INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL
CONCERNING THE CONDUCT OF THE HONOURABLE MICHEL GIROUARD,
SUPERIOR COURT JUDGE

CJC File: 16-0179

REPRESENTATIONS OF COUNSEL FOR THE INQUIRY COMMITTEE

JUNE 9, 2017

M^{e} Marc-André Gravel
Gravel Bernier Vaillancourt
Place Iberville Trois
2960 Laurier Blvd., Suite 500
Québec, Quebec G1V 4S1
magravel@gbvavocats.com
Telephone: 418-656-1313
Fax: 418-652-1844

CANADA

PROVINCE OF QUEBEC

CJC File: 16-0179

INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL

INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL CONCERNING THE CONDUCT OF THE HONOURABLE MICHEL GIROUARD, SUPERIOR COURT JUDGE

REPRESENTATIONS OF COUNSEL FOR THE INQUIRY COMMITTEE
June 9, 2017

I) Preamble

1. As this Inquiry Committee rightly pointed out in its closing remarks, we are presented here with a unique case that has no actual precedent in Canadian law.

2. A judge is facing disciplinary action for having misled or having attempted to mislead a committee of his peers established to lead an inquiry into his conduct. This is an exceptional circumstance. Admittedly, the rare nature of this case stems from the fact that inquiries concerning judges are in and of themselves exceptional. Rare phenomena cannot beget frequent consequences.

3. However, this unusual situation is not due purely to the law of numbers. It also follows from a basic premise (a presumption, if you will) that characterizes the office of judge and lends legitimacy to that office. This premise is that a judge is, by nature, honest and must be honest. The existence of a consensus regarding the belief that our society does not entrust someone who is deceitful or a cheat with the duty to decide people's fate or freedom is imperative. Public trust in the judicial office is associated with this presumption of integrity. It is the most valuable legacy passed on by cohorts of judges who have succeeded one another since the Constitution of 1867 in its respect.

4. A judge has the duty to be the bearer and advocate of this legacy. The privileges that he or she enjoys as a result of such office are conditional on the obligations arising from it. In that sense, a judge's appointment is neither a given nor an accolade. It is a consideration, a collective demonstration of trust of which the judge vows to be worthy.

5. In short, public trust in our judiciary depends on continued confidence in the integrity of the judges who comprise it. This connection between public trust and the integrity of judges is central to this inquiry and must transcend the findings and recommendations arising from it.

II) **Background and factual account**

6. This Committee briefly outlined the relevant facts in paragraphs 1 through 16 of the *Motifs des décisions sur les moyens préliminaires rendus, séance tenante, le 22 février 2017* [Reasons for decisions on preliminary motions rendered from the bench on February 22, 2017] (hereinafter referred to as the "Decision on Preliminary Motions"). This factual background is as follows:

[*Translation*]

> [1] Justice Michel Girouard was appointed to the Superior Court of Québec on September 30, 2010.
>
> [2] He was appointed to the bench after having practised as a lawyer for 25 years in Abitibi, with a focus on criminal law.
>
> [3] In 2012, the Honourable François Rolland, the then-Chief Justice of the Superior Court of Québec, filed a complaint with the Canadian Judicial Council on account of having been informed that a former drug trafficker, turned informer, had identified Justice Girouard as one of his clients when the latter was a lawyer.
>
> [4] A review committee was created comprising Chief Justices J. Ernest Drapeau and Glenn D. Joyal and Justice Arthur J. LeBlanc. Following a summary review, the review committee found that an inquiry committee needed to be established in order to inquire into the matter further.
>
> [5] The Council therefore established a first Inquiry Committee comprising Chief Justices Richard Chartier and Paul Crampton, as well as M^{e} Ronald Leblanc, Q.C. At the conclusion of this first inquiry, a small number of allegations of misconduct were retained and would remain in play.
>
> [6] In its report to the Canadian Judicial Council, the first Committee unanimously concluded that these allegations had not been proven.
>
> [7] However, two of the three members of the first Committee found that the testimony given by Justice Girouard during the inquiry entailed a number of [*translation*] "contradictions, discrepancies and improbabilities," raising [*translation*] "deep and serious concerns" about his credibility and integrity.
>
> [8] In the opinion of the majority, Justice Girouard had engaged in, as part of the inquiry, a pattern of misconduct that rendered his behaviour inconsistent with the office of judge, thus compromising the system's integrity.

[9] As a result of such misconduct, most of the members of the first Inquiry Committee recommended to the Council that Justice Girouard be removed from office.

[10] Chief Justice Chartier dissented from these findings and this recommendation. In his opinion, the concerns raised by the majority were foreseeable and of a nature to be expected from such lengthy testimony on events that had taken place five years earlier. In addition, Chief Justice Chartier was of the view that a recommendation for removal from office could not be based on misconduct not contained in the Notice of Allegations, as Justice Girouard has a right to address the concerns raised by the majority.

[11] In its report to the Minister of Justice of Canada, the Canadian Judicial Council recommended to not remove Justice Girouard from office based on the allegations in the Notice of Allegations in its final form. According to the Council, the finding of the majority that Justice Girouard tried to mislead the Committee by concealing the truth during his testimony could not be given consideration because Justice Girouard had not been formally notified that the specific concerns raised by the majority constituted an allegation of misconduct separate from the misconduct he was to address.

[12] In June 2016, the Canadian Judicial Council received a joint request from the Ministers of Justice of Canada and Quebec under subsection 63(1) of the *Judges Act*, instructing the Council to lead an inquiry into the conduct of Justice Girouard before the first Inquiry Committee.

[13] More specifically, the request pertains to the findings of the majority during the first Committee that prompted the latter to recommend that Justice Girouard be removed from office, as the ministers were of the opinion that [*translation*] "these findings remain unresolved."

[14] The present Inquiry Committee was therefore established in September 2016 in response to the ministerial request.

[15] A letter sent by Ms. L.C. to the Canadian Judicial Council was then brought to the Committee's attention, challenging some aspects of Justice Girouard's testimony during the first inquiry (the [*translation*] "letter of denunciation").

[16] Under section 4 of the *Canadian Judicial Council Inquiries and Investigations By-Laws*, *2015*, the Inquiry Committee retained the services of M^{e} Marc-André Gravel from the firm Gravel Bernier Vaillancourt and of M^{e} Emmanuelle Rolland from the firm Audren Rolland to provide advice and to assist in the conduct of its inquiry.

III) **Notice of Allegations**

7. Further to the successive decisions rendered by the Committee, particularly a decision dated May 16, 2017, the Notice of Allegations pertaining to Justice Girouard was amended such that, by the end of the exercise, there were four separate allegations against him, as follows:

1) Justice Girouard has become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct during the inquiry conducted by the First Committee, which misconduct is more fully set out in the findings of the majority reproduced at paragraphs 223 to 242 of its Report:

   a) Justice Girouard failed to cooperate with transparency and openness in the First Committee's inquiry;

   b) Justice Girouard failed to testify with forthrightness and integrity during the First Committee's inquiry;

   c) Justice Girouard attempted to mislead the First Committee by concealing the truth.

2) Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and his failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before the First Committee that:

   a) he never used drugs;

   b) he never obtained drugs.

3) Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before this Inquiry Committee that he never used cocaine when he was a lawyer;

4) Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before this Inquiry Committee that he never became acquainted with and was never provided a copy of Volume 3 of the Doray Report before May 8, 2017, his testimony on point being:

   > "A. That is . . . that is . . . I was never shown Volume 3, even in the first inquiry, never; I saw it for the first time on Monday, May 8, this week; O.K.?
   >
   > That is…
   >
   > Q. But…
   >
   > A. …the truth!"

IV) **Duty of the Inquiry Committee**

8. As the Supreme Court of Canada clearly expressed in *Ruffo*, the primary duty of an inquiry committee in examining the conduct of a judge is to seek and establish the truth:

> [72] . . . Accordingly, as the statutory provisions quoted above illustrate, the debate that occurs before it does not resemble litigation in an adversarial proceeding; rather, it

> is intended to be the expression of purely investigative functions marked by an active search for the truth.
>
> [73] In light of this, the actual conduct of the case is the responsibility not of the parties but of the Comité itself, on which the CJA confers a pre-eminent role in establishing rules of procedure, researching the facts and calling witnesses. Any idea of prosecution is thus structurally excluded. The complaint is merely what sets the process in motion. Its effect is not to initiate litigation between two parties. This means that where the Conseil decides to conduct an inquiry after examining a complaint lodged by one of its members, the Comité does not thereby become both judge and party: as I noted earlier, the Comité's primary role is to search for the truth; this involves not a *lis inter partes* but a true inquiry in which the Comité, through its own research and that of the complainant and of the judge who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation based on the circumstances of the case before it.[1]
>
> [Emphasis added]

9. Seeking the truth involves the correlative duty to make findings on the credibility of witnesses. In the matter at hand, given the specific purpose of the inquiry, this determination is especially important and, by its very nature, imperative:

> . . . Moreover, the fact-finding function of an inquiry is an important feature of any investigatory and advisory commission and a commissioner's discretion to make findings on the credibility of witnesses and express his reasons for doing so is part and parcel of the necessary decision-making process of such an inquiry. . . .[2]

V) **Role of counsel for the Inquiry Committee**

10. Under section 4 of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*,[3] the legal counsel engaged to assist the Committee in its conduct of the inquiry and to present evidence during hearings is required to perform his or her duties in accordance with procedural fairness.

11. Counsel's crucial role transcends that of the Committee, that is to say that he or she must aim to uncover the truth in conducting the inquiry and in presenting the evidence and, if necessary, that it be possible to infer the truth from the testimony or material evidence.

12. This duty to seek the truth entails an objective approach during the inquiry and the taking of evidence.

13. In the context of this inquiry, such an objective approach was particularly important, as its

---

1 *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, 1995 CanLII 49 (SCC) *(Tab 1)*
2 *Culligan v. New Brunswick (Commissioner, Inquiries Act)*, 1996 CanLII 11286 (NB QB), p. 12 *(Tab 2)*
3 SOR/2015-203

primary aim was to allow Justice Girouard to provide explanations regarding the aspects of misconduct noted in the majority opinion of the First Committee.

14. Seeking the truth implies allowing the person from whom explanations are expected to provide them, even though it is not obvious at first glance that this person is trying to do so of his or her own accord.

15. However, we feel that, during the arguments, the role of the Committee's counsel must shift to some extent. At this stage, counsel's role is to assist the Committee in determining the facts, credibility and, ultimately, findings serving as a basis for the opportunity to make a recommendation. Even though at this stage, counsel must, to fulfill his or her mandate, take sides, his or her opinions and findings are nonetheless the result of an objective process.

VI) **Breach of integrity as a source of misconduct by a judge**

16. As stated in the preamble, integrity, probity and honesty are critical traits for anyone who holds or aspires to hold the office of judge.

> [111] The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens. This is eloquently expressed by Professor Y.-M. Morissette:
>
> > [translation] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of "elites" in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.
> >
> > ("Figure actuelle du juge dans la cité" (1999), 30 R.D.U.S. 1, at pp. 11-12)
>
> In *The Canadian Legal System* (1977), Professor G. Gall goes even further, at p. 167:
>
> > The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary. We expect our judges to be almost superhuman in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of

> an appointment to the judiciary.[4]
>
> [Emphasis added]

17. While the obligation for judges to act with integrity is not likely to vary, we believe there are few situations in which that integrity must be expressed with greater rigour and formality than when a judge is called to appear before a committee tasked with inquiring into the judge's conduct. In such circumstance, the judge must demonstrate not only forthrightness, probity and honesty, but also transparency and flawless cooperation. The reason for this is quite simple: there is no integrity, or appearance of integrity, without transparency, and honesty cannot exist where there is evasion or a lack of openness.

18. That is essentially what the Canadian Judicial Council stated in *Déziel*:

> [73] In our view, judges have a clear obligation to act in a transparent and forthright manner when responding to allegations of misconduct as part of the review process of Council. A shortcoming in this regard would very likely constitute, in and of itself, judicial misconduct.
>
> [74] We note, in this process of review, that Justice Déziel has been honest, transparent and fulsome in responding to all enquiries from the Council, including all queries made by Independent Counsel and the Inquiry Committee.[5]

19. As stated earlier, there is little precedent in Canadian law regarding the review of a judge's conduct during his or her appearance or testimony before a committee consisting of his or her peers. However, there is no doubt that a duty to demonstrate absolute integrity must exist in such circumstances.

20. In the United States, precedents in this regard do exist and are particularly revealing. An analysis of this case law shows that in American law, there are few instances of misconduct more serious than that in which the judge fails to demonstrate honesty or transparency before a committee tasked with inquiring into the judge's conduct.

21. In *Adam*, the Supreme Court of California rendered the following decision on this type of allegation:

> In making our independent determination of the appropriate disciplinary sanction, we consider the purpose of a Commission disciplinary proceeding — which is not punishment, but rather the protection of the public, the enforcement of rigorous

---

4 *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35 (CanLII) *(Tab 3)*

5 Report of the Canadian Judicial Council to the Minister of Justice in the matter of the Honourable Michel Déziel of the Superior Court of Québec dated December 2, 2015 *(Tab 4)*

> standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system. (Adams I, supra, 8 CaL4th at p. 637, 34 CaLRptr2d 641, 882 P.2d 358; Kloepfer v. Commission on Judicial Performance, supra, 49 CaL3d at pp. 864-865, 264 Cal.Rptr. 100, 782 P.2d 239.)
>
> . . .
>
> Finally, with respect to count 4, clear and convincing evidence supports the charges that petitioner engaged in four separate instances of wilful misconduct in making material misstatement or omissions to the Commission. These sustained charges, in particular, warrant petitioner's removal from office. There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission in the course of its investigation into charges of wilful misconduct on the part of the judge.[6]
>
> [Emphasis added]

22. In 2001, the Commission on Judicial Performance of California reached the following decision in *Couwenberg*:

> Second, Judge Couwenberg lied in writing and in testimony under oath to the commission during the course of its investigation. The Supreme Court has noted that there "are few judicial actions in our views that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission in the course of its investigation". When his misrepresentation that he was in the Army in Vietnam was exposed, Judge Couwenberg told the commission — in testimony and in writing — that he had been employed by the CIA in Laos. When the CIA refuted this lie, Judge Couwenberg testified that he was in Laos working for some other agency — a representation that the masters found to be a lie. In addition, Judge Couwenberg volunteered in a statement under oath that he had a master's degree. At the hearing before the masters, he basically admitted that this was perjury. Any discipline other than removal for such blatant misrepresentations might well encourage others who are investigated by the commission to prevaricate and develop faulty memories.
>
> . . .
>
> Third, Judge Couwenberg's persistent misrepresentations might well require his removal from the bench, even if the misrepresentations had not been critical to his bid for a judicial appointment and had not been made to the commission in the course of its investigation. The Supreme Court has noted that honesty is "a minimum qualification" expected of every judge. The commission has in prior decision observed that the "public will not, and should not, respect a judicial officer who has been shown to have repeatedly lied for his own benefit.[7]
>
> [Emphasis added]

23. In 1984, the Minnesota Supreme Court stated as follows in *Winton*:

---

[6] *Adams v. Commission on Judicial Performance*, (1995) 10 Cal. 4th 866, pp. 23 and 24 *(Tab 5)*

[7] *Inquiry Concerning Judge Patrick Couwenberg*, August 15, 2001, (Commission on Judicial Performance of California), pp. 14 and 15 *(Tab 6)*

> A judge has a position of power and prestige in a democratic society espousing Justice for all persons under law. The role of the judge in the administration of Justice requires adherence to the highest standard of personal and official conduct. Of those to whom much is committed, much is demanded. A judge, therefore, has the responsibility of conforming to a higher standard of conduct than is expected of lawyers or other persons in society'. Willful violations of law or other misconduct by a judge, whether or not directly related to judicial duties, brings the judicial office into disrepute and thereby prejudices the administration of justice.
>
> . . .
>
> Our system of Justice depends upon people telling the truth under oath. If witnesses do not testify truthfully under oath, the Justice system will be unable to function. If a judge, who has a professional duty to act in a manner that promotes public confidence in the judiciary, gives a false testimony under oath with impunity, we can hardly expect the public to take seriously the oath to tell the truth.[8]
>
> [Emphasis added]

24. In 2011, the Minnesota Supreme Court provided further substantiation in that regard by issuing the following opinion:

> We next address the Board's allegation that Judge Karasov failed to cooperate and be candid and honest with the Board, in violation of Rule 2.16(A) of the Code of Judicial Conduct, based on her October 6, 2009, letter to the Board and her conversation with the Board's counsel on November 24, 2009. The Board further contends that Judge Karasov violated Rule 2.16(A) by failing to reveal the name of a stalker whom she alleged caused her to keep her address confidential.
>
> Rule 2.16(A) of the Code of Judicial Conduct states, "[a] judge shall cooperate and be candid and honest with judicial disciplinary agencies." A duty to be candid and honest with judicial disciplinary agencies requires a judge to be truthful and to refrain from being dishonest and making deliberately false statements to the Board and its agents. See In re King, 857 So.2d 432, 449 (La.2003) ("As recognized by other jurisdictions, [h]onesty is a minimum qualification expected of every judge." (citation omitted) (internal quotation marks omitted)); Webster's Third New Inn Dictionary, 325, 1086 (1961) (defining "candid" as "indicating or suggesting sincere honesty and absence of deception and duplicity" and defining "honest" as "free from fraud or deception: legitimate, truthful'). **This duty also includes a duty not to make material omissions during a disciplinary investigation**. See Adams v. Comm'n on Judicial Performance, 10 Cal.4th 866, 42 CaLRptr.2d 606, 897 P.2d 544, 568 (1995) (disciplining a judge for making false statements and material omissions during a judicial disciplinary investigation); see also Heidbreder v. Carton, 645 N.W.2d 355, 367 (Minn.2002) ("A misrepresentation may be made by an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading.").
>
> . . .
>
> . . . Judges routinely make credibility determinations and determine whether facts have been proven based on the testimony of witnesses who appear before them. To

[8] *Complaint Concerning the Honorable Robert Crane WINTON, Jr., Judge of District Court, Hennepin County*, State of Minnesota, 350 N.W.2d 337 (1984), pp. 4 to 7 *(Tab 7)*

> ensure that the public has confidence in these judicial determinations, the public must believe that the decision makers are honest. In re King, 857 So. 2d 432, 449 (La. 2003) ("Honesty is a minimum qualification expected of even/ judge." (citation omitted) (internal quotation marks omitted)); In re Ferrara, 582 N. W. 2d 817, 827 (Mich. 1998) ("Judges, occupying the watchtower of our system of justice, should preserve, if not uplift, the standard of truth, not trample it underfoot or hide in its shady recesses."); In re Myers, 496 N.E.2d 207, 209 (N. Y. 1986) ([D]eception is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth."). By failing to be candid and honest with the Board and its agents, Judge Karasov has engaged in conduct that threatens a basic tenet essential to the integrity of the judicial system.[9]
>
> [Emphasis added]

25. In 1998, the Michigan Supreme Court issued a similar opinion in *Ferrara*:

> . . . Her unsupportable denials and inconsistent statements to the media, the public, the commission, and this Court stand as clear evidence of her inability to be forthright, to avoid appearances of impropriety, and to fulfill the ethical obligations of a judicial officer, who must be "perceived to be a person of absolute integrity. When a judge's character and morals come into question not only do people lose respect for him as a person, but worse, respect for the Court over which he presides is lost as well". 1422 Mich. At 1211, 371 N.W.2d 850.7
>
> . . .
>
> Respondent's evidence and testimony were replete with half-truths and misleading statements, such as when respondent attempted to introduce evidence that her ex-husband planted a "bug" (electronic surveillance device) on her phone line. . . .
>
> . . .
>
> On other occasions respondent's testimony was so unnecessarily vague as to hinder the proceedings and significantly interfere with the administration of justice. This misconduct is particularly evident in respondent's testimony directly after respondent agreed to resume questioning about the tapes in an effort to purge the master's civil contempt order.
>
> . . .
>
> IV. APPROPRIATE DISCIPLINE
>
> Judicial disciplinary proceedings are unique and "fundamentally distinct" from all other criminal or civil legal proceedings. 437 Mich. at 28, 465 N.W.2d 317. The purpose of such proceedings is to "protect the people from corruption and abuse on the part of those who wield judicial power." Id. Our primary concern in determining the appropriate sanction is to restore and maintain the dignity and impartiality of the judiciary and to protect the public.
>
> Indeed, we demand strict compliance with the letter and spirit of these rules and canons because, without it, our judicial system, which depends on public confidence

---

[9] *Inquiry into the Conduct of the Honorable Patricia Kerr Karasov*, November 16, 2011, No. A10-1746 (Minnesota Supreme Court), pp. 22, 23 and 37 *(Tab 8)*

> in the integrity and impartiality of the judiciary' would surely fail. Judges, occupying the watchtower of our system of justice, should preserve, if not uplift, the standard of truth, not trample it underfoot or hide in its shady recesses. This is precisely why judges should be exemplars of respectful, forthright, and appropriate conduct.[10]
>
> [Emphasis added]

26. The New York State Court of Appeals delivered the following opinion in *Collazo*:

> The investigation of petitioner's conduct was triggered by a complaint stemming from a note he passed to his court attorney, allegedly concerning the physical attributes of a female law intern, and that petitioner suggested, albeit in jest, to the same intern that she remove part of her apparel in his presence. Although petitioner denied, under oath, making such remarks and gave a different explanation for writing the note, the Referee and the Commission rejected his testimony. Based upon our independent review of the record and giving due deference to the credibility determinations of the Referee and the Commission (see, Matter of Sims, 61 N.Y.2d 349, 353, rearg denied 62 N.Y.2d 884), we find no reason to disturb their findings.
>
> Here, petitioner's ribald note and indelicate suggestion, even if made in jest, are, without question, demeaning, entirely *254 inappropriate and deserving of some sanction. Although we agree with the Commission that these isolated occurrences, standing alone, would not be sufficient to justify' removal, petitioner's misconduct is magnified here by a pattern of evasive, deceitful and outright untruthful behavior, evidencing a lack of fitness to hold judicial office.
>
> . . .
>
> Although the sanction of removal is reserved for those instances where the conduct is "truly egregious" and not merely an exercise of poor judgment (see, Matter of Mazzei, 81 N.Y.2d 568, 572; Matter of Kiley, supra, 74 NY2d, at 369-370), we have recognized that the "truly egregious" standard is measured with due regard to the fact that Judges must be held to a higher standard of conduct than the public at large (see, Matter of Mazzei, supra; Matter of Aldrich v State Commn. on Judicial Conduct, 58 N.Y.2d 279, 283). Particularly relevant here is our conviction that "deception is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth" (Matter of Myers, 67 N.Y.2d 550, 554; see, Matter of Cohen, 74 N.Y.2d 272, 278). Thus, we conclude that the Commission appropriately imposed the sanction of removal in this case.[11]
>
> [Emphasis added]

27. Lastly, the Louisiana Supreme Court found as follows in *King* in 2003:

> . . . Lying to the Commission in his sworn statement is "conduct while in office which would constitute a felony"[18] and "willful misconduct relating to his official duties," for which removal is an appropriate penalty. Further, lying to the Commission in a sworn statement taken as part of an investigation is simply conduct which this Court cannot and will not tolerate. As this Court stated long ago in Stanley v. Jones, 201 La. 549, 9 So.2d 678, 683 (1942), wherein it removed a district court judge for lying:

---

[10] *In re Ferrara*, 582 N.W.2d 817, pp. 4 and 6 *(Tab 9)*
[11] *Matter of Collazo*, 691 N.E.2d 1021, pp. 2 and 4 *(Tab 10)*

> The office of judge is one in which the general public has a deep and vital interest, and, because that is true, the official conduct of judges, as well as their private conduct is closely observed. When a judge, either in his official capacity or as a private citizen, is guilty of such conduct as to cause others to question his character and morals, the people not only lose respect for him as a man but lose respect for the court over which he presides as well.[12]

[Emphasis added]

28. We submit that the principles arising from these precedents in American law are quite relevant, particularly because they are consistent with the fundamental learning point derived from the Supreme Court of Canada decision in *Therrien*, which is that the integrity of judges can in no way be compromised.

VII) **Burden of proof and determination of credibility**

29. There is no debate on the issue. The burden of balance of probabilities applies in this case.

30. In *McDougall*, the Supreme Court very clearly defined the conditions for applying such a burden in all instances of a civil nature:

> [40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.
>
> . . .
>
> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear,

---

[12] *In re Judge C. Hunter King*, 857 So.2d 432, p. 16 *(Tab 11)*

> convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.
>
> [47] Finally there may be cases in which there is an inherent improbability that an event occurred. Inherent improbability will always depend upon the circumstances. As Baroness Hale stated in *In re B*, at para. 72:
>
> > Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog.
>
> [48] Some alleged events may be highly improbable. Others less so. There can be no rule as to when and to what extent inherent improbability must be taken into account by a trial judge. As Lord Hoffmann observed at para. 15 of *In re B*:
>
> > Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.
>
> It will be for the trial judge to decide to what extent, if any, the circumstances suggest that an allegation is inherently improbable and where appropriate, that may be taken into account in the assessment of whether the evidence establishes that it is more likely than not that the event occurred. However, there can be no rule of law imposing such a formula.
>
> . . .
>
> [80] Corroborative evidence is always helpful and does strengthen the evidence of the party relying on it as I believe Rowles J.A. was implying in her comments. However, it is not a legal requirement and indeed may not be available, especially where the alleged incidents took place decades earlier. Incidents of sexual assault normally occur in private.
>
> [81] Requiring corroboration would elevate the evidentiary requirement in a civil case above that in a criminal case. . . .[13]
>
> [Emphasis added]

31. Further, in *McDougall*, the Supreme Court clearly established that the principle of appreciation of evidence in criminal law set forth by the Supreme Court in *W.(D).* and *Hibbert*[14] did not apply in instances subject to the burden of balance of probabilities:

> [85] The *W. (D.)* steps were developed as an aid to the determination of reasonable doubt in the criminal law context where a jury is faced with conflicting testimonial accounts. Lack of credibility on the part of an accused is not proof of guilt beyond a reasonable doubt.
>
> [86] However, in civil cases in which there is conflicting testimony, the judge is

---

[13] *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53 *(Tab 12)*

[14] *R. v. W.(D.)*, [1991] 1 S.C.R. 742 and *R. v. Hibbert*, [2002] 2 S.C.R. 445 *(Tab 13)*

> deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case. *W. (D.)* is not an appropriate tool for evaluating evidence on the balance of probabilities in civil cases.[15]
>
> [Emphasis added]

32. As for assessing the credibility of witnesses in a civil matter, we cite, with approval, the opinion issued by the Federal Court of Appeal in *Suntec Environmental Inc. v. Trojan Technologies Inc.*:

> [21] . . .
>
> . . .
>
> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. . . .
>
> The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with a divine insight into the hearts and minds of the witnesses. . . .
>
> [22] I take the thrust of this passage to be that the assessment of credibility is not simply a matter of the judge's opinion as to which witness "made the better appearance of sincerity". It also involves an examination of the witness' testimony and "of its consistency with the probabilities that surround the currently existing conditions". A judge's finding of credibility therefore must not be based on "one element only to the exclusion of others, but on all the elements by which it can be tested in the particular case". In cases such as this, one of the elements, though not to the exclusion of all others, is the impression created by the witness giving his evidence in chief and under cross-examination. This is why the jurisprudence is so consistent in holding that credibility issues, broadly defined, should be decided after trial.[16]

---

[15] *Op. cit.*, note 13

[16] *Suntec Environmental Inc. v. Trojan Technologies Inc.*, 2004 FCA 140 (CanLII), approvingly citing the comments made by Justice O'Halloran in *Faryna v. Chomy*, [1952] 2 D.L.R. 354, pp. 356 and 357 *(Tab 14)*

[Emphasis added]

33. Below are the learning points of the Court of Appeal of Québec in Roy v. SSQ, Société d'assurances générales inc.:

[*Translation*]

> [32] The probative value of testimony is left to the discretion of the court. Credibility stems from the judge's opinion on "the elements perceived at trail, his experience, his logic and his intuition about the case." The following should be noted about the credibility of a witness:
>
> > The credibility of the witness is assessed by the judge, in a positive or negative light, having regard to a number of criteria, including the degree of perception and knowledge of the facts as reported by the said witness, the latter's ability to remember past events, behavior and manner of expression . . . .
>
> [33] Contradictions in the various statements made by the witness will also be considered in this assessment.[17]
>
> [Emphasis added]

34. We draw the following principles from this case law:

- The burden of proof applicable in the matter at hand is that of the balance of probabilities;
- On the basis of this burden, the Committee must make a finding by determining, where necessary, what constitutes inherent probability;
- The credibility of witnesses, especially where interested witnesses are concerned, must be assessed based not only on the testimony itself, but also on its compatibility with the balance of probabilities that a practical and informed person can immediately recognize as reasonable in the circumstances.

35. We also feel it appropriate to reiterate that the determination of truth based on the balance of probabilities is an exercise that inevitably leads to a binary conclusion, that is, determining what is true and what is untrue:

> [44] Put another way, it would seem incongruous for a judge to conclude that it

---

[17] *Roy c. SSQ, Société d'assurances générales inc.*, 2015 QCCA 1717 *(Tab 15)*

> was more likely than not that an event occurred, but not sufficiently likely to some unspecified standard and therefore that it did not occur. As Lord Hoffmann explained in *In re B* at para. 2:
>
> > If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.
>
> In my view, the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred.[18]

VIII) **General comments on the appearance and testimony of Justice Girouard**

36. We feel it appropriate to make some general comments on the appearance and testimony of Justice Girouard during the hearings held before this Committee.

37. One of the main objectives of the inquiry was to allow Justice Girouard to explain the discrepancies, implausibilities and inconsistencies identified by the majority of the First Committee.

38. In that respect, we were expecting Justice Girouard to be transparent and proactive and to demonstrate utmost cooperation when he appeared before the Committee.

39. Instead, however, we had a witness whose cooperation was highly debatable. We noted, numerous times, that Justice Girouard refused to answer questions of his own accord or deliberately tried to evade them.

40. Too many times, we were forced to ask Justice Girouard to answer the question. Too often did we also have to remind him that he was not there to provide an opinion, but rather to give his version of the facts.

41. In many respects, the judge's testimony was vague, ambiguous or intentionally selective. His insistence on referring to prepared notes or his previous testimony was surprising, such that it could only be detrimental to the reliability and spontaneity of the deposition.

---

[18] *Op. cit.*, note 13.

42. In short, we firmly believe that we had done everything to allow Justice Girouard to provide clear, consistent, transparent and spontaneous answers to the questions asked so that he would play an active part in the process of seeking the truth.

43. However, this exercise, which we realize seemed tedious at times, enabled us to unequivocally assess the credibility of the judge's testimony and to draw the requisite findings and conclusions.

44. It is worth recalling here the following conclusions expressed by the majority of the First Committee:

> [223] Taken together, the contradictions, inconsistencies and implausibilities in Justice Girouard's testimony, which are discussed above, are, in our opinion, much more than mere oversights attributable to the passage of time or the usual types of inconsistencies that can result from being nervous about testifying.
>
> [224] After reviewing all the evidence, we are of the opinion that the constellation of contradictions, inconsistencies and implausibilities in Justice Girouard's testimony raises serious questions about his credibility. . . .
>
> . . .
>
> [227] In short, on the basis of all the evidence submitted to the Committee to date, and subject to our comments below about the possibility of bringing a further count, we cannot, with great regret, accept Justice Girouard's version of the facts. Although this implies nothing about the nature of the object that was exchanged, we wish to express our deep and serious concerns about Justice Girouard's credibility during the inquiry and, consequently, about his integrity. In our opinion, Justice Girouard deliberately attempted to mislead the Committee by concealing the truth.[19]

45. Upon the conclusion of the exercise, and for the reasons that we will expand on further later on, we note with regret that not only did Justice Girouard fail to allay the serious concerns the majority of the First Committee had regarding his integrity, but rather, he only deepened them.

IX)

[19] Report to the Canadian Judicial Council of the Inquiry Committee concerning the Honourable Michel Girouard of the Superior Court of Québec dated November 18, 2015 *(Tab 16)*

Analysis of allegations

FIRST ALLEGATION

> 1) Justice Girouard has become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct during the inquiry conducted by the First Committee, which misconduct is more fully set out in the findings of the majority reproduced at paragraphs 223 to 242 of its Report:
>
> a) Justice Girouard failed to cooperate with transparency and openness in the First Committee's inquiry;
>
> b) Justice Girouard failed to testify with forthrightness and integrity during the First Committee's inquiry;
>
> c) Justice Girouard attempted to mislead the First Committee by concealing the truth;

46. This allegation is based on the conclusions of the majority of the First Committee regarding the integrity and probity of Justice Girouard's testimony. The purpose here was to allow Justice Girouard to provide explanations or clarifications likely to clear up doubts about the noted failings.

A) Justice Girouard failed to cooperate with transparency and openness in the First Committee's inquiry

47. In paragraphs 235 and 236 of the First Committee's Report, the majority finds that Justice Girouard was not transparent in his testimony. The following excerpt is particularly relevant:

> [228] Through his lack of candour during his testimony, Justice Girouard did not demonstrate a level of conduct that is irreproachable, nor did he embody the ideals of justice and truth that the public is entitled to expect from members of the judiciary. . . .

48. We are of the opinion that, during an inquiry seeking to uncover the truth, the obligation to testify and cooperate with transparency must be given the same degree of importance as the obligation to tell the truth. To borrow an expression here, it is not enough to tell the truth, it has to be the whole truth.

49. Testifying transparently means expressing oneself openly of one's own accord. Transparent, direct and full testimony does not leave out more negative or damaging elements. It does not discriminate.

50. In the matter at hand, we are of the opinion that the judge furthered his failure to meet his duty to be transparent. He also demonstrated a lack of cooperation, which unnecessarily hampered the work of the Committee's counsel.

51. Below are six examples of Justice Girouard's lack of transparency, forthrightness and cooperation.

i) Respect for status as a witness

52. Intervening and arguing with the Inquiry Committee and its counsel, Justice Girouard had to be reminded multiple times that he was an ordinary witness and that he was to conduct himself as such. The Committee Chair also had to remind him that he should refrain from challenging the panel's decisions or observations.[20]

ii) Dissent of Justice Chartier

53. While the purpose of the inquiry was to allow him to explain specific points identified by the majority of the First Committee, Justice Girouard referred instead, during his examination-in-chief, to the dissenting conclusions of Justice Chartier (by making them his own). It is therefore essentially in his cross-examination, and not voluntarily during his examination-in-chief, that Justice Girouard finally tried to explain the discrepancies, implausibilities and contradictions raised by the majority.

iii) Cooperation with the Committee and its counsel

54. Both the Committee and its counsel had to rephrase and repeat the questions, to excess, so that Justice Girouard could finally answer.[21]

iv) Compendium

55. Asked why he gave money to Mr. Lamontagne in his office, Justice Girouard looked for the answer in a compendium prepared by his lawyers. Justice Girouard did not want to (and, it appeared, could not) answer the question without knowing exactly what he had said during the first inquiry. He then answered the question after finding what he had been

---

[20] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 442

[21] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 659 to 661, and May 17, 2017 (vol. 6), pp. 1158, 1159, 1164,1185 and 1207 to 1210, and May 18, 2017 (vol. 7), pp. 1324, 1329, 1403, 1648 and 1471 to 1474

looking for in this compendium, giving both M^e^ Synnott and the Committee's counsel the impression that he had read the answer from the compendium during the panel's interventions.[22]

56. Since Justice Girouard systematically tried to refer to the compendium in delivering his testimony, the Committee's counsel was then forced to ask the panel to instruct the witness to do away with this document.[23]

57. In that respect, the following comment from the Committee's Chair is particularly relevant:

[*Translation*]

> And counsel – Justice Girouard was in possession of a compendium, a document that his lawyers had prepared and whose purpose, with due respect, is to provide answers [to questions] that might be asked in relation to all the concerns of the majority; this procedure is highly unacceptable![24]

58. Insistent, Justice Girouard asked, of his own accord and without intervention from his lawyers, to read his previous testimony before answering a question. For example, when asked about the likelihood of not having read the note that Mr. Lamontagne had given him, even though he had confirmed that he was unsure of its content during the first inquiry, Justice Girouard asked to reread this statement before answering.[25]

v) Personal notes

59. During his examination-in-chief, without the Committee's consent, Justice Girouard entered the witness stand with personal notes to use as memory aids.[26]

60. However, when the Committee's counsel expressed discomfort with the use of such notes (since the purpose of the exercise was notably to determine the credibility of the witness), Justice Girouard stated that he had not used them for his testimony. Yet, the panel saw him consult them many times.[27]

61. At that point, Justice Girouard provided a rough explanation to the effect that when he

---

22 Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1127 et seq.
23 Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1103, 1104, 1131 and 1132
24 Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1132
25 Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1478 to 1492
26 Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 502 et seq., and Exhibit G-4
27 Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 505 to 512

does not have his reading glasses, he is unable to read his notes and that, even though he had looked at them (which he admitted in the end), he could not see what they said.[28]

vi) Knowledge of the English language

62. At the very beginning of his examination-in-chief, before he had even been asked a single question (which in and of itself is surprising), Justice Girouard addressed the Inquiry Committee to say a few words about his proficiency in the English language. He explained that he did not want anyone to draw a negative inference from the fact that he might have misunderstood some aspects of the testimony given by L.C., since it is difficult for him to understand English. He then stressed that he could not carry a conversation in English before 1998, and that even today he does not understand everything in an English-language movie.[29]

63. This unsolicited testimony was clearly aimed at positioning himself favourably with respect to one aspect of L.C.'s testimony.

64. However, on his Personal History Form for judicial appointment (Exhibit G-3), Justice Girouard indicated that he is competent to hear and conduct an English-language trial.[30]

65. Questioned about the truthfulness of the content of Exhibit G-3, the judge explained that had the question stated [*translation*] "language in which you are competent to hear any type of trial," he would have indicated only French. He said he was able to conduct a trial in English and had done so before, but not on any subject-matter. He admitted he did not note these subtleties in the "comments" section, even though this section was there on the form.[31]

66. He then explained that it is easier for him to understand people who speak in short sentences and use English words with which he is familiar.[32]

67. However, it bears reminding that Justice Girouard had told the First Committee that his English was very poor:

---

[28] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 513, 514 and 523
[29] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 406 and 407
[30] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 448 to 455
[31] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 454 and 455
[32] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 458, 459, 465 and 466

[*Translation*]

> So.., umm things like that, but . . . umm I know he . . . decided to do a . . . even though my English is very bad, the only . . . the only word that comes . . . comes . . . to mind . . . is in English, but . . . but . . . a . . . screening . . . but . . . sharing . . . [33]
>
> [Emphasis added]

68. The above examples show that not only did Justice Girouard not provide rational explanations to invalidate the conclusions of the majority of the First Committee regarding his cooperation, transparency and forthrightness, he demonstrated an attitude that, in many respects, appeared to us to be inappropriate for a judge called to testify before his peers.

B) Justice Girouard failed to testify with forthrightness and integrity during the First Committee's inquiry

69. This allegation brings us directly to the criteria established by the Supreme Court in *McDougall*.[34] It is up to the Committee to determine what is and is not true, on the balance of probabilities.

70. Here, the majority of the First Committee concluded, in respect of six specific topics, that the testimony given by Justice Girouard was implausible, contradictory or inconsistent. This conclusion implies that there was no forthrightness or integrity in the testimony.

71. For the reasons that follow, we are of the opinion that the versions offered by Justice Girouard before this Committee in no way invalidate the conclusions of the majority. On the contrary, they substantiated them even further.

i) Payment for previously viewed movies directly to Mr. Lamontagne in his office

72. Justice Girouard testified that, on September 17, 2010, he had paid Mr. Lamontagne directly for previously viewed adult movies because he preferred that they not appear in his computer file.[35] However, in the letter he sent to M[e] Sabourin on January 11, 2013 (Exhibit P-28 of E-4.1), he made no mention of the fact that he had paid Mr. Lamontagne for movies on September 17, 2010. In his testimony, he explains that he was flustered at

---

[33] Testimony of Justice Girouard, May 14, 2015, p. 18
[34] *Op. cit.*, note 13
[35] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1133

the time and that he did not think he had to explain his life to M[e] Sabourin. Finally, he said he may not have expressed himself properly in this letter.[36] Justice Girouard does not know how many adult movies he purchased from Mr. Lamontagne over time.[37]

73. He does not remember how much he paid Mr. Lamontagne during the meeting on September 17, 2010.[38] Lastly, he said that his video club account was linked to his telephone number, not his name.[39]

74. We submit that the following elements support the fact that the testimony given by Justice Girouard in this respect is implausible and improbable:

- He makes no mention of this payment in his letter to M[e] Sabourin;
- Mr. Lamontagne testified that Justice Girouard always paid him in $100 bills, which Justice Girouard contradicts;[40]
- The number of movies purchased, their nature and the amount paid remain extremely unclear;
- The coincidence between Justice Girouard handing over money and Mr. Lamontagne surreptitiously handing over a folded "Post-it" strongly suggests that there is a connection between the two;
- The fact that the video club account was not under Justice Girouard's name;
- The fact that Justice Girouard had initially testified that he went to Mr. Lamontagne's office only to discuss his tax matter;
- The fact that Justice Girouard said he rarely purchased adult movies;
- The fact that the version given by Justice Girouard inevitably entails under-the-table transactions, that is, tax-free;
- The fact that the money is slipped under Mr. Lamontagne's desk pad, which is inconsistent with the purchase of movies.

ii) Slipping of money under the desk pad

75. Justice Girouard explained that he did this out of habit and because he did not want to be seen giving money to a drug trafficker.[41]

---

[36] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1146
[37] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1157 to 1159 and 1161
[38] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1161
[39] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1153
[40] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1161, and May 18, 2017 (vol. 7), p. 1385
[41] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1162, and May 12, 2017 (vol. 4), pp. 686 to 688

76. Justice Girouard testified that Mr. Lamontagne was labelled a drug trafficker because of the company he kept and because of his criminal record, specifically his arrest in 2000 for growing cannabis. Justice Girouard had been Mr. Lamontagne's lawyer in that matter. He also states that as his client for 10 years, Mr. Lamontagne had shared things with him under solicitor-client privilege that had enabled him to conclude that he was a drug trafficker.[42] However, Justice Girouard was not representing Mr. Lamontagne in a criminal matter at that time.[43]

77. Asked about the logic of such a surreptitious gesture even though the person was right in front of him, the judge stated that he did not know whether Mr. Lamontagne was going to take the money and he did not want it to stay on Mr. Lamontagne's desk throughout the entire meeting.[44]

78. Again, the explanations provided only strengthen the conclusions of the majority of the First Committee as to the improbability of the version given by Justice Girouard. In our eyes, it is entirely unlikely that someone paying a person right in front of them for movies would resort to such concealment.

79. Moreover, the explanation that Justice Girouard did not want to be seen giving money to a drug trafficker is, in addition to being inherently troubling, undermined by him stating, in the same breath, that he did not know if there was anyone in the store at the time.[45]

C) Purpose of meeting on September 17, 2010, and failure to read note

80. According to Justice Girouard, the context of the meeting on September 17, 2010, is as follows:

- It was an urgent situation because Mr. Lamontagne's account was under threat of being seized by the Canada Revenue Agency.[46]
- There had previously been an agreement on the amount of money that Mr. Lamontagne was supposed to pay the Canada Revenue Agency. This agreement had been negotiated between Mr. Allard (an accountant), M^{e} Girouard and

[42] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1163, and May 18, 2017 (vol. 7), pp. 1346 and 1347
[43] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1235 and 1236
[44] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1169 and 1170
[45] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1167
[46] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1177

Ms. Boucher from the Canada Revenue Agency. The Notice of Assessment was reduced from $400,000 to $90,000.[47]

- Justice Girouard's role was therefore limited to ensuring that Mr. Lamontagne would pay the $90,000, which he had to borrow in order to pay back.[48] He was not involved in negotiations to obtain a private loan with Mr. Gareau, who lent him the $90,000.[49]

- Justice Girouard explains that he does not recall, but that he probably told Mr. Lamontagne the amount of the settlement before the meeting on September 17, 2010.[50]

81. Furthermore, Justice Girouard explains that he was supposed to go to Mr. Lamontagne's office to get a letter from Ms. Boucher.[51]

82. He did not deal with the hypothec for the $90,000 loan.[52] Therefore, all that remained to do during the meeting on September 17, 2010, was to determine the amount that Mr. Lamontagne was able to borrow and from whom.[53]

83. He states that as soon as he entered Mr. Lamontagne's office, they started to talk about the tax matter right away, up until the end of the conversation. That is why he feels that their entire meeting should be covered by solicitor-client privilege.[54]

84. Justice Girouard states that Mr. Lamontagne gave him a note that contained two pieces of information: the name of the lender and the loan amount.[55] He confirms that he did not read the note he received from Mr. Lamontagne in his presence. He waited until he was back in his own office to do so.[56]

85. During his examination-in-chief, he explained that he had not read the note probably

---

47 Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1177
48 Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1178
49 Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1190 and 1190
50 Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1202 and 1203, and May 18, 2017 (vol. 7), pp. 1444, 1450, 1451, 1455 and 1467
51 Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1179
52 Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1458
53 Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1474
54 Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1402, and May 17, 2017 (vol. 6), pp. 1147 to 1149
55 Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 699
56 Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 764 and 766, May 13, 2017, pp. 396 and 397, and May 18, 2017 (vol. 7), p. 1489

because Mr. Lamontagne told him that it contained the information he was expecting.[57]

86. Then, when asked by the Committee, Justice Girouard added that Mr. Lamontagne had to tell him what the note said during the meeting.[58]

87. We are of the opinion that the version given by Justice Girouard in this regard is inconsistent with any form of probability and reasonableness. We make this finding based, in particular, on the following:

- Given the context, surreptitiously giving him a note that contains the information he alleges it does is irrational;
- If Mr. Lamontagne had told him the name of the lender and the loan amount, why then would he have written this information in a note and why would he have given him this note in such a suspicious manner?
- This makes even less sense when we know that the information in question is not of a nature that would be covered by solicitor-client privilege and that it will be instantly reproduced in a document subject to publication of rights.

88. Moreover, it is impossible to lend credence to the testimony of an experienced lawyer who, in a so-called urgent situation, is given a document by his client but does not read it right there and then. It bears reminding that during the first inquiry, Justice Girouard stated that he was unsure of what the note might say when Mr. Lamontagne gave it to him.[59]

89. Furthermore, questioned about the logic of this sequence of actions, Justice Girouard said that he was unable to explain why Mr. Lamontagne had given him such benign information in such a surreptitious way.[60]

90. He also claimed that he was surprised by Mr. Lamontagne move.[61]

91. In addition to being implausible, this version of the facts is fundamentally different from the testimony given by Mr. Lamontagne.

---

[57] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 766
[58] Testimony of Justice Girouard, May 17, 2017 (vol. 6), p. 1190, 1191 and 1183, and May 18, 2017 (vol. 7), p. 1489
[59] Testimony of Justice Girouard, May 13, 2015, p. 377
[60] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1182 and 1184
[61] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1183 and 1184

92. When asked about the nature of the object that he had given Justice Girouard during the meeting on September 17, 2010, Mr. Lamontagne told Justice Chartier the following during the first inquiry:

[*Translation*]

> *Mr. Lamontagne, we see – we see you . . .*
> *A Yes . . .*
> *Q . . . go in . . .*
> *A . . . go into my pocket . . .*
> *Q . . . into your . . .*
> *A . . . that's right.*
> *Q . . . right pocket, to slip him, Justice*
> *Girouard, when he was . . .*
> *A Yes.*
> *Q . . . a lawyer, take something, you indicated what that was, some might suggest: were these drugs?*
> *A No, Your Honour, it wasn't drugs.*
> *Q Pills?*
> *A No, it was . . . like I said, it was documents, having to do with bookkeeping, money that Michel owed me, for movies that, a few weeks earlier, we had done transactions for, that's all.*[62]

93. Mr. Lamontagne therefore testified that what he had given Justice Girouard on September 17, 2010, was an invoice for previously viewed movies.

94. In addition, Mr. Lamontagne testified that he could not have given him a document with information on his tax matter during the meeting on September 17, 2010.[63]

95. Furthermore, Mr. Lamontagne did not know the amount of the settlement; it was Justice Girouard who was supposed to tell him, not the opposite.[64]

96. In the video (Exhibit P-26 of E-4.1), Mr. Lamontagne does not write a note. This is consistent with his testimony that he did not give Justice Girouard a handwritten note about his matter.[65]

---

[62] Testimony of Mr. Lamontagne, May 7, 2015, pp. 326 and 327
[63] Testimony of Mr. Lamontagne, May 7, 2015, pp. 323 to 325
[64] Testimony of Mr. Lamontagne, May 7, 2015, pp. 151 and 152
[65] Testimony of Mr. Lamontagne, May 7, 2015, p. 324

97. Lastly, it is curious, to say the least, that there is no mention of Justice Girouard's visit to see Mr. Lamontagne on his fee invoice dated November 17, 2010 (Exhibit P-17 (I) of E-4.1) and that even though he had provided him with professional services for a year, Justice Girouard had not charged Mr. Lamontagne any fees as at the date of his nomination to the judiciary.

98. The fact that, in his testimony, Mr. Lamontagne contradicts Justice Girouard's testimony in this regard adds, in our opinion, to the implausible character of the version given by the latter.

99. It is also evident, in that respect, that the conclusions drawn by the majority of the First Committee were in no way invalidated by the explanations provided by Justice Girouard during the first inquiry.

D) Content of note

100. As stated in the preceding section, we are forced to conclude that Justice Girouard's version regarding the content of the object given to him by Mr. Lamontagne during the meeting on September 17, 2010, is not credible.

101. This should suffice to close the analysis on the allegation as worded.

102. However, the learning points from *McDougall*[66] and the present Committee's obligation to seek the truth and establish it, to the extent possible, require us to push the analysis a little further.

103. To do this, we believe it is essential to place particular focus on the following undisputed facts:

- Mr. Lamontagne is a major drug trafficker who is a member of a ruthless criminal organization (Exhibit P-2 of E-4.1);
- He pleaded guilty and was sentenced to nine years in prison for drug trafficking and for gangsterism (Exhibit P-2 of E-4.1);
- Mr. Lamontagne's video store was a place through which drugs were trafficked

[66] *Op. cit.*, note 13

(Exhibit P-2 of E-4.1);

- Jean Alarie was in charge of receiving and distributing cocaine in Abitibi in September 2010 (Exhibit P-2 of E-4.1);

- Approximately one hour before Justice Girouard went to Mr. Lamontagne's office on September 17, 2010, Jean Alarie completed a drug transaction with Yvon Lamontagne in his office (Exhibit P-4 B of E-4.1);

- Thirty-five minutes before Justice Girouard arrived in his office, Mr. Lamontagne took a Post-it, put a small object in it, which he had taken out of his right pant pocket, rolled the small object three to four times in the Post-it and then folded the two corners. Mr. Lamontagne put this small wrapped and sealed object in his right pant pocket (Exhibit E-2, para. 85).

- Thirty-five minutes later, Justice Girouard enters Mr. Lamontagne's office and gives him cash, which is when Mr. Lamontagne, with unmistakable timing, takes an object out of his right pant pocket and hands it surreptitiously to Justice Girouard, who just as surreptitiously takes it in his right hand.

104. This list of undisputed facts must be assessed in light of the expert report filed by Sergeant-Supervisor Y (Exhibit P-22 of E-4.1), who, after having analyzed the sequence of facts described above, concludes as follows:

[*Translation*]

> It is clear from this video that we are witnessing a typical drug transaction. In the absence of sound, I can confidently conclude that this transaction between the two men in question is one of habit. That is what I told Sergeant Riverin at the time.

105. It should be noted that this expert had been retained in that capacity by the First Committee,[67] which also lent a great deal of credibility and probative value to his testimony.[68]

106. To this, we must add the testimony before the First Committee given by Sergeant-Supervisor Caouette, who demonstrated folding a Post-it with a dose of cocaine

[67] Exhibit E-2, para. 123
[68] Exhibit E-2, para. 167

(flour for the purpose of the exercise) inside.[69] This exercise was repeated spontaneously before the present Committee by Inspector Cloutier (based on his experience as an undercover officer), who said that a dose of cocaine concealed in this manner inside a "Post-it" was commonly known as a "deck."[70]

107. There is no denying, in the matter at hand, that what Mr. Lamontagne did 35 minutes before Mr. Girouard arrived, that is, place an object inside a Post-it, fold the note several times to seal it and ultimately place it in his right pant pocket, is exactly what Sergeant-Supervisor Caouette had demonstrated during the first inquiry and what Inspector Cloutier showed during this inquiry.

108. Nor can anyone ignore the objective fact that what Mr. Lamontagne surreptitiously gives to Justice Girouard right after receiving money from him comes from his right pant pocket, the same pocket into which he had placed his folded Post-it just a few minutes earlier.

109. The sequence of relevant events is therefore as follows:

- (1) A major drug trafficker (Mr. Lamontagne) places an object in a Post-it according to a packaging method commonly used in the drug trade (testimony from inspectors Caouette and Cloutier); (2) he puts this folded Post-it in his right pocket; (3) Justice Girouard enters and gives Mr. Lamontagne cash; (4) Mr. Lamontagne takes out an object from the same right pocket that he surreptitiously gives to Justice Girouard.

110. The role of this Committee is to determine the truth on the balance of probabilities. In the face of implausible explanations about the content of what Mr. Lamontagne took out of his pocket and gave to Justice Girouard, it is up to the Committee to determine the most plausible nature of what Mr. Lamontagne had given Justice Girouard. This is a good example of the application of the doctrine of inherent probability.

111. In that respect, we are of the opinion that, contrary to what Justice Girouard states, Mr. Lamontagne never gave him a note on September 17, 2010, let alone a note containing the name of a lender and a loan amount. It seems to us that the only outcome that is consistent with common sense and that takes into account, in a coherent manner, all the relevant objective and undisputed facts is that on that day, Mr. Lamontagne and

[69] Exhibit E-2, paras. 113 to 117
[70] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), pp. 385 and 386

Justice Girouard conducted an illegal transaction.

E) The message "I'm under surveillance, I'm being bugged"

112. During the First Committee hearings, Justice Girouard testified that he had never used the terms [*translation*] "I'm under surveillance, I'm being bugged" during the meeting on August 13, 2013, with counsel Raymond Doray, which led the First Committee to make the following finding:

> [209] Consequently, there seems to be a substantial inconsistency between Justice Girouard's testimony at the in camera hearing and the evidence he gave during his cross-examination. In addition, the evidence shows that, on September 17, 2010, Mr Lamontagne did not know he was under surveillance.[71]

113. In addition, the majority of the First Committee deems it implausible that had the message been inaccurate, Justice Girouard or his lawyers would not have corrected it at the first opportunity.

114. We submit that the following facts are relevant to the analysis:

- Volume 3 of the Doray Summary (Exhibit E-3) was prepared the day of the meeting with Justice Girouard and his lawyers on August 13, 2013;
- M[e] Doray, *Advocatus Emeritus*, prepared the Summary (Exhibit E-3) based on the notes he had taken during the meeting with Justice Girouard and his lawyers.[72] These handwritten notes were filed during this inquiry (Exhibit E-9);
- These handwritten notes include (Exhibit E-9) a textual extract of the content of Summary E-3, particularly the following statement: [*translation*] "Lamontagne gave him a note and a Post-it stating 'I'm under surveillance, I'm being bugged'."[73] M[e] Doray stated under oath that those are the words Justice Girouard had used, which he reproduced in paragraph 3 of Volume 3 of his summary.[74] M[e] Doray also stated that Justice Girouard had told him during the meeting that in addition to the message of [*translation*] "I'm under surveillance, I'm being bugged," the Post-it also contained

---

71 Exhibit E-2
72 Testimony of Me Raymond Doray, May 9, 2017 (vol. 2), p. 213
73 Testimony of Me Raymond Doray, May 9, 2017 (vol. 2), pp. 293 and 294
74 Testimony of Me Raymond Doray, May 9, 2017 (vol. 2), pp. 294 and 295

[*translation*] "the name of the person willing to give him a loan and the amount he was prepared to lend."[75]

115. We are of the opinion that the combination of the following factors hampers the credibility of the version given by Justice Girouard in that regard:

- M[e] Doray is a competent, conscientious lawyer who is recognized by his peers;
- He took detailed notes during the meeting, taking care to put the relevant words used by the judge between quotation marks;
- He prepared his summary the day of the meeting with the parties in question.

116. The fact that neither Justice Girouard nor his lawyers attempted to correct this aspect before Justice Girouard's cross-examination in May 2015 also greatly affects the credibility of the judge's statements in that regard.

117. It bears reminding that it has been demonstrated before the present Committee that on at least three occasions, before the Frist Committee hearings, Justice Girouard and his lawyers were in possession of the third volume of M[e] Doraym's Summary,[76] including twice during the review process.

118. Justice Girouard or his lawyers had multiple opportunities to correct the information that might have appeared erroneous to them.[77] Yet, they did not do so.

119. As for the explanation given by Justice Girouard that he had not read the document prepared by M[e] Doray, there is a serious lack of credibility there as well.

120. We find it hard to believe that a judge who is subject to a review process and who is assisted by two experienced lawyers would not discuss the content of documents that pertain to him or pay them attention.

121. For all these reasons, the explanations provided by Justice Girouard did not dispel the implausibilities, discrepancies and inconsistencies raised by the majority of the First Committee on this issue.

---

[75] Testimony of Me Raymond Doray, May 9, 2017 (vol. 2), p. 295
[76] Exhibit E-12, E-14 and admission made during the hearing on May 17, 2017 (vol. 6), stenographic notes, p. 949
[77] See, for example, letter dated January 8, 2014, Exhibit E-13

122. After reviewing all the discrepancies, implausibilities and inconsistencies noted by the majority of the First Committee in Report E-2, in light of the explanations provided by Justice Girouard during the present inquiry, we conclude that Justice Girouard did fail to testify with forthrightness and integrity during the First Committee's inquiry.

F) Justice Girouard attempted to mislead the First Committee by concealing the truth

123. For the reasons set forth in the preceding two sections, Justice Girouard did attempt to mislead the First Committee by concealing the truth.

124. The truth was concealed through a lack of transparency and forthrightness and multiple failures to testify with transparency and integrity.

SECOND ALLEGATION

> 2) Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason his misconduct and his failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before the First Committee that:
>
> a) he never used drugs;
>
> b) he never obtained drugs.

125. Paragraph 101 of the First Committee's Report reads as follows:

> [101] Justice Girouard proclaimed that he has never bought nor used drugs.

126. However, during his chief testimony on May 17, 2017, Justice Girouard denied having told the First Committee that he had never bought or used drugs.[78]

127. Later in the hearing, Justice Girouard was confronted with the following statement made by Justice Chartier during the First Committee's inquiry:

[*Translation*]

> But the question. . . around that, Justice Girouard took the witness stand and said: "I've never taken drugs! I've . . . I've . . . I've never taken them; I didn't take them in 87, in 90, in 91, in 92, I haven't . . . I haven't taken any since!

[78] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 642

> And that's his testimony.[79]

128. Justice Girouard confirmed that this statement made by Justice Chartier was consistent with what he had said during the first inquiry.[80] That is why he did nothing to correct it. He did, however, take care to note that his statement referred to the period after he became a lawyer, not before.

129. In short, Justice Girouard acknowledges that the statement in paragraph 101 of the Report of the First Inquiry Committee is accurate insofar as it applies to the period after he was admitted to the Bar in 1986. We submit that, for the purposes of the present inquiry, this nuance, which we have not found anywhere in Justice Girouard's previous statements, matters little. The allegations regarding the purchase or use of drugs by Justice Girouard all refer to the period after 1986.

130. It remains that we were still troubled by the fact that although he had testified having experimented and made mistakes in his youth like, he claims, half the federal judges under age 60, he stated that he was unable to identify the type of drug he took before becoming a lawyer.[81]

131. It seems obvious to us that someone who had only taken drugs a handful of times, calling them the mistakes of his youth, should remember the nature of the substances concerned.

A) L.C.'s testimony

i) Justice Girouard's use of cocaine

132. L.C., a member of the public, sent a letter to the Canadian Judicial Council on July 25, 2016, following the Council's decision not to remove Justice Girouard from office (Exhibit E-10).

133. In light of her history with Justice Girouard and given the values of justice and integrity that she says she holds, she felt it was her duty to tell her version of the facts.[82]

134. She also testified that she followed the first inquiry and that she was flabbergasted by its outcome, especially with respect to the video, which to her, as a member of the public, is very

---

[79] Testimony of Justice Girouard, May 13, 2015, p. 144
[80] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1592
[81] Testimony of Justice Girouard, May 17, 2017 (vol. 6), pp. 1061 to 1065, and May 18, 2017 (vol. 7), p. 1594
[82] Testimony of L.C., May 9, 2017, pp. 12 to 15

clear.[83]

135. With respect to Justice Girouard's use of cocaine, she lists at least five episodes that she says she witnessed:

- In the fall of 1992, she met Michel Girouard and his wife for the first time at their home in Val-d'Or. She remembers there being a fire outside and several people were there.[84] After leaving the party, Alain Champagne, her then-husband, told her he had taken cocaine with Michel Girouard.[85]

- In January 1994, while M[e] Michel Girouard was visiting Alain Champagne, he was under the influence of cocaine.[86]

- Between 1994 and 1996,[87] she remembers going to a hotel where Michel Girouard and his wife were staying during a visit to Montréal. She testified that her husband, Michel Girouard and his wife all went to the hotel room bathroom, closed the door and emerged after some time. She then noticed a change in their behaviour and understood that they had taken cocaine.[88]

- In the fall of 1998, she and her husband went to Michel Girouard's home in Val-d'Or to visit her husband's family.[89] They were there with L.C.'s mother.

  - She says that she, her husband and her mother went to Michel Girouard's home in the afternoon. Since her husband, Michel Girouard and his wife were gone together for some time, she went to look for them. She recalls finding the children alone in the garage, in bare feet, while nails were scattered all over the floor.[90]

  - After bringing the children in and going back to join her mother in the kitchen, her husband, Michel Girouard and his wife reappeared. She then noticed white powder in their nostrils. She explains that she was sitting at the kitchen table and that the three of them were standing in front of her.[91] She then noticed that they

[83] Testimony of L.C., May 10, 2017, pp. 100 and 101
[84] Testimony of L.C., May 9, 2017, p. 23
[85] Testimony of L.C., May 9, 2017, pp. 29, 31, 34 and 36
[86] Testimony of L.C., May 9, 2017, p. 69
[87] Testimony of L.C., May 9, 2017, pp. 45 and 46
[88] Testimony of L.C., May 9, 2017, pp. 42 to 43
[89] Testimony of L.C., May 9, 2017, p. 49
[90] Testimony of L.C., May 9, 2017, pp. 50 to 52
[91] Testimony of L.C., May 9, 2017, pp. 53 and 54

were behaving differently, particularly Justice Girouard, who had suddenly become very talkative and expressive.[92]

- Lastly, L.C. testified that during dinner at a Montréal restaurant with some of Justice Girouard's former university colleagues, Justice Girouard was under the influence of drugs.[93]

136. In her letter to the Canadian Judicial Council (Exhibit E-10), L.C. referred to RCMP Officer Robert Cloutier, who had told her that during his time as an undercover officer in Abitibi, it was known in police circles that counsel Michel Girouard was a cocaine user.

137. L.C. stated that she was very familiar with the symptoms associated with cocaine use because she had seen them herself many times in users who frequented the bar where she worked in downtown Montréal when she moved to Quebec in the early 90s.[94] She says the symptoms are as follows:

- Hyperactivity, dilated pupils and nasal stress;[95]
- Hypersexuality;[96]
- Feelings of invincibility, externalization and great talkativeness.[97]

ii) Relationship between Michel Girouard and Alain Champagne

138. Alain Champagne is the father of L.C.'s two children. On April 29, 1994, he was found guilty of importing 20 kilos of cocaine from Colombia, concealed in shoe soles. He was sentenced to 10 years in prison for this offence (Exhibits E-17 and E-18).

139. On March 20, 1995, the Court of Appeal ordered a new trial in connection with these charges (Exhibit E-17).

140. L.C. stated that Justice Girouard and Alain Champagne were longtime friends.[98] She says that she had seen Michel Girouard with Alain Champagne approximately 20 times between

---

92 Testimony of L.C., May 9, 2017, pp. 54 and 55
93 Testimony of L.C., May 9, 2017, pp. 70 and 71
94 Testimony of L.C., May 9, 2017, p. 33
95 Testimony of L.C., May 9, 2017, p. 31
96 Testimony of L.C., May 9, 2017, p. 35
97 Testimony of L.C., May 9, 2017, p. 55
98 Testimony of L.C., May 9, 2017, p. 17

1992 and 2000, both in Montréal and in Val-d'Or.[99]

141. As of 2000, she no longer saw Michel Girouard or his wife, following the seizure before judgment involving her husband, Alain Champagne (Exhibit E-16).[100]

142. L.C. also states that she recalls seeing Michel Girouard in prison many times when she was visiting her husband.[101] To have access to Mr. Champagne, Michel Girouard claimed to be his lawyer, even though that role had been played by M[e] Jacques Lafontaine (Exhibit E-17).[102]

143. She went to Michel Girouard's home in Val-d'Or at least twice.[103]

B) Inspector Robert Cloutier's testimony

144. From 1986 to 1989, Robert Cloutier was assigned to Val-d'Or as an undercover officer for the Royal Canadian Mounted Police.[104] From 1993 to 1995, he was posted to Rouyn-Noranda to fight crime groups that were organizing drug trafficking.[105]

145. At the time, the drug situation in Abitibi was very problematic. Inspector Cloutier explained that, in 1986, the price of an ounce of gold was very high and the Abitibi economy was booming. Demand for drugs was therefore high and there were definitely a lot of people offering them.[106]

146. While he was stationed in Abitibi, he soon heard about counsel Michel Girouard.[107] His colleagues with the Val-d'Or municipal police had said that Michel Girouard was a cocaine user.[108] He explains that he was taken aback because this information did not often circulate in police circles about a lawyer.

147. After receiving this information, he decided to share it with his RCMP colleagues and his then-supervisor, who it turned out, already knew this about counsel Girouard.[109]

---

[99] Testimony of L.C., May 9, 2017, p. 41
[100] Testimony of L.C., May 9, 2017, p. 41
[101] Testimony of L.C., May 9, 2017, pp. 68, 84 and 85
[102] Testimony of L.C., May 9, 2017, p. 68
[103] Testimony of L.C., May 10, 2017, p. 71
[104] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 341
[105] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 343
[106] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 349
[107] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 350
[108] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 352
[109] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 356

148. He discussed this information with L.C. at some point before 2008.[110] He recalls visiting L.C. at her home in Montréal and, while talking about his work in Abitibi, L.C. asked him if he knew Michel Girouard, whom he said he did. L.C. then told him that Michel Girouard was a cocaine user, to which Robert Cloutier answered "Yes I know that".[111]

149. Lastly, Robert Cloutier confirmed that the symptoms identified by L.C. as those resulting from the use of cocaine were accurate.[112]

C) Justice Michel Girouard's testimony

i) Cocaine use

150. Justice Girouard testified that he has never taken drugs since becoming a lawyer.[113] He also stated that he never used cocaine with Alain Champagne,[114] nor had Champagne used cocaine in front of him.[115]

ii) Relationship with Alain Champagne and L.C.

151. From January to September 1987,[116] Justice Girouard rented a room in Mr. Champagne home in Val-d'Or.[117]

152. From that point forward (1987), Justice Girouard began investing in Mr. Champagne's financial projects.[118] He states that the first time he met L.C. it was at a restaurant in Montréal. She had apparently been to his home once, from July 9 to 12, 1995, when Mr. Champagne was released pending a new trial following the Federal Court decision.[119]

153. Justice Girouard testified that he wanted to help Mr. Champagne and that he had allowed him to stay in his home along with L.C. and their young daughter. He explains that the women stayed home while he worked in his office, and he assumes that Mr. Champagne was trying

---

[110] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), pp. 357 and 358
[111] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 360
[112] Testimony of Robert Cloutier, May 10, 2017 (vol. 3), p. 376
[113] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 659 to 661, and May 18, 2017 (vol. 7), p. 1594
[114] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 641, and May 18, 2017 (vol. 7), p. 1575
[115] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1574
[116] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1544
[117] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1544
[118] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1547
[119] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 588 and 589

to find financing for new mining projects during this time.[120]

154. Justice Girouard explains that he let Mr. Champagne and L.C. stay at his home in this context because they needed help, they did not have much money and they were entitled to a second chance.[121] Despite that, Justice Girouard denies that the Champagnes were close acquaintances.[122]

155. Justice Girouard confirmed that he had visited Alain Champagne at least three times while he was incarcerated.[123] He says he recalls that he had to go see him in prison concerning a civil matter to show him a document and that Mr. Champagne had asked him to bring his young daughter along because he had not seen her in a long time. He added that since L.C. did not want him to take the child, she accompanied them to prison.[124] This child was between 9 and 13 months at the time.[125]

156. Counsel Girouard did not represent Alain Champagne in connection with his criminal charges.[126]

157. On February 16, 1998, Justice Girouard lent Alain Champagne $100,000, interest-free (Exhibit E-16).[127] Justice Girouard explains that he asked for and received a line of credit for $100,000 specifically for this transaction.[128] When he took out this line of credit and lent the amount to Mr. Champagne, Justice Girouard was aware that Mr. Champagne was leaving prison.[129] Justice Girouard confirms that he continued to do business with Alain Champagne, even though he had been in prison for importing cocaine.

158. He acknowledges introducing Alain Champagne to a lawyer to represent him in connection with this criminal offence.[130]

159. Between 1990 and 1999, he acknowledges that he did, on a few occasions, meet with Mr. Champagne for a meal at Montréal restaurants.[131] While he acknowledges that

[120] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 589
[121] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1624
[122] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1624
[123] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1561
[124] Testimony of Justice Girouard, May 12, 2017 (vol. 4), pp. 593, 594 and 595
[125] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 610
[126] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 603
[127] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1556 et seq.
[128] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1556
[129] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1558
[130] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1564

Mr. Champagne liked to spend and was [*translation*] "frivolous," he denies partying with him in the past.[132]

160. Lastly, he states that he had sent a bailiff to perform a seizure before judgment at the Champagnes' home in 1999.[133] He claims that he never spoke to Alain Champagne after that.[134]

D) Testimony of G.A.

i) Drug use

161. Ms. G.A. has been married to Justice Girouard for 28 years.[135] She testified that she has never had any inkling that her husband could be using drugs. In addition, she says that she never used herself because she was troubled by what drugs had done to her older brother, who developed schizophrenia after using drugs. She explained that her brother had attempted suicide during an episode of psychosis, which left him quadriplegic. She says her brother finally died on July 5, 2011.[136]

162. It should be noted that Ms. G.A. never testified about this family history during her appearance before the First Committee. She says this is because she wanted to respect her family and her parents, and to prevent the story from being covered by the media.[137]

163. She stated that she has always had a deep aversion to drugs because of her brother's misfortunes.[138] Ms. G.A. confirmed that she had been arrested for intoxication on May 1, 2011, and went to St-Jérôme to plead guilty to this charge to make sure everything was kept quiet.[139]

ii) Relationship with Alain Champagne and L.C.

164. Ms. G.A. claims that her first meeting with L.C. was at a restaurant called Hélène de Champlain in Montréal and that it was not a pleasant experience. She states that L.C. was not

---

[131] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1579
[132] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1581
[133] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1614 and 1615
[134] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1616
[135] Testimony of G.A., May 18, 2017 (vol. 7), p. 1632
[136] Testimony of G.A., May 18, 2017 (vol. 7), pp. 1660 to 1662
[137] Testimony of G.A., May 19, 2017 (vol. 8), pp. 1811 and 1812
[138] Testimony of G.A., May 19, 2017 (vol. 8), p. 1813
[139] Testimony of G.A., May 19, 2017 (vol. 8), p. 1817 to 1821

someone she clicked with and that she had no class. She also claims that there was a bad vibe between L.C. and Mr. Champagne.[140] Her perception of L.C. contrasts with the one she has of Alain Champagne, whom she describes as a smiling man who is nice to listen to and likes the good things in life. In short, he is a man with a good personality.[141]

165. She adds that she saw L.C. a second time from July 10 to 12, 1995, because the Champagnes were staying at her home in Val-d'Or. During her examination-in-chief, she simply indicated that the reason for their visit was due to the fact that Alain Champagne had come to work in Val-d'Or.[142]

166. G.A. does not recall meeting L.C.'s mother.[143]

167. G.A. confirmed that she and Justice Girouard had, before the hearing, discussed the details of L.C.'s letter to the Canadian Judicial Council (Exhibit E-10) and their upcoming testimony.[144]

E) Assessment of testimony

i) G.A.'s testimony

168. For the reasons set out below, we have serious doubts about the credibility and transparency of Ms. G.A.'s testimony.

169. We found the same type of evasion, lack of forthrightness, discrepancies or omissions as the ones in Justice Girouard's testimony.

170. For example, while she claims to have a visceral aversion to drugs because of her brother's problems some 30 years ago:

- She has testified that she regularly goes to Mr. Lamontagne's office, with her twins, to pay for movies;[145]
- She has testified that she found out Mr. Lamontagne had been accused of growing cannabis in 2000.[146] Yet, she claims she does not know that Mr. Lamontagne is a drug

[140] Testimony of G.A., May 18, 2017 (vol. 7), p. 1672 and 1673
[141] Testimony of G.A., May 19, 2017 (vol. 8), p. 1742
[142] Testimony of G.A., May 18, 2017 (vol. 7), p. 1674
[143] Testimony of , May 19, 2017, p. 1696
[144] Testimony of G.A., May 19, 2017 (vol. 8), p. 1804
[145] Testimony of G.A., May 19, 2017 (vol. 8), p. 1716
[146] Testimony of G.A., May 19, 2017 (vol. 8), p. 1706

trafficker when she later goes to his place of business;[147]

- On the contrary, she claims that Mr. Lamontagne does not look like a drug trafficker and that he does not have a reputation of being one. Ms. G.A. explains that Mr. Lamontagne did not keep company with Val-d'Or's notorious traffickers.[148]

- This statement is a glaring contradiction of the testimony given by Justice Girouard, who says that practically everyone knew that Mr. Lamontagne was a trafficker, particularly because of the company he kept.[149]

- Moreover, Ms. G.A. testified that she had found out through newspapers that Mr. Champagne had been charged with and found guilty of importing cocaine.[150] However, when questioned about her knowledge of the guilty verdict and imprisonment of Mr. Champagne while he was staying at her home in July 1995, Ms. G.A. becomes very ambivalent.[151] She initially explains that she must have known.[152] Yet, that is certainly not something that is so easily forgotten.

- Then, questioned a second time about knowing that she let a man who had been arrested, charged and imprisoned for one of the most serious crimes under the *Criminal Code of Canada* stay in her home*,* she explains that she knew he had run-ins with the law, but that she was unaware of the extent of the situation.[153] Confronted with this implausibility, she adds that, at the time, she did not know that Mr. Champagne was a drug trafficker; she only knew that he was in trouble with the law.[154]

- All of a sudden, she claims that she knew that Mr. Champagne had been arrested for trafficking, but that she did not know that it was for large quantities and under such dramatic circumstances.[155]

- Lastly, she again backtracks and explains that she did not see the newspapers at the time and that it was only after Mr. Champagne's visit that she knew he had been found

[147] Testimony of G.A., May 19, 2017 (vol. 8), p. 1719
[148] Testimony of G.A., May 19, 2017 (vol. 8), p. 1720
[149] Testimony of Justice Girouard, may 17, 2017 (vol. 6), pp. 1162 to 1165
[150] Testimony of G.A., May 19, 2017 (vol. 8), p. 1754
[151] Testimony of G.A., May 19, 2017 (vol. 8), p. 1750 to 1757
[152] Testimony of G.A., May 19, 2017 (vol. 8), p. 1752
[153] Testimony of G.A., May 19, 2017 (vol. 8), p. 1753
[154] Testimony of G.A., May 19, 2017 (vol. 8), p. 1755
[155] Testimony of G.A., May 19, 2017 (vol. 8), p. 1756

guilty of importing in shoe soles.[156] However, the newspaper articles regarding Mr. Champagne's conviction all predate his stay with Michel Girouard and G.A. (Exhibit E-18).

171. In short, the complete aversion that Ms. G.A. expressed towards drugs appears to suffer from highly specific exceptions and very surprising tolerance in some circumstances. This tolerance is accompanied by contradictions, hesitation and lack of forthrightness, which are not characteristic of transparent and candid testimony.

172. This same lack of forthrightness was observed a number of other times during Ms. G.A.'s testimony.

173. For example, it took no fewer than 24 attempts before she answered a simple question as to whether she had discussed L.C.'s letter with her husband (Exhibit E-10) prior to her testimony.[157]

174. In the same vein, her lack of transparency about her alcohol level is, for us, very telling. When M[e] Synnott asked what her alcohol level was when she was arrested for being impaired in May 2011, she answered in the following manner:

[*Translation*]

> *Q Do you remember the level?*
> *A I don't recall exactly.*
> *Q Do you have an idea?*
> *A I don't remember the level.*
> *It was above point eight (.8).*
> *Q You don't remember?*
> *A No.*[158]

175. However, during re-examination by the Committee's counsel, what started out as being complete amnesia suddenly turned to clarity:

[*Translation*]

> *Q Going back to counsel Synnott's questions, you said you didn't remember your alcohol level when you blew at the police station?*

[156] Testimony of G.A., May 19, 2017 (vol. 8), p. 1756
[157] Testimony of G.A., May 19, 2017 (vol. 8), pp. 1798 to 1804
[158] Testimony of G.A., May 19, 2017 (vol. 8), p. 1821

> *A It was more than point eight (.8), but I don't know the exact number. I think it's point fourteen (.14), I think that's it.*
>
> *Q O.k.*
>
> *A Because, like I told you, I'm – I remember something visual more than a number, a date . . .*
>
> *Q Yes, but . . .*
>
> *. . .*
>
> *Q Do you remember, Ms. A, that when you were arrested, you were given a report with the alcohol level written on it?*
>
> *That's visual.*
>
> *A Yes, but like I told you, the . . . a paper?*
>
> *Q Yes, with your . . . you don't remember that?*
>
> *A I . . . pffft! . . . I . . . of course I . . .*
>
> *Q Yes.*
>
> *A . . . I had the paper, but . . . I don't remember . . .*[159]

176. With due respect, it is hardly believable that someone who was arrested for being intoxicated while going to pick up her children from school does not remember the amount of alcohol in her blood when tests were performed at the police station and does not remember that she was given the results of those tests when she left the police station.

177. These examples support our finding that Ms. G.A. gave skewed testimony intended to favour her husband.

F) Comparative analysis of the testimony of L.C., Michel Girouard and G.A

178. As the table below shows, there are two major discrepancies between the testimony given by L.C., on the on hand, and by Justice Girouard and G.A., on the other. These discrepancies pertain to drug use and the number of times they might have met. With respect to most of the other aspects (aside from the pool and the language spoken), L.C.'s testimony is not disputed and is, rather, confirmed by Justice Girouard and/or G.A.:

[159] Testimony of G.A., May 19, 2017 (vol. 8), pp. 1845 and 1846

Testimony of L.C.	Testimony of Justice Girouard and G.A.
Justice Girouard and Alain Champagne were good friends.[160]	Alain Champagne was friends with Justice Girouard.[161]
Justice Girouard and Alain Champagne lived together.[162]	Justice Girouard rented a room in Alain Champagne's home.[163]
She had been to a party at the home of Justice Girouard, and there were guests and a campfire.[164]	They liked to have a fire going when friends are over.[165]
Justice Girouard's house is gray and is on a lake.[166]	Their house is white on Lac Lemoyne.[167]
The main rooms in Justice Girouard's home are upstairs, not on the ground floor.[168]	The bedrooms are on the ground floor of the house. The upstairs has an open space with the living room, dining room and kitchen.[169]
Justice Girouard had a red Corvette.[170]	Justice Girouard had a white Corvette in the 90s.[171]
The road to Justice Girouard and G.A.'s house is not paved.[172]	The road to get to their house, Des Scouts Street, is a dirt road.[173]
There is an outdoor pool.[174]	The pool was put in in 2000. There was no pool before then.[175]
G.A. had in vitro fertilization.[176]	G.A. had in vitro fertilization from 1992 to 1995.[177]
Alain Champagne was in prison for importing cocaine.[178]	Alain Champagne was in prison, but Justice Girouard claims that he did not know he was involved in importing cocaine.[179]

[160] Testimony of L.C., May 9, 2017, p. 17
[161] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 584, and May 18, 2017 (vol. 7), p. 1540
[162] Testimony of L.C., May 9, 2017, p. 22
[163] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1544
[164] Testimony of L.C., May 9, 2017, p. 23
[165] Testimony of G.A., May 19, 2017 (vol. 8), p. 1796
[166] Testimony of L.C., May 9, 2017, p. 25
[167] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 572
[168] Testimony of L.C., May 9, 2017, p. 25
[169] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 548
[170] Testimony of L.C., May 9, 2017, p. 25
[171] Testimony of G.A., May 19, 2017 (vol. 8), p. 1845
[172] Testimony of L.C., May 9, 2017, p. 25
[173] Testimony of G.A., May 19, 2017 (vol. 8), p. 1795
[174] Testimony of L.C., May 9, 2017, pp. 25 and 71
[175] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1620 and 1625, and testimony of G.A., p. 1670
[176] Testimony of L.C., May 10, 2017, p. 32
[177] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 543, and testimony of G.A., May 18, 2017 (vol. 7), pp. 1649 to 1660
[178] Testimony of L.C., May 10, 2017, p. 66
[179] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1576

G.A. and Justice Girouard live on Des Scouts Street.[180]	Their house is on Des Scouts Street.[181]
They have a Doberman.[182]	Justice Girouard has always had Doberman.[183] He still has one today.
Alain Champagne and Justice Girouard did business together.[184]	In 1987, Justice Girouard started to invest in Alain Champagne's projects.[185] Justice Girouard was his lawyer in civil matters.[186] He even lent him $100,000, interest-free, to invest in MedcomSoft[187] when Alain Champagne got out of prison.
Justice Girouard sent a bailiff to her home in a matter involving Alain Champagne.[188]	Justice Girouard confirmed proceeding with a seizure before judgment at Alain Champagne's home (E-16).[189]
She visited Justice Girouard and G.A. at their home at least twice, during a party in 1992 and in 1998 with her mother.[190]	L.C. visited their home only once in July 1995. She was there with Alain Champagne's daughter, but was not with her mother. They stayed two or three days.[191] Alain Champagne had just been released from prison.[192]
G.A. is a quiet, gentle person.[193]	In public, G.A. is a woman who smiles and speaks quietly.[194]
Justice Girouard went to see Alain Champagne in prison multiple times.[195]	Justice Girouard went to see Alain Champagne in prison at least three times.[196] He also went to see Alain Champagne, at his request, with Mr. Champagne's daughter, who was around 1 year old at the time.[197]

[180] Testimony of L.C., May 10, 2017, p. 72
[181] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 549
[182] Testimony of L.C., May 10, 2017, p. 72
[183] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1618 and 1619
[184] Testimony of L.C., May 9, 2017, pp. 22 and 82
[185] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 583, and May 18, 2017 (vol. 7), p. 1547
[186] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 583
[187] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1556 to 1559
[188] Testimony of L.C., May 9, 2017, p. 41
[189] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1552 and 1553
[190] Testimony of L.C., May 10, 2017, p. 71
[191] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 589, and testimony of G.A., May 18, 2017 (vol. 7), 1674
[192] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 589
[193] Testimony of L.C., May 9, 2017, p. 55
[194] Testimony of G.A., May 19, 2017, p. 1741
[195] Testimony of M[e] Raymond Doray, May 9, 2017 (vol. 2), pp. 84 and 85
[196] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1561
[197] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1562, and May 12, 2017, p. 593

Justice Girouard and G.A. definitely like nice things and have a very posh lifestyle. They like going out, vacations, nice cars and big homes.[198]	They like nice things.[199] G.A. drives a Mercedes.[200] Justice Girouard drives a Porsche.[201] They have two cars at home.[202] Justice Girouard travels down south with his children nearly every fall.[203] They go on a family vacation at least once a year.[204] They have had a home in Saint-Sauveur since 2000. Before that, they had condos there.
G.A.'s family is from Trois-Rivières or Québec.[205]	G.A. comes from Trois-Rivières.[206]
L.C. talked with Justice Girouard and his wife in English.[207]	Justice Girouard still has trouble with English to this day. G.A. claims she does not speak English.[208]
According to L.C., Alain Champagne is a compulsive liar.[209]	According to Justice Girouard, Alain Champagne was a real liar, but a good salesman.[210]

179. In our opinion, this exercise substantiates Ms. L.C.'s credibility. In addition, it bears reminding that Ms. L.C. is an uninterested witness, unlike Justice Girouard and Ms. G.A.

180. Generally speaking, Ms. L.C. testified with transparency and forthrightness. She never contradicted herself, never hesitated in answering questions and was very precise with some details.

181. Ms. L.C.'s cross-examination did not undermine her credibility or her version.

182. In addition, L.C.'s testimony is consistent with that of witness and informer Mr. X. In a statement filed as Exhibit P-21 of E-4.1 and during his sworn testimony before the Frist Committee,[211] the latter stated as follows:

---

[198] Testimony of L.C., May 9, 2017, p. 40
[199] Testimony of G.A., May 19, 2017 (vol. 8), pp. 1793 and 1794
[200] Testimony of G.A., May 19, 2017 (vol. 8), p. 1822
[201] Testimony of Justice Girouard, May 12, 2017 (vol. 4), p. 1076 and 1077
[202] Testimony of G.A., May 19, 2017 (vol. 8), p. 1842
[203] Testimony of G.A., May 19, 2017 (vol. 8), p. 1722
[204] Testimony of G.A., May 19, 2017 (vol. 8), p. 1841
[205] Testimony of L.C., May 9, 2017, p. 41
[206] Testimony of G.A., May 18, 2017 (vol. 7), p. 1632
[207] Testimony of L.C., May 10, 2017, p. 30
[208] Testimony of G.A., May 18, 2017 (vol. 7), p. 1673, and May 19, 2017, p. 1736
[209] Testimony of L.C., May 10, 2017, pp. 36 and 37
[210] Testimony of Justice Girouard, May 18, 2017 (vol. 7), pp. 1601 and 1602
[211] Testimony of Mr. X, May 8, 2015, pp. 1 to 194

- He sold cocaine to counsel Michel Girouard starting in the 80s;
- When M^{e} Girouard was his lawyer, he occasionally paid him in cocaine, worth $10,000;
- The *modus operandi* of their transaction is described by Mr. X as follows:
  - Justice Girouard came to see him directly at his place of business; the sale took place very discretely in his office at the back (P-21 of E-4.1, lines 208 to 210);
  - Justice Girouard gave him money in exchange for cocaine (P-21 of E-4.1, lines 210 to 211);
  - Since he had no camera in his office, they would occasionally do a line of cocaine together during the transaction (P.21 of E-4.1, lines 211 to 213);
  - He stated that he made between 10 and 15 deliveries of cocaine to Justice Girouard's home on Des Scouts Street in Val-d'Or.[212]
  - He stated that during these deliveries, there were often parties at the home of the Girouards and that Ms. G.A. was there.[213]

183. In short, in light of the rules set forth in *McDougall* and the standards applicable to the assessment of credibility,[214] Ms. L.C.'s version must be retained. For this reason, and considering our conclusion regarding the first allegation, it must be concluded that Justice Girouard did in fact use cocaine when he was a lawyer.

THIRD ALLEGATION

> Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before this Inquiry Committee that he never used cocaine when he was a lawyer.

184. Given the conclusion we have reached with respect to the second allegation, it must be concluded that Justice Girouard did mislead the present Committee by stating under oath that he had never used cocaine when he was a lawyer.

---

[212] Testimony of Mr. X, May 8, 2015, p. 129
[213] Testimony of Mr. X, May 8, 2015, pp. 182 to 184
[214] *Browne v. Dunn*, (1894) 6 R. 67; *R v. Lyttle*, [2004] 1 S.C.R. 193, paras. 64–65; *Palmer v. The Queen*, [1980] 1 S.C.R. 759, p. 781

FOURTH ALLEGATION

> Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the *Judges Act*), by falsely stating before this Inquiry Committee that he never became acquainted with and was never provided a copy of Volume 3 of the Doray Report before May 8, 2017, his testimony on point being:
>
> "A. That is . . . that is . . . I was never shown Volume 3, even in the first inquiry, never; I saw it for the first time on Monday, May 8, this week;
>
> O.K.?
>
> That is…
>
> Q. But…
>
> A. …the truth!"

185. There is no doubt that Justice Girouard's statement as reproduced in the fourth allegation is a lie.

186. On May 8, 2017, Justice Girouard received and was in possession of, not fewer than four times, Volume 3 of the Doray Report, that is:

1. Via the letter dated October 22, 2013, sent by M^{e} Sabourin (with a copy to M^{e} Gérald R. Tremblay) announcing that a review committee had been convened (Exhibit E-12);

2. Via the letter dated February 11, 2014, sent by M^{e} Sabourin (with a copy to M^{e} Gérald R. Tremblay and M^{e} Louis Masson) (Exhibit E-14);

3. During the disclosure of evidence during the First Inquiry Committee on March 13, 2015;[215]

4. During hearings before the First Inquiry Committee in May 2015.[216]

187. In cross-examination, Justice Girouard acknowledged that the answer he had provided on May 12, 2017, was inaccurate. He claims, however, that it was not a lie.[217]

---

[215] Admission made during the hearing on May 17, 2017 (vol. 6), stenographic notes, p. 949
[216] Testimony of Justice Girouard, May 13, 2015, pp. 507 to 510, 516 and 517, and May 14, 2015, pp. 16 and 17
[217] Testimony of Justice Girouard, May 18, 2017 (vol. 7), p. 1494

188. Regretfully, we cannot rely on the testimony and explanations of Justice Girouard on that matter. With the resources Justice Girouard devotes to defending his rights, it seems implausible to us that, despite all these documents provided to him in person and through his lawyers, Justice Girouard could have been mistaken when he made such a clear and precise statement.

189. On the contrary, we believe that Justice Girouard wanted instead to take advantage of an opportunity that he no doubt felt he had following M[e] Doray's testimony. Yet, testifying with forthrightness has nothing to do with opportunism.

190. That is why we conclude, without hesitation, that the fourth allegation has been proven.

X) **Conclusions**

191. After carefully reviewing the evidence and all the circumstances, we are of the opinion that this Inquiry Committee must find Justice Girouard guilty of the four allegations against him.

192. The instances of misconduct noted are all characterized by a breach of every judge's duty to testify with forthrightness, transparency and integrity when called to do so before his peers.

193. It is our view that these violations entail a very high intrinsic seriousness. Few cases of misconduct are likely to erode public confidence in the justice system as much as a judge evading his obligation to respect and promote the truth and the oath.

194. After having heard from Justice Girouard, the majority of the First Committee stated as follows:

> [240] A compromising of a judge's integrity through the giving false and deceitful evidence before a Committee of his peers undermines the integrity of the judicial system itself and strikes at the heart of the public's confidence in the judiciary. Such conduct is most incompatible with the due execution of the office of judge, and weakens and undermines public confidence.[218]

195. After giving Justice Girouard an opportunity to again explain himself during the present inquiry, we can see the accuracy of this statement made by the majority of the First Committee.

---

[218] Exhibit E-2

196. We are of the opinion that Justice Girouard's misconduct is manifestly and profoundly destructive of the concepts of impartiality, integrity and independence of the judiciary and that it sufficiently undermines public confidence so as to render Justice Girouard incapable of executing the judicial office.

197. We therefore feel that only a recommendation to remove Justice Girouard from office is likely to maintain public confidence in our judiciary.

198. Because the integrity of the judiciary must be irreproachable, any serious breach of that integrity must be met with exemplary sanctions.

199. Respectfully submitted.

Québec, June 9, 2017.

[*original signed by*]

M^e^ Marc-André Gravel
Counsel for the Inquiry Committee
Gravel Bernier Vaillancourt
magravel@gbvavocats.com
2960 Laurier Blvd., Suite 500
Québec, Quebec G1V 4S1
Tel.: 418-656-1313 / Fax: 418-652-1844
Counsel for the Inquiry Committee

Ref.: 11707-01 MAG/aj