citizens seeking information on the Council's mandate.

The ever-increasing use of the Web has made it the preferred communication tool of all organizations. The Council is no exception. Its new website has drawn praise from around Québec and even



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from across the Atlantic. The goal is to reach citizens and give lawyers and researchers access to a host of valuable information.

Citizens taking issue with the judiciary may have recourse to the Conseil de la magistrature. On the other hand, they may have to turn to an appeal or a judicial review. Unfortunately, there is a great deal of confusion in the public mind, as can be seen by the fact that two-thirds of rejected complaints are turned down for this reason alone.

Since the *Judicial Code of Ethics* states that judges should “render justice within the framework of the law,” many believe that a legal error is grounds for recourse to the Conseil de la magistrature. That simply isn’t the case. A more detailed analysis of the text clearly shows that the Council can examine the behavior of a judge, but cannot affect a judgment. The primary purpose of judicial ethics according to the Supreme Court in the Ruffo case is to [...] prevent any violation and maintain the public’s confidence in judicial institutions.

This year, by working closely with the Éducaloi team, which is known for its skills in popularizing the law, we created a website that provides the answers citizens need.

## BETTER INFORMED JUDGES

The courts and tribunals have a set procedure for welcoming new judges. It involves the Council. With the Court of Québec’s new orientation procedure, new judges have a full-day meeting with the Council secretary and staff within days of being appointed. A large part of this day is dedicated to judicial ethics, which is different from professional ethics because it applies to public behavior. During these meetings, judges discover the new rules governing their behavior and learn about the importance of judicial ethics and public expectations in the matter.

Indeed, public expectations are ever-present in the mind of the Council when it deals with judges. In the last two years, it has taken a number of measures—including publication of a document and creation of a website on judicial ethics—to inform the public of ethical rules and their interpretation. These are only two examples, but there are others.

In addition to the many telephone calls we receive, we also respond to some one hundred written complaints every year. We can therefore recognize any existing trends and risk areas. For example, we can identify which types of behavior result in the most complaints. We can even learn from unfounded complaints. The chief judge and associate chief judge responsible for municipal courts have an explicit mandate to ensure judicial ethics is respected. Their work with the Council helps them fulfill that mandate.

For example, we can see that in order to prevent undesired behavior from occurring or spreading, courts and tribunals are organizing a growing number of judicial ethics training sessions.

## PROCESSING TIMES

Nevertheless, persons appearing before the court sometimes complain about a judge’s behavior. Citizens who complain usually feel they are victims of injustice. It is important for both the complainant and the judge in question that the complaint be processed quickly.

With an average processing time of 48 days, including cases that require further investigation, the Council has proven to be quite efficient. This is a remarkable timeframe, especially considering that Council members work part time, that they only meet every five weeks, and that every member examines each case. We will strive to maintain this standard.

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## PROJECTS

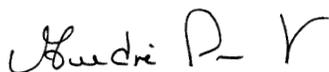
Public spending cuts are no match for the Council's determination to fulfill its obligations under the *Courts of Justice Act*. As it revises its strategic plan, the Council will ensure it maintains two of its defining characteristics: leadership and thoroughness.

The Council will make absolutely no compromise on its primary mandates—ongoing training and ethics. Starting this year the Council will take steps to implement the guidelines set out by the President, making it possible for judges to receive the training they need to carry out their duties in the best way possible.

That being said, we will be focusing on two areas in particular. We will be undertaking a major overhaul of our intranet, which provides judges with up-to-date documents. At the same time, we will be deciding how to proceed with making recommendations to revise the stipulations of the rules that govern the Council. In both cases, our goal is to improve the tools used by the Council while maintaining the level of service it provides to clients, judges, and citizens.

In this activity report, we will outline our past accomplishments and future challenges.

Enjoy!



André Ouimet, Lawyer  
November 2010

# 1. INTRODUCING THE CONSEIL DE LA MAGISTRATURE

THE CONSEIL DE LA MAGISTRATURE HAS BEEN SERVING THE PUBLIC FOR OVER THIRTY YEARS. IT ALSO PROVIDES SERVICES TO THE QUÉBEC JUDICIARY. THE COUNCIL WORKS INDEPENDENTLY FROM JUDGES AND THE GOVERNMENT AND IS SUPPORTED BY A PERMANENT SECRETARIAT.

## 1.1 MANDATE

The Council's mandate is multi-faceted. Most of its time and effort is devoted to fulfilling primary mandates, and its secondary mandates are addressed less frequently.

With regard to its primary mandates, the *Courts of Justice Act* makes the Council responsible for ensuring that the judges under its jurisdiction comply with the rules of conduct in effect. This is usually referred to as “judicial ethics.” The Council receives and examines complaints brought against judges, thereby helping to maintain public trust in our legal institutions.

The Act also makes the Council responsible for overseeing the implementation of training activities for judges and providing them with the required legal documents.

The Council's secondary mandates are geared towards improving the legal system as a whole:

- Promote the efficiency and standardization of proceedings before the courts
- Receive suggestions, recommendations, and requests regarding the administration of justice, study them, and make the appropriate recommendations to the Minister of Justice
- Confirm or annul the recommendation of the chief judge of the Court of Québec concerning modification of a judge's appointment with regard to his or her place of residence or the decision to transfer the judge to another division
- When requested by the Minister of Justice, conduct an inquiry to determine whether a judge has become permanently incapable of carrying out the functions of his or her position
- When requested by the Minister of Justice, conduct an inquiry regarding municipalities that refuse to remedy a reported situation (Sec. 91, *Act respecting municipal courts*)
- Cooperate with all bodies pursuing similar aims outside Québec



The Conseil de la magistrature has jurisdiction over all judges appointed by the Government of Québec. There are approximately 400 of these judges appointed to the Court of Québec, the Professions Tribunal, the Human Rights Tribunal, and municipal courts as well as justices of the peace.

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## 1.2 COMPOSITION

The Council is composed of 15 members—11 judges, 2 lawyers, and 2 members of the public.

The chief judge of the Court of Québec also serves as President of the Conseil de la magistrature du Québec. The senior associate chief judge and four associate chief judges from the Court of Québec are ex-officio members of the Conseil de la magistrature during their entire term of office, which is usually seven years. The Vice President is elected by the Council from among its members. The senior associate chief judge is currently serving as Vice President. The other members are as follows:

- One of the presiding municipal court judges of Laval, Montréal, or Québec City (This seat has been vacant as of March 31, 2010.)
- The president of the Human Rights Tribunal or the chair of the Professions Tribunal (The chair of the Professions Tribunal has been a member since March 31, 2010.)
- Two judges chosen from the Court of Québec
- One judge chosen from among municipal court judges
- Two lawyers
- Two citizens who are neither judges nor lawyers

Members of the Council do not serve on a full time basis. They generally meet once every five weeks at the discretion of the President. During these sessions, they examine complaints and other matters brought to their attention.

## 1.3 THE SECRÉTARIAT DU CONSEIL

Since its members do not serve on a full time basis, the Council has been assigned a permanent Secretariat to support its activities and carry out its ongoing operations. The head office of the Secrétariat du Conseil is located at the Palais de justice in Québec City, with a second office at the Palais de justice in Montréal. In addition to being the repository for official Council documents, the Secretariat has been assigned a number of responsibilities to help carry out the Council's mission. It ensures that the Council functions properly and provides followup for various administrative issues and coordinates all Council activities. The Secrétariat du Conseil is composed of five staff members, including a secretary appointed by the President for a five-year term, after which he or she is replaced or appointed for another term.

## 1.4 BUDGET

The Council budget has three main categories: judicial ethics, training and legal documentation for judges, and Council operations (day-to-day operations). The *Courts of Justice Act* states that funds required for the Council to carry out its mission are to be taken from the government's financial reserves. Therefore, it does not have a predetermined budget.

While unusual, this specific feature guarantees the Council the complete financial independence needed to properly conduct its business, especially as regards judicial ethics. It avoids having complaints go unexamined for lack of funding.

The budget for training and legal documentation for judges is established annually by the government.

In 2009–2010, its budget was \$1,206,720.

## 2. THE **SECRÉTARIAT** DU CONSEIL DE LA MAGISTRATURE

AS PREVIOUSLY STATED, COUNCIL MEMBERS WORK FULL TIME IN THEIR RESPECTIVE FIELDS AND SERVE PART TIME ON THE COUNCIL. ONGOING OPERATIONS ARE THEREFORE CARRIED OUT BY THE SECRÉTARIAT DU CONSEIL.

The Secretariat handles the Council's day-to-day administrative operation. In matters of judicial ethics, its staff handles incoming calls, emails, and letters from citizens. They provide information on submitting complaints, identifying the details the Council will need and guiding citizens towards services that will be responsive and meet their needs.

The Secretariat also provides support to the judges under its jurisdiction. For example, it oversees their training, handles budgets, and purchases legal documentation.

Finally, the Secretariat supports the activities of the Council, giving its members access to a dynamic, experienced, and professional team.

The Secrétariat du Conseil is composed of five staff members.

The President appoints the Council secretary, 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 determines the secretary's salary, employment benefits, and other conditions of employment.

Once appointed, the secretary ceases to be subject to the *Public Service Act*. The person appointed is therefore no longer a public servant and is on leave without pay for the duration of the term.

The Council secretary exercises the functions of the position on an exclusive basis, under the authority of the President. At the expiry of the term, the secretary remains in office until replaced or re-appointed.

The secretary works with a team whose members (unlike the secretary) are appointed and remunerated in accordance with the *Public Service Act*. They are therefore public servants.

The other members are a professional administrative assistant, a clerk, a desk officer, and a paralegal whose services are only occasionally required.

The team, albeit small, handles day-to-day operations as well as major cases. The following sections provide a summary of the cases processed in 2009–2010.

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## 2.1 INDEPENDENCE: THE COUNCIL'S RESPONSIBILITIES AND OBLIGATIONS

In its activity report last year, the Council described what sets it apart as an institution. Indeed, it is truly a unique organization.

The Council acts independently from the government and even from the judges themselves. Contrary to popular belief, it is not under the authority of the chief judge of the Court of Québec or Ministère de la Justice. Having been established under the *Courts of Justice Act*, the Council's legal power is clearly recognized. Because of the separation of powers, neither the National Assembly nor the government interferes in the Council's affairs.

The independence of the Conseil de la magistrature is so well respected that lawmakers sometimes exempt it from the application of major laws. In what has become almost common practice, the Council is not subject to the *Sustainable Development Act*, the *Public Administration Act*, or more recently the *Act respecting contracting by public bodies*.

Furthermore, a decision by the Court of Appeal excluded the Council from the *Act respecting access to documents held by public bodies and the protection of personal information*, or at least from its first section.

Exclusion from the *Act respecting contracting by public bodies* led the Council to reexamine how it is governed. All public bodies must do this periodically to ensure they remain efficient, transparent, and accountable. In the case of the Council there is no law—not even the *Courts of Justice Act*—that imposes specific rules regarding contract allocation.

To ensure that public funds are properly handled, the Council devised a policy on awarding contracts this year, basing itself on the rules that apply to public administration in this matter. Council members must now approve all contracts not directly linked to day-to-day management.

## 2.2 BUDGET

### 2.2.1 OPERATING AND ETHICS BUDGET

The *Courts of Justice Act* states that monies needed to carry out the Council's mission shall come from the government's consolidated revenue fund, meaning that its operating budget is not established as a function of government-allocated budgets. The Council thus enjoys complete financial independence and need not leave complaints uninvestigated for lack of funds.

This singular characteristic is due to the fact that the Council cannot know in advance how many complaints it will receive and which of them will warrant the formation of an inquiry committee. Decisions concerning activities that involve judicial ethics should not be influenced by budget considerations in any way.

In light of last year's financial difficulties, the Secrétariat du Conseil paid particular attention to expenses. The Council's needs were reexamined, and spending was cut by \$113,000 compared to the previous year. Council expenditures for 2009–2010 were \$992,412, divided as follows:

- \$338,000 for remuneration
- \$504,342 for operations
- \$150,070 for judicial ethics

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## 2.2.2 TRAINING BUDGET FOR JUDGES

The training and continuing education budget serves to meet the needs of judges in matters of legal documentation and training. Part of this budget goes toward the purchase of legal documentation, while the rest is allocated for training activities for the 400 judges under the Council's jurisdiction.

The budget is determined by government decree. In 2009–2010, this amount was set at \$1,206,720. A further \$90,000 was added under a federal/provincial agreement. Those sums were specifically set aside for English language training.

## 2.3 RELOCATION OF THE COUNCIL'S MONTRÉAL OFFICE

The Council's head office is in Québec City, but it also has an office in Montréal.

In December 2007, the Council had been informed by Ministère de la Justice that it must vacate the space it occupied at the Palais de justice in Montréal because the ministry needed it for other purposes. In March 2010, the Council moved its Montréal office to a new location better suited to its needs.

Since the move was due to specific instructions by Ministère de la Justice, the cost of the move was covered by the ministry.

## 2.4 AN IMPROVED WEBSITE

In a continued effort to inform the public of its role, the Council chose to reach out to citizens in 2009–2010 and explain how it can provide assistance. All too often in the past, citizens have contacted the Council to challenge a decision or have it reversed or to request a new hearing. The Council learned from this, and has changed the message it shares on its website ([www.conseildelamagistrature.qc.ca](http://www.conseildelamagistrature.qc.ca)).

Thanks to the Council's partnership with Éducaloi, a nonprofit organization dedicated to legal literacy, the new website is a complete success. The information it provides was totally revised and reformulated to create a much more user-friendly site.

It is very simple to use, offering a host of information as well as specially created video clips. Visitors can find answers to their questions with just a few clicks. To help meet demand, a secure online complaints form has also been added.

## 2.5 COLLABORATING WITH ORGANIZATIONS IN CANADA AND ABROAD

The Council boasts many high-quality and often original achievements, but it is not very well known, particularly outside of Québec, even by organizations that play similar roles. The Council's strategic orientations involve sharing its expertise and learning from the experiences of organizations outside Québec.

This orientation stems from a statutory provision that clearly requires the Council to cooperate with organizations outside Québec that are pursuing similar goals.

During a series of meetings held over the year, it became evident that the Conseil de la magistrature du Québec has close ties with the Canadian Judicial Council, the Office of the Commissioner for Federal Judicial Affairs, and the National Judicial Institute. But the Secrétariat

du Conseil has also established ties well beyond the Ottawa River. Across the Atlantic, for example, the Council is now well known to judicial institutions, because its secretary was invited to give a workshop on judicial ethics at École nationale de la magistrature de France.

Furthermore, recognizing Québec's expertise in matter of judicial ethics, four judges from France's Conseil supérieur de la magistrature met with members of the Secretariat and of the Council to learn about its role and mandate. This was part of the project to create an anthology on the ethical obligations of French judges published in July 2010. This was not the Council's only contribution to the French institution. The Council's secretary had the opportunity to work even more closely with the committee of the Conseil supérieur de la magistrature tasked with the project. The experience was beneficial to both parties.

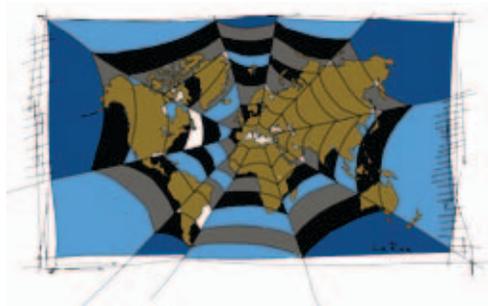
The Council's work in the past year with its Canadian and French counterparts—and the success of these endeavors—has revealed the great potential of such relations. In the coming year, we will look at ways of deepening and solidifying these ties, particularly through the use of modern communication methods.

South of the border, the Council's secretary has been invited to take part in a project hosted in Mexico by the Commissioner for Federal Judicial Affairs. It is an opportunity for judges and experts from Canada and Mexico to discuss issues surrounding judicial ethics.

Finally, a researcher is creating a list of judicial councils around the world and their respective mandates. The information collected is provided on the judicial ethics website ([www.deontologie-judiciaire.umontreal.ca](http://www.deontologie-judiciaire.umontreal.ca)) created by the University of Montréal's Centre de recherche en droit public and put online in partnership with the Conseil de la magistrature du Québec.

## 2.6 2009 ANNUAL CONFERENCE

The Council's mandate includes providing training for judges. Therefore, once again this year, the Secretariat organized the Conseil de la magistrature's annual conference. The event was held in Gatineau in November 2009 and was attended by 300 people.



This year's theme was "*Dire le droit... dans un si petit monde!*" and participants had the opportunity to share, discuss, and reexamine the role of judges in the age of globalization. Judges must now keep abreast of all international regulations and conventions. In some cases, even judges at the Small Claims Division are required to consider and apply international regulations.

Judges may also be required to take into account the Warsaw Convention or the Hague Convention with regard to the civil aspects of international kidnapping. Other issues like social security, taxation, and road safety have also given rise to international agreements.

The conference was opened by Édouard at the behest of the Secrétariat du Conseil.

## 2.7 2008 JUDGES' CONFERENCE

In the summer of 2009, while it was organizing that year's annual conference of the Conseil de la magistrature, the Secretariat published the *Proceedings of the 2008 Judges' Conference*.

This reference document available in French and English includes the addresses presented by notable guest speakers. Copies can be downloaded from the Council's website at [www.conseildelamagistrature.qc.ca](http://www.conseildelamagistrature.qc.ca) or obtained by contacting the Council.

The 2008 Judges' Conference gave judges from all over Canada and from all jurisdictions their very first opportunity to get together and discuss various matters around the common theme "Which Judge for Which Society?"

On August 25, 2009 a commemorative plaque was unveiled to mark this event. It now adorns the walls of the Palais de justice in Québec City. It reads:



*In honor of the 400th anniversary of Québec City, the 30th anniversary of the Conseil de la magistrature du Québec, and the 20th anniversary of the Court of Québec, nearly 500 judges from all jurisdictions of Québec and Canada met, for the first time, in Québec City.*

*The 2008 Judges' Conference was held November 5–7, 2008, in Old Québec City. It was organized in partnership with the Canadian Association of Provincial Court Judges, the Conférence des juges du Québec, the Conseil de la magistrature du Québec, the Court of Appeal of Québec, the Superior Court of Québec, the Court of Québec, and the National Judicial Institute.*

*Members of the Canadian Judicial Council and the Canadian Council of Chief Judges also took part.*

*This commemorative plaque was unveiled by The Honourable J.J. Michel Robert, Chief Justice of Québec, The Honourable François Rolland, Chief Justice of the Superior Court of Québec, and The Honourable Guy Gagnon, Chief Judge of the Court of Québec and President of the Conseil de la magistrature du Québec.<sup>1</sup>*

<sup>1</sup> Our translation.

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## 2.8 WELCOMING NEW JUDGES

Every year, the Court of Québec provides orientation for a number of lawyers newly appointed as judges. This year, 19 new judges joined the court and three new justices of the peace were appointed. In addition, four new judges were appointed to the Municipal Court of the City of Montréal.

Shortly after being appointed, each of them met with the Council's secretary and his assistant. They spent almost a full day learning about the Council's role and mandate as well as the new rules of ethics that now govern their behavior.

In the past year, at the behest of the chief judge of the Court of Québec, the senior associate chief judge of the Court of Québec created a committee joined by the Council's secretary to review the orientation sessions for judges newly appointed to the court. Initially launched as an experiment in January 2010, this new procedure now introduces new judges to the Council's intranet, which provides access to all the legal documentation they need to carry out their work and keep abreast of the training sessions available.

This orientation procedure is now used for newly appointed presiding justices of the peace and municipal court judges.

### 3. DOCUMENTATION, TRAINING, AND CONTINUING EDUCATION FOR JUDGES

THE COURTS OF JUSTICE ACT  
ENTRUSTS THE CONSEIL  
DE LA MAGISTRATURE  
WITH RESPONSIBILITY  
FOR IMPLEMENTING  
PROGRAMS FOR  
THE TRAINING AND  
CONTINUING EDUCATION  
OF JUDGES.

It also requires the Council to provide the legal documentation that judges require to perform their duties, and allocates an annual budget with which the Council can carry out these tasks. Part of the budget is earmarked for the purchase of documentation, and the rest is for organizing training activities.

#### 3.1 LEGAL DOCUMENTATION

To keep current with their field, judges must have access to the laws, regulations, and reference works that comprise the tools of their trade. At the start of the year, each judge is given a budget to be used for book purchases. The policy of allocating a budget for legal documentation recognizes that

specific needs may exist in certain regions or with respect to a judge's practice areas. Under this policy, judges receive an overall budget—based on amounts set by the Council—that takes into account the subject areas judges may need to address.

With publication prices on the rise, and as part of its ongoing effort to keep expenses under control, the Council makes use of information technology and supplies the judiciary with software and other computerized documents. Its sophisticated intranet site gives judges online access to a multitude of databases and reference works. This site, developed by the Council, allows information to be shared among all the courts and tribunals under its jurisdiction.

In addition, a partnership agreement signed with Centre d'accès à l'information juridique lets the Council ensure access to more documentation and to resource-rich libraries throughout Québec.

Over the course of the 2009–2010 fiscal year, the Council spent \$555,154.98 on purchasing documents in paper and electronic format.



## 3.2 TRAINING AND CONTINUING EDUCATION ACTIVITIES

The Council entrusts the organization of training and continuing education activities to the courts and tribunals. After reviewing the programs offered, the Council allocates a budget to each court and tribunal on a prorata basis to reflect the number of judges. An additional amount is awarded to judges who concurrently serve at the Court of Québec and specialized tribunals. The courts and tribunals manage funds they are allocated, with the exception of sums earmarked for the Council conference, English language courses, and a training session in criminal matters for newly appointed judges.

Budgets allocated for training must be used primarily for courses, conferences, and study days that are organized by the courts and tribunals. The Council does allow judges—with some restrictions—to take part in seminars or conferences that have not been organized by the courts and tribunals themselves. The Council has ruled that courts and tribunals cannot devote more than 20% of their total allocated budgets to outside training.

To allow for greater flexibility in the way budgets are distributed, the Council decided to create a reserve to respond to certain requests or special situations at the start of or during the fiscal year. Establishing a reserve makes it possible to take into account the situation of certain courts and tribunals that have fewer judges.

At the end of every year, the Council asks the tribunals to compile a report on the training and continuing education activities they have held. It is important to note that the programs implemented by the courts and tribunals were made possible not only through Council training budgets, but also through the considerable and invaluable contribution of the many judges who, above and beyond their everyday duties, agree to devote their time and knowledge to developing and delivering training programs. While they are too numerous to name here, their dedication and availability deserve commendation from the Council.

The following table provides a breakdown of Council spending on training in fiscal 2009–2010:

Court of Québec:	\$334,457.10
Justices of the peace:	\$41,966.10
Human Rights Tribunal:	\$4,500.00
Professions Tribunal:	\$5,406.82
Municipal courts:	\$120,757.90

### 3.3 SPECIALIZED TRAINING

Every year, the Canadian Association of Provincial Court Judges partners with provincial tribunals to organize a specialized training session on criminal issues for new judges.

This year, training took place in Québec April 18–25. Nine judges from the Court of Québec and two judges from the Municipal Court of Montréal attended.

### 3.4 ENGLISH LANGUAGE COURSES

Through a federal/provincial agreement, Ministère de la Justice du Québec allocated \$90,000 to the Council for classes in English as a second language. The Council added another \$35,000 to this sum.

This funding lets the Council offer judges a variety of instructional programs that address the requirements of the judiciary. These include semi-private lessons tailored to meet individual needs.

In addition, the Council in recent years has asked Bishop University to present a five-day English language immersion course. This program, which utilizes small group interaction, has been designed expressly for members of the judiciary. Once again this year, judges and justices of the peace attended.

The Council also makes immersion training from the Office of the Commissioner for Federal Judicial Affairs available to judges annually. This year, one judge was able to take advantage of this instructional program. As Council regulations state, so as to maximize available financial resources participants are required to pay 35% of the cost of these sessions. This makes it possible to allocate larger amounts for semi-private lessons, so more judges can participate.



## 4. PROCESSING OF COMPLAINTS IN 2009–2010

THIS SECTION DESCRIBES THE ACTIONS TAKEN BY THE CONSEIL DE LA MAGISTRATURE IN MATTERS OF JUDICIAL ETHICS, USING TABLES AND FIGURES TO HELP THE READER GRASP HOW THE COMPLAINT REVIEW PROCESS WORKS.

### DATA SUMMARY

Between April 1, 2009, and March 31, 2010, the Conseil de la magistrature received 102 complaints. A further 10 complaints, received in 2008–2009, were not processed and resolved until 2009–2010. After being examined, all ten of these complaints were deemed unfounded.

**TABLE 1: HOW COMPLAINTS WERE HANDLED**

The following table breaks down results from the processing of the 102 complaints received in 2009–2010. Note that 13 complaints were still being examined as of March 31, 2010.

Complaints deemed unfounded upon reception	Complaints deemed unfounded after examination	Complaints not warranting inquiry	Other (cases closed during processing)	Complaints investigated	Complaints being processed as of March 31, 2010	TOTAL
66	22	1	0	0	13	102

Complaints referred to the Council this year came from 107 complainants (39 women and 68 men). Of these 107 complainants, only 8 were not parties to the dispute.

Furthermore, 91 of the 107 complainants (85%) did not have legal representation before the court.

**TABLE 2: TRENDS IN COMPLAINTS OVER THE PAST THREE YEARS**

	2007-2008	2008-2009	2009-2010
Number of complaints received	98	91	102
Number of complaints processed	104	101	112

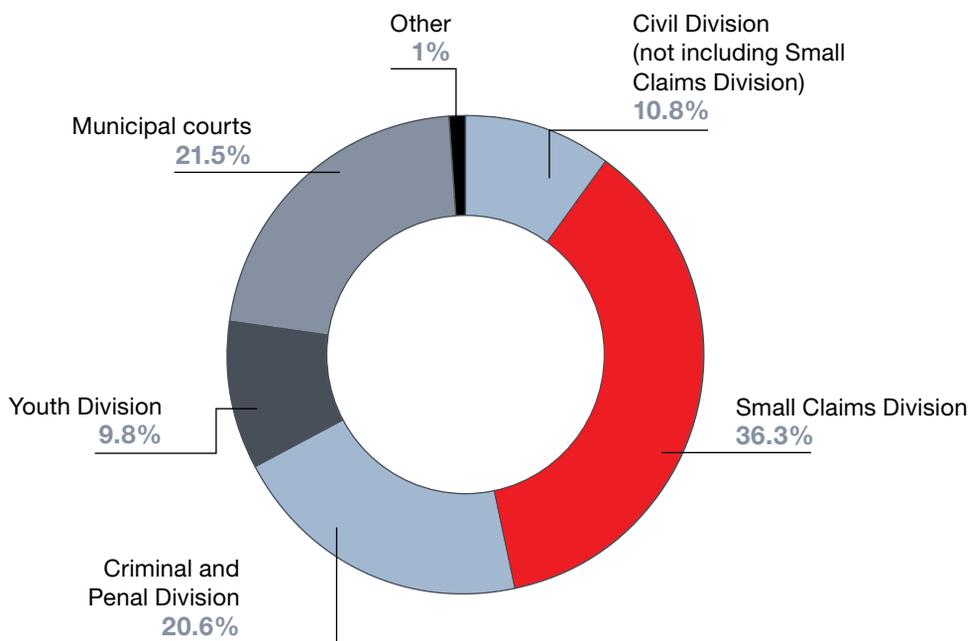
**TABLE 3: COURTS AND TRIBUNALS SUBJECT TO COMPLAINT**

The following table shows the courts and tribunals whose judges were the subjects of complaints.

Courts and tribunals	Complaints received	Complaints deemed unfounded	Complaints deemed unfounded after examination	Other complaints not warranting inquiry	Complaints investigated	Complaints being examined
Civil Division (not including Small Claims Division)	11	11				
Small Claims Division	37	24	9	1		3
Criminal and Penal Division	21	15	4			2
Youth Division	10	8	1			1
Presiding justices of the peace	0					
Municipal courts	22	6	9			7
Human Rights Tribunal	0					
Professions Tribunal	0					
Other (events occurring outside of judiciary functions)	1	1				
<b>Total</b>	<b>102</b>	<b>65</b>	<b>23</b>	<b>1</b>		<b>13</b>

**FIGURE 1**

This figure displays complaint jurisdictions by percentage<sup>1</sup>:



**TABLE 4: ORIGIN OF COMPLAINTS**

Let's take a closer look at where the 107 complaints received by the Council originated. Origin is determined by a complainant's place of residence and not the judicial district where cases were heard because certain cases may have had to be transferred to another district.

Region of Origin	Number of Complainants
Bas-Saint-Laurent	3
Saguenay – Lac-Saint-Jean	2
Capitale nationale	17
Mauricie	5
Estrie	5
Montréal	29
Côte-Nord	1
Outaouais	2
Chaudière-Appalaches	4
Laval	2
Lanaudière	3
Laurentides	12
Montérégie	18
Centre-du-Québec	2
Outside of Québec	2
<b>Total:</b>	<b>107</b>

<sup>1</sup> The Human Rights Tribunal, Professions Tribunal, and presiding justices of the peace do not appear in this figure because they were not the subject of any complaints in 2009–2010.

**TABLE 5: SUMMARY OF COMPLAINTS**

The Conseil de la magistrature was created in 1978, which means it has been receiving and processing complaints for 31 years. The following table provides a summary of the decisions reached by the Council in that time.

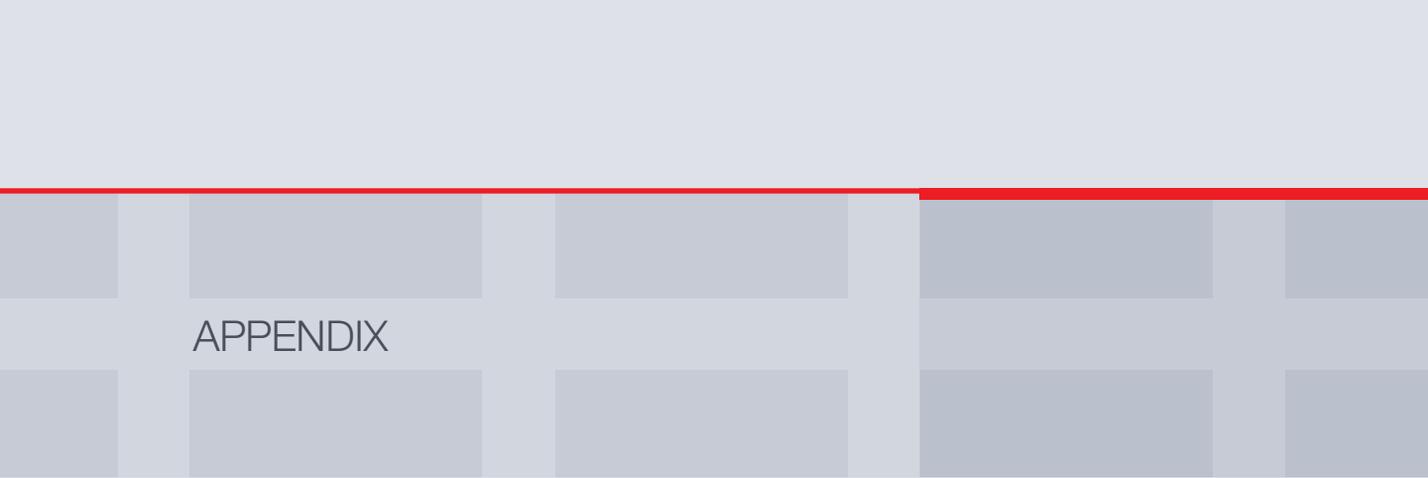
Number of complaints received	Complaints deemed unfounded upon reception	Results after examination				
		Complaints deemed unfounded after examination	Other complaints not warranting inquiry	Other	Complaints being processed	Complaints investigated
1,716	1,042	496	42	27	13	96

Results after inquiry				
Complaints deemed unfounded after inquiry	Complaints resulting in a reprimand	Complaints resulting in a recommendation to remove a judge	Other	Complaints under inquiry
35	45	4	11	1

These figures do not include complaints currently being processed, but in general, we can see that

- 94.4% of complaints were deemed unfounded at the examination stage
- 51.6% of the 96 complaints resulted in sanctions after inquiry
- With both stages combined,
  - 97% of complaints were deemed unfounded or did not warrant inquiries
  - 3% of complaints resulted in sanctions
- 35.8% of complaints required the collection of additional information
- 63.8% of complaints were ruled upon during the first Council meeting (i.e., at the examination stage)

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## APPENDIX

# APPENDIX 1

## JUDICIAL ETHICS

### 1 CODES OF JUDICIAL ETHICS

The term “judicial ethics” refers to the rules that govern the conduct of judges. We could simply define judicial ethics as a lens through which the conduct of judges is examined.

Two codes of ethics adopted by the Conseil de la magistrature have outlined the conduct expected of judges. They are the *Code of Ethics for Judges* and the *Code of Ethics for part-time Municipal Judges*<sup>1</sup>. The first applies to judges at the Court of Québec, Human Rights Tribunal, and Professions Tribunal, presiding justices of the peace, and judges at the municipal courts of Laval, Montréal, and Québec. The second specifically addresses part-time municipal judges.

The *Code of Ethics for Judges*, which applies to the greatest number of judges, contains 10 articles:

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 honor.
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.

The *Code of Ethics for part-time Municipal Judges* covers the same points. It contains similar provisions, which nonetheless take into account the fact that the judges in question perform their duties on a part-time basis.

The codes of ethics were drafted for an independent judiciary in that they do not dictate standards for judges, but establish general principles for their conduct. They are therefore a reference tool for judges.

The Québec codes have certain distinctive characteristics. They are less detailed than the code of ethics for provincially appointed judges in British Columbia (1994), for example, and do not take the same form as the Ethical Principles for Judges drafted by the Canadian Judicial Council for federally appointed judges (1998), or, on the international level, the Bangalore Principles of Judicial Conduct (2002).

In Québec, we will find neither a list of prohibited nor a list of permissible conduct in codes of ethics.

As the courts have indicated, they express values rather than setting precise rules of conduct.

<sup>1</sup>: The *Code of Ethics for Judges* and the *Code of Ethics for Part-Time Municipal Judges* can be consulted at the Appendix 2.

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Besides expressing values, the codes of ethics aim to preserve the public's trust in its judicial institutions.

These considerations mean that the Conseil and, as needed, an inquiry committee assess judicial conduct based on the general principles of these codes of ethics. They are therefore called on to spell out these principles the process of examining a complaint.

Judicial ethics play a remedial role with respect to the judiciary, not the judge affected by a sanction.

By recommending a judge be sanctioned, the inquiry committee plays an educational, preventive role, to prevent any further undermining of the judiciary's integrity.

Judicial ethics are unique for all these reasons. In this sense, they are not comparable to any other system of professional oversight.

## 2 THE COMPLAINTS PROCESS

Anyone may file a complaint against a judge. The complaint must be made in writing to the Secretary of the Conseil and 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, for comment as desired.

The complaint is reviewed by Conseil members at the meeting following its receipt. At this stage, the Conseil may assign one of its members to obtain additional information. For example, if the incident warranting the complaint took place during a hearing, the appointed person will be able to demand a complete copy of the file from the court, as well as a copy of the court recordings. The complainant and the judge are always informed of the Conseil's proceedings. Upon the completion of this stage, the assigned person reports to the Conseil.

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

In contrast, if the Conseil decides that the complaint warrants investigation, it forms a five-member inquiry committee from among its members. An inquiry committee may be made up of past and present Conseil members. However, it must include at least three current Conseil members, one of whom is appointed chair.

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

Thirty days before beginning the inquiry, the inquiry committee summons the judge in question and the complainant in writing. It also advises the Minister of Justice. The minister or the latter's representative may intervene during the inquiry.

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

The inquiry committee hears the parties, their lawyers, and their respective witnesses. It may summon any person qualified to testify about the facts. Witnesses may be examined and cross-examined by the parties.

The function of an inquiry committee is purely to conduct an investigation in search of the truth. Its primary goal is to ensure compliance with judicial ethics to preserve the integrity of the judiciary. The function of the inquiry committee is subject to public order.

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Depending on the nature of the complaint, the Conseil de la magistrature may suspend the judge for the duration of the inquiry. Such a suspension, which is not a sanction, is intended solely to protect the credibility of the justice system.

Once the inquiry is completed, the inquiry committee submits its report to the Conseil de la magistrature. The Conseil may not modify any of the report's content, in part or in full. It reviews the report and adopts its recommendations as its own.

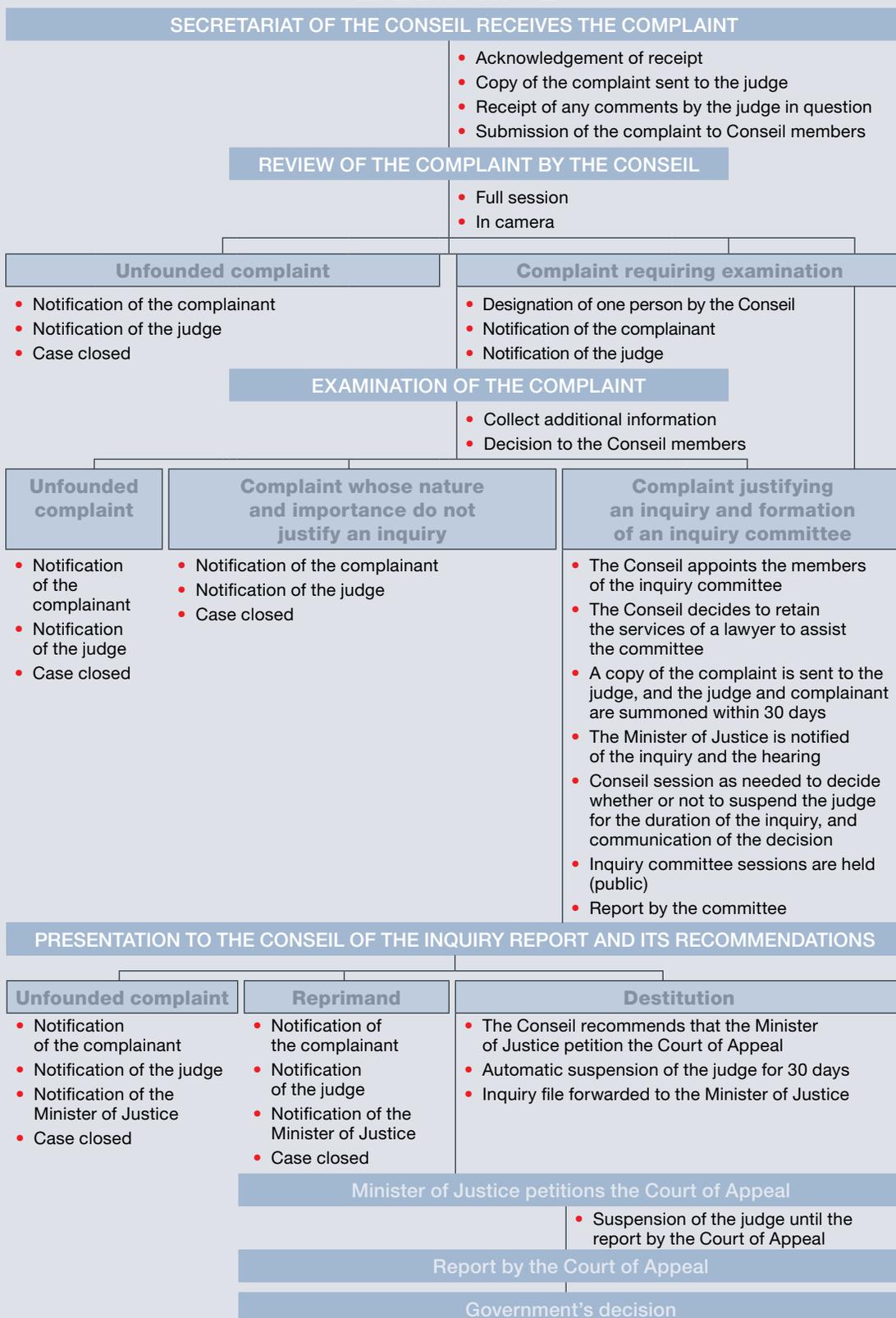
If the inquiry report concludes that the complaint is unfounded, the Conseil de la magistrature sends a legal opinion to the Minister of Justice, the judge concerned, and the complainant.

Moreover, if the inquiry report determines that the complaint is founded, the Conseil de la magistrature, following the recommendations of the report, reprimands the judge or recommends that the Minister of Justice and Attorney General petition the Court of Appeal to hold an inquiry. If the inquiry committee makes the latter recommendation, the Conseil de la magistrature suspends the judge for a period of 30 days.

Regarding the removal of judges, the Conseil de la magistrature only has the power of recommendation. If the Conseil were to conclude as a result of its inquiry that removal was necessary, it would advise the Minister of Justice and Attorney General, who would petition the Court of Appeal. At this point the judge would be automatically suspended from his or her positions until the Court of Appeal rules on the 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.

To clarify the entire process, the following diagram illustrates the steps in the handling of a complaint.

## COMPLAINTS PROCESS



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## 3 CONSEIL DECISIONS

This section summarizes all decisions by the Conseil at either the conclusion of the examination (when additional information has been collected) or the conclusion of the inquiry committee's work. In contrast, complaints that were immediately assessed as unfounded—that is, outside the purview of the Conseil de la magistrature—or that did not require additional information were not summarized.

### 3.1 EXAMINATION STAGE (COLLECTION OF ADDITIONAL INFORMATION)

The Conseil may request from any person such information as it may deem necessary, and examine the relevant record. Proceedings are conducted *in camera* during this stage. Playback of court recordings will usually provide sufficient insight for the Conseil to reach a conclusion. In our summary, names of judges and complainants have been omitted to ensure confidentiality of personal information.

#### Complaints Against Judges Assigned to the Small Claims Division of the Court of Québec

Most of the complaints received by the Conseil concern judges who are assigned to the Small Claims Division which, it should be noted, is governed by its own set of rules. For example, under the Québec Code of Civil Procedure, judges must provide the parties with summary explanations of the rules of evidence that must be followed and the procedures that they deem appropriate. In addition, judges are responsible for conducting oral examinations themselves and for providing all parties with fair and impartial assistance so as to apply the law and ensure that it is sanctioned.

As a result, judges are expected to intervene much more in such discussions, which may explain the greater number of complaints.

- A complainant accused a judge of not allowing him to reply to a second opinion, denouncing the defendant's testimony as being crazy, erroneous, and even coarse. He felt that the judge had been partial and aggressive.

Playback of the court audio recordings showed that the judge had conducted the proceedings in a very calm and collected manner. Playback also confirmed that at one point, the complainant thanked the judge for making him feel welcome. Both parties had had the opportunity to present all their arguments and, following the complainant's statement, the judge asked him at a timely moment whether he had anything to add.

Following the defendant's statement, the judge once again gave the complainant the opportunity to submit his comments. The complainant freely expressed his disagreement and said he was "stunned to hear such a statement and shocked to hear such fantasies being told under oath."

The hearing ended on this note without any altercation whatsoever and without any inappropriate comments uttered between the complainant and the judge.

The complainant was dissatisfied with the ruling but, as it is not up to Conseil de la magistrature to review judicial decisions because it is not a court of appeal, the complaint was unfounded.

- A complainant who was a defendant accused the judge presiding over his case of not disqualifying himself because his second home was located down the street from the complainant's.

The examination of the complaint helped determine that the complainant and the judge had never spoken to each other outside the courtroom. The judge had not recognized the complainant during his grievance hearing. He did not realize the complainant was a neighbor until he received a copy of the complaint.

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Nothing in the judge's conduct constituted a breach of ethics. The complaint was therefore considered unfounded.

- A complainant accused a judge of not allowing the use of English during the proceedings. As a result, he added that he was unable to present his evidence properly.

Playback of the court audio recordings showed that the judge speaks fluent English. The judge did not address the complainant in French at any time. The judge used either French or English depending on the language of the person he was addressing. The complainant never raised the question of language during the hearing. The judge directed the proceedings in accordance with the rules of the Small Claims Division.

The complainant was not satisfied with the judge's ruling, but the Council is not a court of appeal and does not review judicial decisions.

- A complainant accused a judge of having a very negative attitude toward her, contrary to his courteous attitude toward the defendant. She also accused him of being biased and showing partiality toward the defendant.

Playback of the court audio recordings provided no basis for the accusations made against the judge. Playback revealed instead that the judge behaved with great respect toward the complainant and her witnesses throughout the proceedings, as he did toward the defendant and her witness, and showed no bias. He spoke courteously and took the time to explain the rules of hearsay to the woman.

The complainant was dissatisfied with the ruling, but it is not the Council's responsibility to review judicial decisions; the complaint was therefore unfounded.

- A complainant accused a judge of a number of violations, notably of being rude to him (which harmed the integrity of his business), lacking impartiality, making personal comments on the way he awarded work, etc. The complainant requested to have the ruling dismissed and demanded the judge's resignation.

During the examination, it was discovered that the judge had presided over two hearings the same day in which the complainant was the complaining party concerning two different defendants.

In each case the judge rendered a written judgment dismissing the claim, concluding that the complainant had not proven his case. The judge ordered him to pay costs.

The examination of the conduct of the hearing led Conseil de la magistrature to conclude that the judge had not violated any provisions of the *Judicial Code of Ethics*.

Conseil de la magistrature is not a court of appeal and, as it cannot review decisions rendered by Small Claims Division judges, the complaint was unfounded.

- Among numerous accusations made against a judge, it appears that a series of things led a complainant and her witnesses to believe that they had not been treated fairly in court. Furthermore they felt the judge had rendered a decision that did not comply with the rule of law.

After listening to the playback of the court audio recordings, the Council noted that the time allotted to each party was dictated by the number of witnesses to be heard. The witnesses presented their version of the facts and the judge only interrupted the testimony of the complainant's daughter to ask a witness of the opposing party to stop laughing.

A number of items raised by the complainant were merely a dispute of the ruling. The complainant was dissatisfied with the decision rendered by the judge, but here also, it is not up to the Council to review judicial decisions. The complaint was therefore unfounded.

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- A complainant informed Conseil de la magistrature of the behavior of the judge presiding over his hearing. He alleged that the judge had shown partiality at a hearing concerning a dispute between him and a city. He added that at the beginning of the hearing, the judge took the floor to say that for him, “it was clear.” In his complaint, he specified that at that time, he got the feeling the judge had made up his mind about the decision he was going to hand down. He also indicated that he requested to present a witness and suddenly, the judge looked surprised and had no choice but to agree.

Playback of the court audio recordings indicated that the judge’s comments regarding both the complainant and the defendant were empathetic and bore no hint of partiality in any way whatsoever toward either party. The judge’s “it was clear” comment at the beginning of the hearing was made following a comment by the complainant, who had just indicated that he was not contesting the validity of the municipal by-law or the decision of the borough council.

Nothing made it possible to conclude that the judge hesitated in hearing the complainant’s witness. Playback indicated just the opposite, that the judge spontaneously agreed to the complainant’s request.

Conseil de la magistrature concluded that the complaint was unfounded.

- Some complainants criticized a judge’s behavior during their hearing. The judge did not allow them to present their version of the facts and did not fully assess the evidence. The complainants demanded a review of the decision rendered in this affair.

After the party plaintiff finished presenting its evidence, which the complainants could not refute, it was the judge’s belief that their defense was not valid. A judge may cut short the proceedings if he/she deems to have the elements required to render a decision. In this particular case the judge gave quick indication of this to the complainants.

In the Small Claims Division, the judge is master of court procedure. In exercising his discretionary power, the judge in this case acted quickly, giving the complainants little explanation about the fact that he did not need to hear them. In doing so, he sparked discontent with his management of the proceedings, which he could have avoided by hearing the claims of the complainants.

His conduct did not, however, constitute a breach of ethics. The complainants were dissatisfied with the decision rendered, but it is not up to Conseil de la magistrature to review judgments.

- A complainant alleged that a judge refused to hear him and uttered threats against him.

Playback of the court audio recordings clearly indicated that contrary to what he claimed, the complainant had had the opportunity to be heard and put forward his claims.

In the interest of fully serving an individual whose proficiency in French and Québec law was questionable, the judge proceeded very slowly and clearly to explain to the complainant the basis of his judgment, point by point.

After being cut off more than five times while he was pronouncing judgment, the judge raised his voice and warned the complainant of the possibility of calling in a courthouse constable.

As the alleged facts did not in any way constitute a breach of ethics, the Council concluded that the complaint was unfounded.

- A complainant accused a judge of showing partiality when he rejected the complainant’s claim for damages and granted the defendants’ claim in part.

Playback of the court audio recordings clearly indicated that the judge did not cut off the complainant in any way. On the contrary, he let the complainant express himself and asked questions to better understand the nature of the claim against the defendant. In addition, playback did not reveal any form of intimidation of the complainant; it indicated instead that the hearing was conducted properly and the parties and their witnesses were allowed to express themselves as fully as possible.

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The complainant was not satisfied with the decision rendered by the judge. However, no breach of ethics was found. The judge acted impartially and performed his duties properly. The Council therefore concluded that the complaint was unfounded.

- A complainant summarily accused a judge of being arrogant and racist, preventing him from speaking and constantly blaming him.

Playback of the court audio recordings helped determine that at the start of the hearing, the judge had informed the parties of the rules of evidence applicable to the matter at hand.

On a number of occasions, the judge patiently intervened to urge the complainant to keep to the facts on which his claim was based. During the second half of the hearing, the complainant became more animated during the proceedings. The more he shouted, the more the judge remained calm and collected.

The examination did not indicate any arrogant, racist, or rude language on the part of the judge toward the complainant, who was given every opportunity to express himself and present all his evidence.

Nothing in the judge's behavior constituted a breach of ethics. The Council concluded that the complaint was unfounded.

- A complainant alleged that a judge insulted her and showed partiality during a damages claim hearing over which he was presiding.

Because the complainant was deaf, the judge ensured that the conditions were ideal for the interpreters to perform their work. He did his best to be clear and concise so that the entire transcription of the proceedings could be done properly. The judge explained the applicable rules of the *Code of Civil Procedure* and allowed each party to explain its version of the facts.

Playback of the court audio recordings showed that the judge was respectful, impartial, patient, and extremely courteous to all parties.

The examination helped determine that the judge did not violate any provision of the *Judicial Code of Ethics*, but did show that the complainant was dissatisfied with the decision rendered by the judge. As it is not up to Conseil de la magistrature to review judicial judgments, the complaint was unfounded.

- Some complainants condemned a judge for his behavior during a hearing. They claimed that he did not allow them to fully explain their version of the facts before dismissing their claim.

However, playback of the court audio recordings revealed that during the testimony of the complainants, the judge was patient and courteous. He took the time to explain certain rules of law and procedure to them so that they could better conduct the presentation of their evidence.

Playback showed that the hearing was conducted in a framework that allowed each party to express and submit its claims in a calm atmosphere without any bias shown by the judge.

Throughout the testimony of the complainants, the defendants, and their witnesses, the judge was patient and courteous.

The judge did not breach any provision of the *Judicial Code of Ethics*. The complainants were not satisfied with the ruling, but as it is not up to Conseil de la magistrature to review judicial decisions, the complaint was unfounded.

- A complainant alleged that a judge had had an arrogant and biased attitude toward him during his appearance in court, and specified that he had lacked impartiality. The complainant requested that his case be heard by another judge because he believed the judge in question had not rendered justice in his case.

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Playback of the court audio recordings provided no evidence that might corroborate an arrogant or biased attitude on the part of the judge toward the complainant. All their exchanges were calm and the complainant was never interrupted or called a liar.

Issues regarding the presentation and assessment of evidence fall under the judge's discretionary power. The Council therefore determined that the complaint was unfounded.

- A 78-year-old complainant with a hearing problem accused a judge of mistreating him on the day of his hearing, being rude to him, and preventing him from finishing his questions. Furthermore he alleged that the judge had been biased toward the opposing party and unfair toward him. He stated that he had felt nervous, humiliated, and lost.

The judge intervened a number of times throughout the hearing and used a firm and sometimes authoritarian tone. Following a remark by the judge, who considered the complainant's questions repetitive, the complainant informed him of his hearing problem and asked him to be patient. The judge then took the time to ensure that he had fully understood the testimony just given. The judge never shouted.

The judge's remarks to the complainant about his legal training and the tone used were subject to sections 2 and 8 of the *Judicial Code of Ethics*. However, given the difficulties of managing these proceedings, the Council determined that the facts pertaining to this complaint were not of sufficient character or importance to justify the holding of an inquiry, in accordance with Section 267 of the *Courts of Justice Act*.

- A complainant accused a judge of treating her with contempt and using a disconcerting tone. She also alleged that the judge had been aggressive and arrogant. She specified that he had called her a liar and told her she was not credible.

Although the judge did not explain from the beginning the rules of evidence and procedure applicable to the Small Claims Division, he did provide explanations each time he refused to receive evidence.

Except for one incident where the judge clearly stated to the complainant that he did not believe her, he used a direct tone with the parties and witnesses and did not raise his voice. During this intervention, the judge could have been less sharp but, in the absence of evidence pertaining to the loss of income cited by the complainant, he was able to draw conclusions regarding her credibility and it was his privilege to do so.

A judge's decision about a party's credibility is not a compromise of ethical conduct. Conseil de la magistrature therefore concluded that the complaint was unfounded.

- A complainant alleged that during her hearing, the judge had lacked courtesy, calm, and impartiality. She claimed that the judge had not taken the time to assess her claim and had already made up his mind before even hearing her.

Playback of the court audio recordings showed that the judge was patient and courteous and the proceedings were conducted in a calm and impartial manner.

First the judge took time to understand the complainant's explanations, asked questions, and examined her documents. He paid particular attention to what she said and heard each witness, asking questions himself.

The judge provided the complainant with all required assistance and explained the reasons for his decision regarding the claim of the complainant's landlord and the complainant's counterclaim.

The examination of the facts led Conseil de la magistrature to conclude that no provisions of the *Judicial Code of Ethics* had been violated and that the complaint was unfounded.

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- **Complaints Against Judges Assigned to the Civil Division of the Court of Québec**

A complainant alleged many grievances against a judge, including his arrogance, homophobia, and partiality. He claimed, in particular, having been prevented from testifying and cross-examining the defendant at the most crucial point in the hearing. He also condemned the judge's conduct during the proceedings. He considered himself to be a victim of injustice and based on this fact, he requested that he be granted a new hearing or the right to appeal the judge's decision.

Playback of the court audio recordings showed that each party was able to submit its claims in a calm atmosphere without any suggestion of partiality whatsoever. After the defendant presented evidence, the judge gave the complainant an opportunity to present a rebuttal, which the complainant waived.

Because the parties were not represented by counsel, the judge had to intervene on numerous occasions to explain basic concepts of law to them. On at least three occasions, he explained to the complainant the essential elements he needed to prove to have his claim granted.

Throughout the hearing, the judge showed patience, courtesy, and respect toward each party, although he sometimes raised his voice after having to repeat the same instructions several times in a row.

Playback of the court audio recordings did not suggest that he had shown preference for one party over the other. It did not reveal any form of arrogance or intimidation toward the complainant, anything pertaining to the sexual orientation of the witness, or any comments by the judge regarding homosexuals.

The judge did not commit any breach of ethics. Although the complainant was disappointed with the judge's decision, the Council cannot amend it, order a new hearing, or grant the right to appeal the judge's ruling. The complaint was therefore unfounded.

### **Complaints Against Judges Assigned to the Youth Division of the Court of Québec**

- During the first hearing regarding the situation of her three children, a complainant accused the Youth Division judge who heard the case of accepting all the lies told by the Director of Youth Protection (DYP) and dismissing the evidence of her witnesses. She added that the judge had not been impartial because he had asked the DYP prosecutor's opinion, and she accused him of acting in concert with the DYP.

During the second hearing, she accused the judge of believing that her spouse was recording the court proceedings. The complainant added that the judge had not wanted to listen to her and her spouse and had refused to hear their evidence; they were not able to testify.

During the first hearing, the judge requested not only the DYP prosecutor's opinion, but also that of all the parties in the case. The mother concurred with the DYP's position through her counsel. The mother's counsel announced that she did not intend to have the grandmother testify in the case. Testimony from others during this hearing was out of the question.

With regard to the second hearing, playback of the court audio recordings indicated that the judge offered the father the opportunity to testify at the beginning of the hearing because he seemed to want to express himself. The father's counsel declined this offer.

The judge's attention was then drawn to the fact that the father had a voice recorder in front of him. The father stated that it contained recorded evidence, which his counsel confirmed; he added that he was not recording the proceedings. The judge immediately informed the father of the prevailing rules of confidentiality and added that he was not going to verify whether the recorder was on. The incident ended thusly.

The judge pronounced judgment at the end of the hearing. The father contested the decision and accused the judge of not listening to his evidence. The judge reminded him that he was represented by counsel, who had no doubt made an informed decision when he stated that he had no evidence to present.

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The judge was courteous, patient, and impartial at all times. He allowed all parties to assert their rights and did not prevent anyone from testifying.

As the judge did not violate any provisions of the *Judicial Code of Ethics*, the Council determined that the complaint was unfounded.

### Complaints Against Judges Assigned to the Criminal Division of the Court of Québec

- A complainant, who was the father of a son accused of assault, sexual assault, and violation of promises to appear, accused a judge of trying to intimidate his son on two occasions and showing partiality.

Playback of the court audio recordings showed that contrary to the complainant's allegations, the judge did not attempt to intimidate the accused at any time. In fact, the judge demonstrated objectivity, impartiality, and courtesy. Nothing led to conclude that the judge had breached any ethics.

The Council therefore determined that the complaint was unfounded.

- A complainant accused a judge of not being impartial toward him because he was an anglophone. He had waived a hearing in his language. In the complaint submitted to the Council, he described various incidents that, in his opinion, all tended to indicate that the judge was prejudiced against anglophones in general and him in particular.

The complaint was made as a result of the way the complainant perceived the judge's tone and actions. The judge was extremely patient with the parties and witnesses. He provided assistance to all witnesses and allowed both attorneys to perform their respective duties without undue interference.

The examination of the facts showed that the complainant was not satisfied with the judge's decision and had already filed an appeal. As the judge did not violate any rules in the *Judicial Code of Ethics*, the Council determined that the complaint was unfounded.

- A complainant alleged that while he was in a courthouse corridor with a friend, a judge called him a liar.

Because the event took place in a courthouse corridor, no audio recording was available. Information was gathered and helped determine that the complainant's version was not corroborated by any of the individuals who were present when the judge allegedly called him a liar.

Regarding the version of the second witness who was on the scene, the Council's examination revealed that he was adamant that the judge never said the words the complainant accused him of, at any time that day.

Under the circumstances, the Council concluded that the judge had not violated any measures of the *Judicial Code of Ethics* and determined that the complaint was unfounded.

- In a complaint concerning the conduct of a judge when he issued a warrant to search the complainant's residence, the complainant alleged that the judge falsified the "Search Warrant Request." She claimed that the judge, the prosecutor, and a police officer were in collusion.

Conseil de la magistrature cannot interfere in a judge's use of discretionary power when the judge decides to issue a search warrant. A clerical error may have been made on the copy of the police officer's documents, but not in the official documents. The allegations of fraud were not supported by the evidence.

In conclusion, the Council determined that the complaint was unfounded.

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## Complaints Against Judges Assigned to the Municipal Court

- A complainant accused a judge of behaving unacceptably during a hearing and disregarding all decorum.

In May 2009 a municipal judge was presiding over the hearings of a number of different cases. The hearing of the complainant's friend began at around 3 p.m. The judge courteously listened to the defendant's explanations, explaining to him the nature of the violation and its consequences. At the end of the defendant's testimony, the defendant explained to the judge that he had a witness, but the witness was not present because he was not available before 4 p.m. The judge therefore decided to suspend the hearing so that the defendant could go get his witness.

As there were a number of cases on the hearing list, the judge decided to continue sitting to hear other cases. At around 4:15 p.m., a few minutes before the defendant's hearing was about to resume, the judge made a comment on the composition of hearing lists.

The judge's comment referred to there being six to eight cases scheduled on the half-hour in the type of list he was presiding over and that this type of list should not include cases with witnesses. He specified that in the future, if the administration made the mistake of including hearings with witnesses when there were six to eight cases scheduled on the half-hour, he would refuse to hear cases with witnesses in this type of list.

The judge subsequently listened to the testimony and arguments of the parties before pronouncing judgment.

Playback of the court audio recordings confirmed that the judge had made a comment on the management of the Municipal Court's hearing lists. This comment was made in a proper tone, with no rude remarks. No accusation could be brought against the judge for the comment he made, which did not specifically target the complainant.

Throughout the hearing the judge was respectful toward the defendant, complainant, and prosecutor.

Conseil de la magistrature concluded that the complaint was unfounded.

- In a complaint against a municipal judge, the complainant condemned the judge's conduct during his trial hearing and pointed out a host of inappropriate behavior and interventions.

Playback of the court audio recordings helped determine that the judge assisted the complainant in reformulating certain questions and affirmations. In no case was the complainant denied the right to speak.

During the hearing, the judge was patient and occasionally tolerant of the complainant's procedural deviations due to his lack of experience. However, the judge remained firm in his conduct of the interrogations and discussions with the parties.

The examination of the facts helped determine that the judge had not violated any of the provisions of the *Judicial Code of Ethics*. Conseil de la magistrature concluded that the complaint was unfounded.

- A complainant filed a complaint on behalf of her father, who had appeared before the Municipal Court. She accused the judge of being extremely tactless toward her father—an elderly man with Parkinson's disease—before declaring him guilty of a traffic violation and imposing a fine.

Playback of the court audio recordings indicated that the accused spoke slowly, hesitating at times, with a few enunciation problems, and testified in a manner that could be interpreted as not always being perfectly coherent. After listening to him for a few minutes, the judge addressed him and provided reasons for finding him guilty of the violation. The judge spoke in a firm tone to explain the principles involved.

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When the judge dealt with the accused's inconsistencies between his testimony in court and the explanations he provided in writing during his not guilty plea, he addressed the accused in a very terse manner using an extra-firm tone and told him he was not credible and that he couldn't believe him in any way whatsoever.

Given the accused's frail physical condition, it would have been preferable for the judge to show compassion toward him and address him using a more conciliatory approach with toned-down language. It is unfortunate and regrettable that he did not do so.

Nevertheless the judge's comments did not constitute as such a breach of ethics of the dignity and honor that should guide a judge's conduct.

The complainant specified in her complaint that her father should not have had to pay this fine in addition to court costs. It is worth repeating here that Conseil de la magistrature cannot in any way hear an appeal of a decision rendered by a judge.

As the judge did not violate the *Judicial Code of Ethics*, the Council determined that the complaint was unfounded.

- A complainant accused a judge of inappropriate behavior during a hearing.

The judge handled the complainant's case in a perfectly legal manner with objectivity, impartiality, and courtesy. He took time to reread the violation of which the complainant was accused and explained to him the reasons for his decision to declare him guilty.

The Council found no breach of ethics whatsoever on the part of the judge, who rendered a decision within his authority. The complaint was therefore unfounded.

- A complainant accused a municipal judge of showing partiality during the hearing of his trial to contest a violation.

She indicated that the judge's behavior clearly showed that he knew the counsel of the opposing party quite well, which created the appearance of partiality. She added that she had expected to be heard and treated with respect and impartiality during the hearing.

The hearing lasted nearly 15 minutes and the judge let the complainant present all her evidence. He even called on her to ask her whether she had anything else to add. Furthermore, the judge conducted the proceedings with the same tone and respect toward both parties.

The fact that the judge did not rule in favor of the complainant does not constitute a breach of ethics. The complainant was not satisfied with the decision rendered but, as it is not up to Conseil de la magistrature to review judicial judgments, the complaint was unfounded.

- A complainant indicated that during a hearing, a municipal judge showed partiality and a certain familiarity with the prosecution witness. He added that the judge's behavior was inappropriate and disrespectful.

Playback of the court audio recordings revealed that the judge intervened only to clarify testimony or questions.

Contrary to what the complainant alleged, the judge did not show familiarity with the prosecution witness. He intervened, rather, to ask the witness to answer the questions during the complainant's meticulous cross-examination.

The complainant submitted all her claims during the hearing and the judge consistently acted in a calm and collected manner. At no time did he make any inappropriate or disrespectful comments.

As the alleged facts contained nothing suggesting a breach of ethics, Conseil de la magistrature determined that the complaint was unfounded.

- A complainant condemned a municipal judge's conduct during a hearing. She claimed that he had humiliated her, prevented her from speaking, and cut her off while she was trying to explain herself.

Playback of the court audio recordings helped determine that the judge did not violate any provisions of the *Judicial Code of Ethics*.

The judge conducted the hearing properly, but the complainant did not agree with the guilty verdict. The complainant demonstrated her dissatisfaction and objected to having to pay more to appeal the decision before the appropriate authority.

Conseil de la magistrature is not a court of appeal. It cannot review decisions that have been rendered. The Council therefore determined that the complaint was unfounded.

- A complainant accused a municipal judge of being aggressive toward him when he was addressing the court to provide explanations for the accusations brought against him with regard to a violation of the *Highway Safety Code*. He specifically accused the judge of raising his voice, cutting him off, and being in a bad mood. He added that he had had no opportunity to defend himself given the aggressive, obstinate, cantankerous, and unfair behavior of the judge.

This short, 15 minute hearing, during which the complainant was able to speak freely, was conducted properly. Playback of the court audio recordings showed that the judge's remarks were direct and to the point. The hearing was managed in a firm manner without, however, any indication of partiality.

The judge's behavior, as alleged in the complaint, did not seem either unfair or aggressive, although his tone could have been less sharp.

The complainant was obviously dissatisfied with having been found guilty and consequently ordered to pay a fine and costs.

As this was a matter of weighing the evidence coming under the jurisdiction of the judge's discretionary power, the Council was not able to intervene as there was no breach of the *Code of Ethics for Part-Time Municipal Judges*. Conseil de la magistrature is not a court of appeal and therefore cannot review decisions that have been rendered. The complaint was therefore unfounded.

### **3.2 INQUIRY STAGE (FORMATION OF AN INQUIRY COMMITTEE)**

After examining a complaint, the Council may decide to make an inquiry. To conduct an inquiry, the Council forms a five-person committee, summons the complainant and judge concerned, and notifies the Minister of Justice. It hears the parties, their attorneys, and their witnesses in hearings that are open to the public. Three inquiries were held in 2009-2010.

- On March 17, 2008, Ms. Danielle Michaud filed a complaint with Conseil de la magistrature against Judge Antonio De Michele, sitting in the Civil Division's Small Claims Division.

Ms. Michaud was the mother of the plaintiff. She accused the judge of publicly insulting her daughter. According to her, Judge De Michele used unacceptable language with her daughter and intimidated and humiliated her. She specified that he was obnoxious from the beginning to the end of the proceeding, severely criticizing her daughter for things that had nothing to do with the case, such as her demeanor, language, respect, politeness, grammatical and legal shortcomings, etc.

At its meeting on March 25, 2008, the Council appointed one of its members to gather additional information. During the examination it was determined that the language and attitude of Judge De Michele during the plaintiff's testimony could have created the impression that he was partial and discourteous (sections 5 and 8 of the *Judicial Code of Ethics*).

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On August 27, 2008, the Council decided to conduct an inquiry following the examination, and formed an inquiry committee.

Together with the attorneys, the committee took cognizance of the evidence (including the official transcript of the proceedings) and listened to the audio recording. The committee heard Ms. Michaud, the plaintiff, and the judge.

During her testimony, Ms. Michaud said that the day of the proceeding, the atmosphere in the courtroom was tense. She said the hearing was tedious, because she had the impression the judge wasn't interested in the case. In 20 pages of transcript, she noticed that the plaintiff had been interrupted 30 times.

The plaintiff indicated during her testimony that at the beginning of the proceedings, she had the impression that the judge wanted to educate her. She had the impression it was she who was on trial, rather than her claim. She said she noticed that the judge had a completely different attitude toward the defendant. She stressed that when she called the defendant by his first name during her testimony, the judge interrupted to remind her that she should use his last name, but he never interrupted the defendant when the latter called the plaintiff by her first name. She said that after the first few minutes of the hearing, she got the feeling that he was angry with her, based on his statements about her posture, her mouth muscles, the words she used, and her bad French.

When called to testify before the Inquiry Committee, Judge De Michele explained his behavior by the fact that on the morning of the case, he had the flu and had taken some medication. He added that given his condition, he should not have sat.

He said that he was surprised when he heard himself on the recording. He was surprised at his tone and acknowledged that he was rather severe in his search for the truth. He said that if had to do it over, he would not use the same tone. He also recognized that one sentence in his written judgment, submitted the day following the hearing, reveals his frustration and his condition: "Nevertheless, the plaintiff, unfortunately for her, has no knowledge whatsoever of the basics of business law."

At the hearing before the Committee, Judge De Michele apologized to Ms. Michaud and the plaintiff.

The Committee submitted that Section 977 of the *Code of Civil Procedure* acknowledges that Small Claims Division judges have the power to interrupt discussions under certain circumstances. However, they cannot overstep certain limits and must demonstrate restraint in their comments. Judges may intervene to clarify evidence and ensure that the rule of law and decorum are respected.

The judge criticized the quality of the plaintiff's language, posture, education, lack of organization, and lack of knowledge about business law. These remarks were contrary to the integrity, dignity, honor, impartiality, courtesy, and serenity provided for in sections 2, 5, and 8 in the *Judicial Code of Ethics*.

The Inquiry Committee noted that Judge De Michele had never been sanctioned by Conseil de la magistrature and took into account the fact that he had apologized to the complainant and her daughter.

It considered the tone used by the judge toward the plaintiff, the number of interventions regarding her person and education, and the different treatment of the plaintiff when she referred to the other party.

The Committee also noted the impact this behavior had on the complainant and the plaintiff. The complainant felt that the atmosphere at the trial was not one of serenity or impartiality and that the plaintiff felt personally attacked and humiliated. The Committee considered that the remarks of a personal nature and the tone used during the hearing could undermine public confidence in the justice system and contravened the integrity, honor, and dignity of the judiciary.

Conseil de la magistrature therefore reprimanded Judge Antonio De Michele on April 29, 2009.

- Part time municipal judges are attorneys and continue to practice as such. These judges are remunerated per sitting and remain entitled to practice as attorneys, except before any municipal court or the Court of Québec (sections 37 and 45.1 of the *Act respecting municipal courts*).

Because of this special situation, judges who continue to practice as attorneys must use extreme caution.

On October 1, 2008, Conseil de la magistrature received a complaint from Mr. Adnan Dany Saba regarding Judge Richard Alary, a part time judge at the City of Longueuil Municipal Court. He accused the judge of using a Municipal Court phone line to contact him to discuss a case as an attorney for a client.

The facts showed that in a dispute against his sister, Mr. Saba sent the judge a formal demand. Mr. Alary was representing Mr. Saba's sister on a *pro bono* basis. On September 21, 2008, the complainant received a phone call. The caller identified himself as his sister's attorney and spoke to him about the formal demand. When he answered the phone, the complainant noticed the name "Richard Alary" on the call display followed by a phone number. Mr. Saba investigated by calling the number displayed and discovered that it was the City of Longueuil's phone number. After further investigation, Mr. Saba learned that Mr. Alary was a judge at the City of Longueuil Municipal Court.

After examining the complaint, the Council set up an inquiry committee on November 19, 2008.

When the Committee started its work on June 11, 2009, it was informed that the judge against whom the complaint was filed was no longer practicing as a judge, following his resignation effective June 8, 2009.

The committee wondered whether the judge, when practicing as an attorney, had engaged in an activity incompatible with his duties as municipal judge, in violation of Section 7 of the *Code of Ethics for Part-Time Municipal Judges*, and whether he had used his position as municipal judge to exercise undue influence on the complainant, thus contravening Section 9 of this code.

Before the committee, the judge claimed he had always separated his activities as an attorney from his duties as judge. He was familiar with the rule to the effect that he could not use his judge's office and the material within it to practice as an attorney. The judge explained that he had made a phone call from his municipal judge's office because the deadline for responding to the formal demand was going to expire shortly if it had not already done so. The judge had forgotten his cellphone in his car. He was unaware that his name and the City of Longueuil's phone number appeared on the complainant's call display. This situation resulted from a communications computer failure. The call display normally indicated "private number" when he called from his judge's office.

These exceptional circumstances led to the complainant's confusion. Judge Alary acknowledged that he should not have used the phone in his judge's office for his work as an attorney. He hastened to clear up the complainant's confusion as soon as he was told about it. He never tried to intimidate the complainant.

The Inquiry Committee was of the opinion that the acts the judge had been accused of were of an irregular nature, exacerbated by the technological breakdown of the phone in his judge's office. A reasonable person well informed of the facts of this matter could not conclude that there had been incompatibility in this case between the judge's duties and his profession as attorney, or that the integrity and independence of the judiciary had been compromised.

For these reasons the Council declared that this complaint was unfounded.

- In a letter addressed to Conseil de la magistrature du Québec on March 13, 2009, the Honorable Gilles Charest, the Associate Chief Justice of the Court of Québec responsible for municipal courts, condemned the conduct of municipal judge Richard Alary, a part time judge at the City of Longueuil Municipal Court. Judge Charest accused him of having obtained signed forms from City of Longueuil officials that would have unduly provided Judge Alary with tax benefits.

Judge Alary, through his accountant, had presented the City of Longueuil treasurer with forms completed in advance by the accountant, to be signed by the treasurer to attest to the accuracy of the information contained in said forms, for the purposes of preparing Judge Alary's tax return for the 2007 tax year.

Upon the treasurer's refusal to sign these forms, Judge Alary sent a personal letter to the treasurer reiterating his request for an attestation of his "general employment conditions" and asking for a meeting with him.

After being informed of the situation, the complainant contacted the city clerk to verify certain information, particularly whether the same types of forms had been sent to the city in the years prior to the 2007 tax year, and if so, whether they had been signed. The clerk confirmed that the same types of forms had been sent to Judge Alary's accountant for the 2006 tax year after having been inadvertently signed by a city official.

On February 23 Judge Charest, as the Associate Chief Justice of the Court of Québec responsible for municipal courts, met with municipal judge Alary. On this occasion the municipal judge admitted that the forms had been prepared by his accountant in advance and the use of said forms had provided him with a tax benefit.

On March 18, 2009, after examining the complaint, Conseil de la magistrature decided to conduct an inquiry and set up an inquiry committee. Given the seriousness of the offence, Judge Alary was exceptionally suspended for the duration of the inquiry.

On April 22, 2009, Judge Richard Alary informed the Minister of Justice that he was retiring as part time municipal judge as of June 8.

On June 18, 2009, the hearing began. The discussion dealt exclusively with the Inquiry Committee's jurisdiction over a retired judge. After deliberating the issue, the committee decided that it had jurisdiction over both the subject matter and the individual named in the complaint.

According to the committee, municipal judge Alary's attitude of trivialization, lack of consideration, and smugness toward municipal administrators had to be condemned. The explanations he provided in this regard made it seem as though his duties were a burden, an attitude far removed from the one of dignity one expects from a judge. According to Judge Alary, after reaching the maximum amount of professional fees set by law, he had performed volunteer work by continuing to sit, as he was not permitted further remuneration. He had used improper comments to exert influence on the municipal director and treasurer for personal gain.

Certain comments also contravened the judge's appearance of impartiality, particularly when he boasted about having afforded the city substantial savings. Furthermore, under the terms of the *Act respecting municipal courts* and the decrees adopted under this act, it is clear that regardless of where they practice, part time municipal judges must be provided with the physical organization required by law and receive remuneration (also determined by law), which was the case.

Members of the judiciary are not authorized to negotiate personal benefits for themselves that are not established in law, except via a process whereby an independent body is assigned to adjust the remuneration levels of judges. The judge's conduct contravened sections 2, 4, 5, and 9 of the *Code of Ethics for Part-Time Municipal Judges*.

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In light of the facts, the Committee felt that any well-informed member of the public could not have anything but a negative perception leading to a loss of confidence in this judge or, if the judge continued to perform his duties, in the entire judiciary. The penalty had to be proportionate to the seriousness of the violations, which were of such magnitude that they hindered the judge's ability to perform his duties.

If Judge Alary had not retired, his dismissal would have been recommended.

Any reprimand would have been in theory only, given that Judge Alary was no longer performing his duties. In light of this, his retirement constituted a circumstance that had to be taken into consideration. The Committee noted, however, that the public nature of the decision would benefit the entire judiciary if the decision were dissociated from conduct condemned by the entire judiciary.

## APPENDIX 2

### CODES OF ETHICS

#### 1. CODE OF ETHICS FOR 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 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.

#### 2. 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.

# APPENDIX 3

## EXCERPTS FROM THE *COURTS OF JUSTICE ACT* (R.S.Q., C. T-16)

### 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.
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- 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.
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- 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.

<b>Term of office.</b>	<p>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.</p> <hr/> <p>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.</p>
<b>Remuneration and expenses.</b>	<p><b>250.</b> 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.</p>
<b>Indemnity.</b>	<p>The judges are entitled to the indemnity provided for in section 119.</p> <hr/> <p>1978, c. 19, s. 33; 1988, c. 21, s. 55.</p>
<b>Quorum.</b>	<p><b>251.</b> Eight members of the council, including the chairman or vice-chairman, are a quorum.</p> <hr/> <p>1978, c. 19, s. 33; 1986, c. 48, s. 5.</p>
<b>Meetings.</b>	<p><b>252.</b> The council meets as often as necessary, when convened by the chairman.</p>
<b>Sittings in camera.</b>	<p>It may sit in camera and hold its sittings at any place in Québec.</p>
<b>Head office.</b>	<p>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.</p> <hr/> <p>1978, c. 19, s. 33; 1996, c. 2, s. 985.</p>
<b>Internal management.</b>	<p><b>253.</b> The council may make bylaws for its internal management or to establish committees and determine their functions.</p> <hr/> <p>1978, c. 19, a. 33.</p>
<b>Minutes.</b>	<p><b>254.</b> 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.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Secretary.</b>	<p><b>255.</b> 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.</p>

<b>Leave.</b>	<p>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.</p> <hr/> <p>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.</p>
<b>Functions.</b>	<p><b>255.1.</b> The secretary of the council shall exercise the functions of the secretary on an exclusive basis, under the authority of the chairman.</p>
<b>Oath.</b>	<p>The secretary shall, before taking office, make the oath set out in Schedule III, before the chief judge of the Court of Québec.</p> <hr/> <p>1989, c. 45, s. 7; 1997, c. 76, s. 2; 1999, c. 40, s. 324.</p>
<b>Expiry of term.</b>	<p><b>255.2.</b> At the expiry of the five-year term of office, the secretary shall remain in office until replaced or re-appointed.</p> <hr/> <p>1989, c. 45, s. 7; 1997, c. 76, s. 2.</p>
<b>Appointment.</b>	<p><b>255.3.</b> 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).</p> <hr/> <p>1989, c. 45, s. 7; 1997, c. 76, s. 2; 2000, c. 8, s. 242.</p>

## **DIVISION II**

### **FUNCTIONS OF THE COUNCIL**

<b>Functions.</b>	<p><b>256.</b> The functions of the council are:</p> <ul style="list-style-type: none"> <li>a) to organize, in accordance with Chapter II of this Part, refresher programmes for judges;</li> <li>b) to adopt, in accordance with Chapter III of this Part, a judicial code of ethics;</li> <li>c) to receive and examine any complaint lodged against a judge to whom Chapter III of this Part applies;</li> <li>d) to promote the efficiency and uniformization of procedure before the courts;</li> <li>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;</li> <li>f) to cooperate, in accordance with the law, with any body pursuing similar purposes outside Québec, and</li> <li>g) to hear and decide appeals under section 112.</li> </ul> <hr/> <p>1978, c. 19, s. 33; 1988, c. 21, s. 56.</p>
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## 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.
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- 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.
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- 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.
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- 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.
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- 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.

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**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 therefore.  
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 or solemn declaration.** 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.	<p>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.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1991, c. 70, s. 5.</p>
Presiding justice of the peace.	<p>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.</p>
Oath.	<p>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.</p>
Indemnity.	<p>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.</p> <hr style="width: 20%; margin-left: 0;"/> <p>2004, c. 12, s. 14.</p>
Meetings.	<p>270. The committee meets as often as necessary, when convened by its chairman.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1978, c. 19, s. 33.</p>
Copy of complaint, or request.	<p>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.</p>
Calling by committee.	<p>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.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1978, c. 19, s. 33; 1988, c. 21, s. 61; 1990, c. 44, s. 24, 2004, c. 12, s. 15.</p>
Hearing.	<p>272. The committee hears the parties, their attorneys and their witnesses.</p>
Facts and testimonies.	<p>It may inquire into the relevant facts and call any person apt to testify on such facts.</p>
Examination.	<p>The witnesses may be examined or cross-examined by the parties.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1978, c.19, s. 33.</p>
Powers and immunity.	<p>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.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1978, c. 19, s. 33; 1992, c. 61, s. 621.</p>

<b>Prohibition.</b>	<p><b>273.1.</b> An advocate who is a judge of a Municipal Court may not act as a prosecutor for the application of this chapter.</p> <hr/> <p>1980, c. 11, s. 100.</p>
<b>Recusation of a member of the committee.</b>	<p><b>274.</b> 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).</p>
<b>Obligation to declare.</b>	<p>Furthermore, a member of the committee who is aware of a ground of recusation to which he is liable is bound to declare it.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Rules of procedure or practice.</b>	<p><b>275.</b> The committee may make rules of procedure or rules of practice for the conduct of an inquiry.</p>
<b>Orders of procedure.</b>	<p>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.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Suspension of a judge.</b>	<p><b>276.</b> The council may suspend a judge for the duration of an inquiry on him.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Report of inquiry and recommendations.</b>	<p><b>277.</b> 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.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Complaint not justified.</b>	<p><b>278.</b> 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.</p> <hr/> <p>1978, c. 19, s. 33.</p>
<b>Complaint justified.</b>	<p><b>279.</b> If the report of the inquiry establishes that the complaint is justified, the council, according to the recommendations of the report of the inquiry,</p> <ul style="list-style-type: none"> <li>a) reprimands the judge; or</li> <li>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.</li> </ul>
<b>Suspension.</b>	<p>If it makes the recommendation provided for in paragraph b, the council suspends the judge for a period of thirty days.</p> <hr/> <p>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.</p>

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.

## OTHER DISPOSITIONS FROM THE COURTS OF JUSTICE ACT

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.

<b>Disability.</b>	<b>168.</b> 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.
<b>Resumption of duties.</b>	If the justice of the peace recovers, the Government may permit him or her to resume duties.
<b>Inquiry.</b>	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. <hr/> R. S. 1964, c. 20, s. 178; 1992, c. 61, s. 617; 2004, c. 12, s. 1.
<b>Removal.</b>	<b>95.</b> 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. <hr/> R. S. 1964, c. 20, s. 86; 1988, c. 21, s. 30.
<b>Dismissal.</b>	<b>167.</b> The Government may dismiss a presiding justice of the peace only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice. <hr/> R.S. 1964, c. 20, s. 177; S.Q. 1992, c. 61, s. 617; S.Q. 2004, c. 12, s. 1.
<b>Modification to a notice of appointment.</b>	<b>108.</b> 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. <hr/> 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.
<b>Assignment to another division.</b>	<b>111.</b> 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. <hr/> 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.

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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.

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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.

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

# APPENDIX 4

## 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 5

## INTERNAL BYLAWS OF THE CONSEIL DE LA MAGISTRATURE

### **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.

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#### **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 6

# DESCRIPTION OF THE COURTS AND TRIBUNALS WHOSE JUDGES ARE UNDER COUNCIL JURISDICTION

### **COURT OF QUÉBEC**

Although the *Courts of Justice Act* stipulates that the Court of Québec is to number no more than 270 judges, there were 295 judges on the bench as at March 31, 2010, including 33 deputy judges chosen from among retired judges. They have been authorized by the government to continue exercising, for a set period, the judicial duties assigned to them by the chief judge.

The administration of the Court is entrusted to the chief judge, the senior associate chief judge, and the four associate chief judges: one for the Civil Division, one for the Criminal and Penal Division, one for the Youth Division, and another who is responsible for municipal courts. In addition, the chief judge designates from among the judges of the Court and with the approval of the government, 10 coordinating judges to assist him or her in the various regions, and, when circumstances warrant, a maximum of eight associate coordinating judges.

#### **Civil Division**

The judges who sit in the Civil Division hear cases where the amount involved in the litigation is less than \$70,000, except with respect to 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 the 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*.

In administrative matters, the Civil Division also has jurisdiction to hear appeals of decisions rendered by various administrative tribunals, such as Commission d'accès à l'information, Régie du logement, the Administrative Tribunal of Québec, Comité de déontologie policière du Québec, and ethics committees established under the *Act respecting the distribution of financial products and services* and the *Real Estate Brokerage Act*. This appeal jurisdiction also applies to certain decisions rendered by the Québec Minister of Revenue with respect to provincial taxation. Since May 2007, this jurisdiction has been exercised by 30 judges appointed to a new division known as the Administrative and Appeal Division. The judges are from all regions and act in this capacity under the responsibility of a judge responsible for the court.

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## Small Claims Division

When sitting in the Small Claims Division of the Civil Division, judges hear any claims not exceeding \$7,000 submitted by individuals or by companies or associations that, 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 rescinding, termination, or cancellation of a contract when neither the value of the contract nor the amount claimed exceeds \$7,000. Judgments cannot be appealed.

Procedure in the Small Claims Division is simple and informal. The claimant cannot be represented by a lawyer, unless authorized to do so because of the complexity of the case. It is the judge who directs debate, examines the witnesses, and hears the parties.

Unfamiliarity with this aspect of the proceedings on the part of claimants sometimes leads to perceptions of favoritism, leading the other party to file a complaint with the Council for breach of the *Judicial Code of Ethics*.

## Youth Division

The *Courts of Justice Act* establishes the jurisdiction of the Court's judges with respect to youth matters.

The judges therefore have the authority to exercise the powers and functions of the youth court, in accordance with the *Youth Criminal Justice Act*. In this regard, the judges preside over trials of 12- to 18-year-olds accused of an offence upon committing a violation of the *Criminal Code* or a federal or provincial criminal or penal statute.

The judges also have jurisdiction over proceedings initiated under the *Code of Penal Procedure*, with regard to offences relating to public welfare committed by defendants between 14 and 18 years of age. The Court judges have exclusive jurisdiction when the accused adolescent is not able to be released or if he or she was placed in the custody of the director of youth protection, if the adolescent so requests, or if it is in his or her interest to do so. In certain circumstances, the judges also preside over the preliminary inquiry.

Moreover, the judges have jurisdiction over youth protection, pursuant to the *Youth Protection Act*. These judges therefore hear cases concerning children whose safety or development is—or may be declared to be—at risk. Once the risk situation has been established to the Court's satisfaction, the judge orders one or more protection measures to be carried out, as provided for in the *Youth Protection Act*, in order to put a stop to this situation.

The judges also hear all cases of adoption, including those involving international adoption.

## Criminal & Penal Division

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

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

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## Presiding Justices of the Peace

As at March 31, 2010, there were 33 presiding justices of the peace throughout Québec.

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.

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

Lastly, these judges also grant certain authorizations in matters of youth protection.

## Professions Tribunal

As at March 31, 2010, the Professions Tribunal consisted of 11 Court of Québec judges designated by the chief judge, including a chair and a vice chair. With the exception of the chair, these judges perform their duties concurrently with those of the Court of Québec.

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

## HUMAN RIGHTS TRIBUNAL

The Human Rights Tribunal is a specialized judicial tribunal independent from the Court of Québec. It is made up of at least seven members, including the president and the assessors, named by the government. After the chief judge of the Court of Québec is consulted, the president is chosen from among the judges of this court who possess considerable experience, expertise, sensitivity and interest with respect to human rights and freedoms. The other members of the Tribunal are also chosen on the basis of these criteria.

As at March 31, 2010, not including the president, the Tribunal was composed of two judges and seven assessors selected according to a procedure established by government regulation. The two judges perform their duties concurrently with those of the Court of Québec.

Under the Québec *Charter of Human Rights and Freedoms*, the Tribunal is competent to hear cases involving discrimination and harassment based on one of the grounds prohibited by section 10 of the Charter, namely, race, gender, a handicap or the use of means to offset the handicap, sexual orientation, religion, etc. The Tribunal may also hear cases involving the exploitation of elderly or handicapped individuals and cases involving affirmative action programs.

Commission des droits de la personne et des droits de la jeunesse may bring a suit before this Tribunal on behalf of a victim of discrimination, harassment or exploitation. It thus acts upon request for the benefit of the complainant, whom it represents before the Tribunal. If the Commission decides not to bring the matter before the Tribunal despite evidence sufficient to do so, the complainant may himself or herself, at his or her own costs, bring a suit before the Tribunal.

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## MUNICIPAL COURTS

Municipal courts and their judges come under the authority of the associate chief judge of the Court of Québec, who is responsible for municipal courts. Under the authority of the chief judge of the Court of Québec, this judge performs the functions of the chief judge with respect to municipal courts.

There are 85 municipal courts in Québec serving approximately 90% of the population. These courts are governed by the *Act respecting municipal courts*.

Each municipal court is composed of at least one judge. The government may appoint several judges to the same court to ensure that it functions properly.

When the court is composed of a number of judges, the government designates, from among them, the judge 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 Laval, Montréal and Québec City, the government appoints, from among them, a president judge when it considers that this is warranted by the volume of judicial work. It may also appoint an associate president judge to assist the president judge in performing his or her tasks.

As at March 31, 2010, in addition to the associate chief judge, these courts were composed of 83 judges, including one president judge in the municipal courts of Laval, Montréal, and Québec City, one associate president judge in the Montréal municipal court, and one judge responsible for the Gatineau and Longueuil municipal courts.

In penal matters, municipal courts have jurisdiction notably with regard to ruling on statutory violations of municipal by-laws and hearing cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code*, and various provincial and federal laws. These courts also exercise, in certain cases—i.e., when an agreement to this effect has been reached with the Minister of Justice and Attorney General—their jurisdiction in accordance with Part XXVII of the *Criminal Code* concerning summary convictions.

In civil matters, municipal courts have jurisdiction notably over tax collection, permits and licenses, as well as actions involving an amount less than \$30,000 related to the leasing by a municipality of movables and immovables, other than residential property.

## APPENDIX 7

# MEMBERS AND STAFF OF THE CONSEIL DE LA MAGISTRATURE AS AT MARCH 31, 2010

### **MEMBERS OF THE CONSEIL DE LA MAGISTRATURE;**

Honourable Elizabeth Corte, President, Chief Judge of the Court of Québec\*

Honourable Mario Tremblay, Vice President, Senior Associate Chief Judge of the Court of Québec\*

Honourable Claude C. Boulanger, Associate Chief Judge of the Court of Québec

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

Honourable André Perreault, Associate Chief Judge of the Court of Québec, responsible for municipal courts

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

Honourable Louise Provost, President of the Professions Tribunal

Honorable François Beaudoin, Judge of the Court of Québec\*

Honorable Daniel Lavoie, Judge of the Court of Québec

Honorable Sophie Beauchemin, municipal Judge\*

Mrs Odette Jobin-Laberge, Lawyer - Lavery, de Billy\*

Mr. Claude Rochon, Lawyer - Stein, Monast

Mr. Cyriaque Sumu, Consultant

Mr. Robert L. Véronneau, Consultant

### **PERSONNEL**

Mr. André Ouimet, Lawyer, Secretary of the Council

Mrs Michelle Blanchet, Secretary

Mrs Dominique Bouchard, Administrative Assistant

Mrs Liliane Gouge, Desk Officer

Mrs Rachelle Matteau-Désilets, Para-Legal

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\* These people are also members of the Executive Committee.

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300, boulevard Jean-Lesage, Suite RC-01  
Québec City, Québec G1K 8K6

Telephone: 418 644-2196  
Fax: 418 528-1581

Email: [information@cm.gouv.qc.ca](mailto:information@cm.gouv.qc.ca)

Web: [www.conseildelamagistrature.qc.ca](http://www.conseildelamagistrature.qc.ca)

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## TRIBUTE TO THE HONOURABLE GUY GAGNON

CHAIR OF THE CONSEIL  
DE LA MAGISTRATURE  
DU QUÉBEC  
2003 - 2009

Judge Gagnon brought his exuberant energy to the Conseil de la magistrature, lending a new vitality to an institution recognized here and abroad.

Under his exceptionally professional leadership, the Council became a vibrant, modern institution that is better understood by the judiciary and the citizenry.

With his vision and his ability to communicate and bring people together, he helped build the Council and increase public trust in judicial institutions.

## VISIONARY

Recognizing that the future lay in information technology, Judge Gagnon led the Council into the digital age with a website and intranet that became invaluable tools for Québec judges.

Part of his legacy is the Council's intranet, called Intramagis. It has become an invaluable and innovative tool providing all judges under the Council's jurisdiction with fast, easy access to databanks, books, articles, research notes, and all other types of legal documents.

Under his leadership the Council went even further in its technological evolution, striving to become a "paperless Council." Members now enjoy safe online access to all the Council's files from any computer!

## COMMUNICATOR

His contribution to reaching the public and promoting the Council role and mandate included the adoption of new colors for the Council and redesigning its image. He also oversaw the creation of a new, dynamic, and interactive website that provides a host of information on the Council's activities.

During the same period, the Council also contributed to the publication of an annotated code entitled Applied Judicial Ethics. Judge Gagnon supported and wrote a preface for this work by Professor Noreau, which describes the 1,500 decisions rendered by the Council. This was yet another milestone.

## BRIDGE BUILDER

The information highway features a multitude of lanes. Through a partnership with the Université de Montréal's Centre de recherche en droit public, a website was created to provide experts and the general public with information on judicial ethics from around the world. Today, this ever-evolving website reaches visitors from all the four corners of the earth.

The virtual world does have its limits, however. In 2008, the year-long celebrations marking the 400th anniversary of Québec City offered an opportunity to recognize the contribution of judicial institutions to the city's development. A committee was therefore created to organize a conference that, for the first time, brought together judges from across Canada and from all jurisdictions as well as American and European judges.

## CONCLUSION

Judge Gagnon had a tremendous respect for institutions and individuals.

The Conseil de la magistrature recognizes his contribution and pays tribute to his time as chair by naming the conference hall at its headquarters "Guy Gagnon Hall" in his honor.

CONSEIL  
DE LA



MAGISTRATURE  
DU QUÉBEC

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