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Inquiry Committee concerning
the Honourable Michel Girouard

Report of the Inquiry Committee to the Canadian Judicial Council

6 November 2017

[TRANSLATION]

TRANSLATED REPORT TO THE CANADIAN JUDICIAL COUNCIL

TRANSLATED REPORT OF THE INQUIRY COMMITTEE CONSTITUTED PURSUANT TO SECTION 63(3) OF THE *JUDGES ACT* TO INQUIRE INTO THE CONDUCT OF JUDGE MICHEL GIROUARD OF THE SUPERIOR COURT OF QUEBEC

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Chief Justice of New Brunswick
Chairperson

The Honourable Glenn D. Joyal
Chief Justice of the Court of
Queen's Bench of Manitoba

The Honourable Marianne Rivoalen
Associate Chief Justice
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I. INTRODUCTION AND OVERVIEW

[1] The four allegations of misconduct on the part of Judge Michel Girouard are set out in the Notice of Allegations, as amended.[1] Each of those allegations takes issue with the truthfulness of his testimony under oath and, correlatively, his integrity:

> [TRANSLATION]
>
> **First Allegation:**
>
> Judge 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) Judge Girouard failed to cooperate with transparency and forthrightness in the First Committee's inquiry;
>
> b) Judge Girouard failed to testify with transparency and integrity during the First Committee's inquiry;
>
> c) Judge Girouard attempted to mislead the First Committee by concealing the truth;
>
> **Second Allegation:**
>
> Judge 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;
>
> **Third Allegation:**
>
> Judge 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;

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[1] The Notice of Allegations of 23 December 2016, amended on 22 February 2017 and further amended on 17 May 2017.

Fourth Allegation:

> Judge 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!"

[2] At the outset, it bears acknowledging the circumstances which led to the constitution of our Committee are unprecedented. Indeed, this is the first time an inquiry committee has been tasked with carrying out an inquiry that brings into play findings by another inquiry committee.

[3] Be that as it may, and given the seriousness of the findings of the majority of the First Inquiry Committee, and that they seemed destined to remain unresolved, there can be no doubt the public interest and the interest of the judiciary as a whole required the present inquiry be undertaken and pursued to its conclusion.

[4] That said, the uniqueness of the proceedings in this case and the lack of pertinent jurisprudence caused us to reflect long and hard on the contours of the analytical framework most conducive to a principled resolution of the **First Allegation**.[2]

[5] All things considered, we concluded it was appropriate to accept the findings of the majority underlying that Allegation only if it was shown they were both free from error and reasonable, and only to the extent they withstood our assessment of the evidence deemed reliable.

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[2] On the other hand, and as will be seen, the inquiry into the **Second Allegation**, the **Third Allegation** and the **Fourth Allegation** is relatively straightforward.

[6] We have carefully considered both the documentary and the testimonial evidence. That process involved the review, either personally or through our advisory counsel and legal drafters, of 4,000 pages of stenographic notes reporting the 14 days of hearings before the First Committee.

[7] On May 8, 9, 10, 12, 16, 17, 18 and 19, 2017, in Québec City, we heard testimony in connection with the aforementioned allegations, including the testimony of Judge Girouard.

[8] We have also considered the comprehensive briefs submitted for our review and taken into account the supplementary representations of counsel.

[9] Finally, on July 10, 2017, in Montreal, we brought the hearing to a close with oral representations and exchanges on the merits.

[10] For the reasons fleshed out in the text that follows, the Committee finds the **First Allegation**, the **Third Allegation** and the **Fourth Allegation** have been established on a strong balance of probabilities by clear and convincing evidence.

[11] The misconduct particularized in each of those Allegations falls within ss. 65(2)(b) and (c) of the *Judges Act*,[3] is extremely serious, and mandates a recommendation for removal from office.

[12] As regards the **Second Allegation**, the Committee finds it has not been established.

[13] Needless to say, this Report should be read in conjunction with our prior decision disposing of preliminary motions,[4] including, in particular, our application of the principles of *res judicata* and *obiter dicta* to some statements in the Council's Report to the Minister of Justice. Our Report was drafted in French; the present text is faithful to its contents without being a literal translation.

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3 R.S.C. 1985, ch. J-1 [the *"Act"* or the "*Judges Act"*].

4 Decision on the preliminary motions of 5 April 2017 [*Decision on Preliminary Objections*].

[14] Finally, we wish to thank all counsel for their contribution to the proper conduct of the proceedings and execution of our truth-seeking mandate in conformity with the principle of procedural fairness.

II. THE CONTEXT

[15] In 2008, M[e] Michel Girouard applies for a position with the Superior Court of Québec.[5] In the application form, he describes himself as [TRANSLATION] "an excellent litigation lawyer projecting an image of integrity and honesty", and he underlines the importance of honesty as an essential judicial attribute.[6]

[16] On September 30, 2010, he is appointed to the Superior Court, Québec City Division.[7]

[17] Although he no longer adjudicates by reason of this inquiry, Judge Girouard acts as coordinating judge for the Judicial Districts of Rouyn-Noranda and Témiscamingue.[8]

[18] Our Committee was constituted following a joint request from the Ministers of Justice of Québec and Canada under s. 63(1) of the *Judges Act.*

[19] As mentioned, our inquiry follows an inquiry by another Committee of Council (the "First Committee"). It resulted in the dismissal, *inter alia*, of Allegation 3 in the first Notice of Allegations, alleging M[e] Girouard purchased an "illicit substance" on September 17, 2010, two weeks before his appointment to the judiciary. The substance in question had allegedly been purchased from Yvon Lamontagne, a client. The independent counsel contended before the First Committee that the drug transaction had been recorded on video.[9]

[20] The First Committee unanimously dismissed Allegation 3, following an analysis informed by the criminal law principle positing the rejection of an accused's testimony may not constitute inculpatory evidence.[10] Since the rejection of Judge Girouard's

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5 Testimony of Judge Girouard, 12 May 2017, pp. 481-483.
6 Exhibit E-4.1 (I-4).
7 Testimony of Judge Girouard, 12 May 2017, pp. 474.
8 Testimony of Judge Girouard, 12 May 2017, pp. 435-444.
9 Detailed Notice of Allegations, dated 13 March 2015.
10 *R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445; *R.* v. *Nedelcu*, 2012 SCC 59, [2012] 3 S.C.R. 311.

testimony – that the video did not record a drug transaction – could not weigh in the balance, the First Committee focused on the video-recorded images. It concluded those images did not constitute clear and convincing evidence establishing Allegation 3.

[21] However, and significantly, the First Committee unanimously dismissed Judge Girouard's application for a declaration that the video did *not* capture a drug transaction.[11] The outcome of that application hinged on the credibility of Judge Girouard's sworn testimony.

[22] Finally, the majority of the First Committee found Judge Girouard's testimony was replete with inconsistencies, contradictions and implausibilities, and that he attempted to mislead the Committee by concealing the truth. In so doing, Judge Girouard had, according to the majority, engaged in misconduct within the meaning of s. 65(2)(d) of the *Judges Act*, which incapacitated and disqualified him from discharging the duties of his office.[12] Although the interaction captured by the September 17, 2010 video recording was "suspicious",[13] Chief Justice Chartier, dissenting "on the analysis of Judge Girouard's testimony", declined to endorse all of the findings of the majority unfavourable to the judge on the issue of his credibility and integrity. In his view, procedural fairness required Judge Girouard be given a formal opportunity to respond to the concerns underlying those findings.[14]

[23] In its Report to the Minister of Justice, Council did not recommend removal from office, being of the opinion that the formal allegations articulated in the first Notice of Allegations, including Allegation 3, had not been established. However, Council refrained from deciding whether the majority's unfavourable findings were established. It settled on this course of action because the Notice of Allegations did not feature any formal allegation on point:

> [42] In this Report, we do not consider the majority's conclusion that the judge attempted to mislead the Committee by concealing the truth and that such

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11 *Report of the Inquiry Committee Regarding Judge Girouard to the Canadian Judicial Council*, 18 November 2015 at paras. 160 and 172 [the "Report of the First Committee"].
12 Report of the First Committee at paras. 236 to 242.
13 Report of the First Committee at para. 262.
14 Report of the First Committee at para. 270.

> conduct places him in a position incompatible with the execution of his office. The Council takes this approach because the judge was not informed that the specific concerns of the majority were a distinct allegation of misconduct to which he must reply in order to avoid a recommendation for removal.
>
> [43] Because the judge was entitled to this kind of notice and did not get it, the Council does not know whether the majority's concerns would have been resolved had it received an informed response to them from the judge.
>
> [44] Because we do not know if the majority's concerns would have been resolved, the Council, itself, cannot act upon the majority's concerns as if they were valid.[15]

[24] Subsequently, the Ministers of Justice for Canada and Québec jointly requested Council launch an inquiry in relation to the serious misconduct identified by the majority of the First Committee, and which led its members to recommend Judge Girouard's removal from office. Although expressed in the clearest of terms, that misconduct seemed destined to elude any legal consequences. In their request, the Ministers of Justice indicated:

> 1) they appreciated Council's view that Judge Girouard was entitled to receive (prior) notice of the allegations of misconduct set out in the majority opinion;
>
> 2) they were very concerned with the misconduct-related conclusions formulated in the majority opinion; and
>
> 3) they were of the view that allowing such serious conclusions to remain unresolved risked jeopardizing public trust in both the disciplinary process and the judicial system as a whole.[16]

[25] For its part, Council deemed it advisable to constitute this Committee to conduct the inquiry. Bearing in mind the ministerial request and ss. 5(1) and 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-Laws, (2015),*[17] the Committee drafted an allegation, which, following amendment, reads:

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15 Report of the Canadian Judicial Council to the Minister of Justice, dated 20 April 2016, at paras. 42 to 44.

16 Letter from the Ministers of Justice of Canada and of Québec to the Canadian Judicial Council, dated 13 June 2016.

17 SOR/2015-203 [the "*By-Laws*"].

First Allegation:

> Judge 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) Judge Girouard failed to cooperate with transparency and forthrightness in the First Committee's inquiry;
>
> b) Judge Girouard failed to testify with transparency and integrity during the First Committee's inquiry;
>
> c) Judge Girouard attempted to mislead the First Committee by concealing the truth.[18]

[26] The analytical framework applied to the **First Allegation** takes into account the special advantage enjoyed by the members of the First Committee, who, in carrying out their mandate, witnessed the *viva voce* testimony given under oath.

[27] That analytical framework is also informed by the mandate conferred upon the First Committee under s. 8(1) of the *Canadian Judicial Council Inquiries and Investigations By-Laws, (2002)*.[19] That mandate obligated it to set out in a report its findings in connection with the key allegation it had to determine, namely Allegation 3 in the first Notice of Allegations.

[28] The nature of the interaction between M^{e} Girouard and Mr. Lamontagne captured in the video recording of September 17, 2010 lay at the core of Allegation 3. Judge Girouard stated under oath before the First Committee it did not involve an illegal drug transaction. The credibility of that testimony was therefore an issue for determination. If the First Committee had determined it was truthful, this would have disposed of Allegation 3.

[29] Moreover, the majority of the First Committee formulated the findings in question with the expectation that Council (or any Committee tasked with holding an additional hearing) might derive some benefit from them.[20]

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[18] The Notice of Allegations of 23 December 2016 was amended in accordance with the Decision of the Inquiry Committee of 22 February 2017 in response to Judge Girouard's motion for particulars.

[19] SOR/2002-371.

[20] Report of the First Committee at para. 235.

[30] All things considered, we concluded the unfavourable findings regarding Judge Girouard's credibility and integrity contained in the majority opinion could not be equated to a run-of-the-mill complaint that has not been the subject of an inquiry under the *Judges Act*. However, the analytical framework we settled upon denies any *res judicata* effect to those findings, which are targeted by the **First Allegation:** if it were otherwise, our Committee would be without any real mandate to inquire into that Allegation, the outcome being etched in stone, irrespective of the explanations Judge Girouard might provide.

[31] In the final analysis, we concluded it was appropriate to accept the findings referenced in the **First Allegation** only if they were shown to be error-free and reasonable, and only to the extent they survived our assessment of the evidence, including Judge Girouard's sworn explanations.

[32] Concurrently with the ministers' request, a complaint was filed by L.C.,[21] the common-law spouse of Alain Champagne, a friend, client and occasional business partner of M^{e} Girouard during the 1990s. In a July 25, 2016 letter to Council, L.C. complained Judge Girouard provided false testimony in the course of the first Inquiry when he denied using cocaine during those years.

[33] That complaint was drawn to the attention of our Committee and, after due consideration, we added the following allegation to the Notice of Allegations:

> **Second Allegation:**
>
> Judge 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.

[21] We refer to her initials to ensure confidentiality.

[34] We heard the testimony of Judge Girouard, G.A. (his common-law spouse)[22], L.C. and Inspector Robert Cloutier of the Royal Canadian Mounted Police ("RCMP") who was stationed in Val-d'Or in the late 1980s. We also heard the testimony of M[e] Raymond Doray, Ad. E., counsel instructed by Council to conduct a preliminary investigation in connection with the review of Chief Justice François Rolland's complaint, which, as it turned out, triggered the first inquiry.

[35] During his direct examination on May 12, 2017, Judge Girouard stated he never used cocaine while he was a lawyer. That statement contradicted the gist of L.C.'s testimony.

[36] Judge Girouard also stated under oath he did not get acquainted with and was not provided a copy of Volume 3 of the investigative Report produced by M[e] Doray, before May 8, 2017. That statement did not seem consistent with other evidence in the record.

[37] Before the conclusion of Judge Girouard's direct examination, the Committee saw fit to add the following two allegations to the Notice of Allegations:

> **Third Allegation:**
>
> Judge 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;
>
> **Fourth Allegation:**
>
> Judge 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…

[22] We refer to her initials to ensure confidentiality.

A. …the truth!"

[38] Our inquiry into the four allegations in the Notice of Allegations being at an end, we submit our Report to Council in accordance with s. 8(1) of the *By-Laws*.

III. THE CONDUCT REQUIRED OF A JUDGE

[39] It is common ground that public confidence in the judiciary is essential to the success and legitimacy of our judicial institutions, and to uphold the rule of law. As Council stated in *Cosgrove*, "all judges have both a personal and a collective duty to maintain this confidence by upholding the highest standards of conduct".[23]

[40] Integrity is a fundamental value in the administration of justice and an essential attribute for judges. Its importance is emphasized in the *Canadian Judicial Council Ethical Principles for Judges*: "Judges shall strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary".[24]

[41] The judge who testifies at an inquiry must not only refrain from lying, he or she must also eschew half-truths, stonewalling and other forms of subterfuge designed to frustrate a thorough examination of the relevant issues.[25]

[42] In this case, the allegations of misconduct have a common theme; they take issue with the honesty and transparency of the testimony Judge Girouard gave under oath and, correlatively, his integrity.

IV. THE LEGAL CONTEXT

[43] Security of tenure is an essential component of judicial independence.[26] However, the protection it affords is not absolute.

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[23] Canadian Judicial Council, *Report of the Judicial Council to the Minister of Justice In the Matter of the Honourable Justice Cosgrove*, 30 March 2009, at para. 1 [*Cosgrove*].

[24] *Ethical Principles for Judges*, Ottawa, Canadian Judicial Council, p. 13. The *Ethical Principles for Judges* are not a prohibitive code of conduct. They reflect well-established principles and "set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judge": Canadian Judicial Council, *Report of the Judicial Council to the Minister of Justice in the Matter of the Honourable Justice Matlow*, 3 December 2008 at para. 99.

[25] *In re Ferrara*, 582 N.W. 2d 817, pp. 4 and 6. American case law on the issue seems relevant to us, since the issues of legal ethics have a universal quality which extends well beyond the specificities of different legal systems.

[44] As the First Committee so ably explained, the requirement of appropriate judicial conduct acts as a counterbalance to security of tenure, with a view to ensuring public confidence in the judiciary.[27]

[45] The *Judges Act* establishes guidelines for the review of judicial conduct.[28] An Inquiry Committee has a dual task. First, it must determine whether the conduct at issue falls within any of the subsections of s. 65(2) of the *Judges Act*. If so, it must then decide whether the conduct justifies recommending removal of the judge from office.[29] The applicable test was formulated in *Marshall*[30] before its adoption by the Supreme Court of Canada in *Therrien (Re)*[31] and *Moreau-Bérubé v. New-Brunswick (Judicial Council)*.[32] It ordains the following question be answered:

> "Is the conduct alleged so manifestly and profoundly destructive of the concept of the impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office?"

[46] The process of reviewing the conduct of judges is, as a general rule, future-oriented.[33] In most cases where an inquiry committee makes a finding of misconduct, it must determine not only what that misconduct reveals about the judge's character, but also assess the risk of future misconduct. As *Déziel* shows, the relative seriousness of the misconduct, its remoteness in time, the chief justice's support for the judge whose conduct is impugned, exemplary cooperation with the inquiry and sincere remorse may render inappropriate a recommendation for removal where the possibility of subsequent misconduct is not reasonably foreseeable.[34]

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26 Report of the First Committee at para. 62.

27 Report of the First Committee at para. 64.

28 *Judges Act*, R.S.C. 1985, c. J-1, sects. 63, 64 and 65. See our *Décision sur les moyens préliminaires* for a detailed explanation of the process.

29 Report of the First Committee at para. 67.

30 Canadian Judicial Council, *Report of the Inquiry Committee in the Matter of Marshall*, 27 August 1990, p. 28.

31 *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3 at para. 146.

32 2002 SCC 11, [2002] 1 S.C.R. 249 at para. 66.

33 Canadian Judicial Council, *Report of the Judicial Council to the Minister of Justice in the Matter of the Honourable Justice Matlow*, 3 December 2008 at para. 166.

34 Canadian Judicial Council, *Report of the Judicial Council to the Minister of Justice in the Matter of the Honourable Justice Déziel*, 2 December 2015, at paras. 62 *et seq*. of the majority's reasons. On the other hand, as the *Cosgrove* case demonstrates, the mere fact of acknowledging one's misconduct and making apologies

[47] That said, on occasion, the misconduct is so serious that the risk of repetition need not be considered, its harmful effect on the confidence in the judiciary of the reasonable and well-informed observer being irreparable. Such is the case here.

V. THE APPLICABLE STANDARD OF PROOF

[48] It is well settled that, in the absence of any legislative provision prescribing otherwise, the standard of proof in disciplinary proceedings is the balance of probabilities standard applicable in civil matters.[35] Our legal system does not allow different levels of evidential scrutiny depending upon the seriousness of the case; it is our duty to scrutinize the evidence with care and to determine whether the allegation under consideration has been established on a balance of probabilities. To satisfy the balance of probabilities standard, the evidence must be clear and convincing.[36]

[49] In this case, the formal allegations call into question the truthfulness of Judge Girouard's testimony, either before the First Committee or before this Committee. We must determine whether the allegations have been established on a balance of probabilities by clear and convincing evidence. That standard, and not the standard applicable to a criminal charge of perjury, has application here.

[50] Moreover, and obviously, we are alive to the distinction between testimonial credibility and reliability.[37] It goes without saying that this distinction informed our assessment of all testimonial evidence. On occasion, witnesses were required to recall years-old, even decades-old, facts and events, and their significance was not apparent at the time. Not surprisingly, some details were unclear in their memory and there was occasionally some confusion, notably regarding the year or the precise timeframe for an event's occurrence. We observed uncertainty of this nature in the testimony of Judge Girouard, G.A. and L.C.

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would not necessarily be sufficient to re-establish public confidence: Canadian Judicial Council, *Report of the Judicial Council to the Minister of Justice In the Matter of the Honourable Justice Cosgrove*, 30 March 2009.

35 *Bisson v. Lapointe*, 2016 QCCA 1078 at paras. 64 to 68, application for leave to appeal to the Supreme Court of Canada dismissed, 2017 CanLII 2718; *Foo v. Law Society of British Columbia*, 2017 BCCA 151 at para. 63; *Fitzpatrick v. Alberta College of Physical Therapists*, 2012 ABCA 207 (CanLII) at paras. 12 to 15, application for leave to appeal to the Supreme Court of Canada dismissed, 2013 CanLII 18848.

36 *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 at paras. 44 to 48.

37 *Pointejour Salomon v. R.*, 2011 QCCA 771 at paras. 40 and 41.

[51] We have meticulously reviewed the evidence, with a view to determining whether each allegation was established on a balance of probabilities. That process led us to the unanimous conclusion that the **Second Allegation** has not been established, whereas the **First Allegation**, the **Third Allegation** and the **Fourth Allegation** have been established on a strong balance of probabilities.

VI. ADMISSIBILITY IN EVIDENCE OF THE VIDEO RECORDING

[52] Before the First Committee, Judge Girouard objected to the admissibility in evidence of the September 17, 2010 video recording, on the grounds that it was obtained by means of an "abusive seizure" and in violation of his "basic rights", in particular "his right to privacy and his right to his image". He further argued its admission would violate Mr. Lamontagne's right to solicitor-client confidentiality.

[53] Judge Girouard's objection was unanimously dismissed by the First Committee in a May 14, 2015 decision.[38]

[54] Judge Girouard reiterated his objection before us.[39] We dismissed it for the reasons provided by the First Committee.

[55] That said, the majority's observations spotlighting the link between the Committee's decision and the credibility of Judge Girouard's testimony bear repeating:

> [226] In addition, at the *voir-dire* on the admissibility of the video recording, on May 4, 2015, Judge Girouard stated that the only purpose of the meeting of September 17 was to discuss the tax matter and that nothing was said about the payment for previously viewed movies. Similarly, at the *in-camera* hearing on the issue of solicitor-client privilege, Judge Girouard stated that, during their entire meeting, Mr. Lamontagne and him spoke only about the tax matter that concerned them. All Committee members preferred Mr. Lamontagne's testimony, in which he stated that the discussion about the tax matter probably began after he got up to retrieve a document located behind him. This must be added, in our opinion, to the constellation of significant inconsistencies and

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38 *Décision relative à la requête du juge Girouard en exclusion d'un élément de preuve*, 14 May 2015.

39 Transcript of hearings of 9 May 2017, pp. 288-290; *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at paras. 57 and 58.

implausibilities in Judge Girouard's testimony regarding the issues stemming from the transaction recorded on video on September 17, 2010.[40]

VII. ADMISSIBILITY IN EVIDENCE OF THE DORAY SUMMARY

[56] Following Chief Justice Rolland's complaint, Council initiated its internal review process. The Vice-Chairman of the Judicial Conduct Committee, Chief Justice Blanchard, enlisted the services of an external counsel, M[e] Raymond Doray, Ad. E, to conduct an investigation and report back on the advisability of constituting a committee of inquiry.

[57] On August 13, 2013, M[e] Doray met with Judge Girouard and his counsel. That same day, M[e] Doray recorded Judge Girouard's comments in a document entitled [TRANSLATION] "Summary of the Testimony and Supplementary Evidence Collected at a Meeting with the Honourable Michel Girouard, Superior Court Judge"[41] (the "Doray Summary"). It is the third and final part of the "Doray Report".

[58] Although the Doray Summary was used in the cross-examination of Judge Girouard before the First Committee, the document itself was not admitted in evidence.

[59] Before us, Judge Girouard objected to the admissibility of the Doray Summary on several grounds, including confidentiality. We dismissed the objection.[42]

[60] When the objection was raised, counsel for Judge Girouard underscored the fact that the Doray Summary had not been admitted in evidence before the First Committee, and argued it should not have been mentioned in its Report. Counsel added the questions relating to the Summary had been formulated by members of the First Committee, and not by the independent counsel, who, in their submission, knew full well the document was inadmissible.[43]

[61] With respect, those submissions are not in sync with what transpired before the First Committee. While it is true the Doray Summary was first raised by means of a question

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40 Report of the First Committee at para. 226

41 Exhibit E-3, *Synthèse des témoignages et des éléments de preuve complémentaires recueillis dans le cadre d'une rencontre avec l'honorable Michel Girouard, juge à la Cour supérieure.*

42 Transcript of 9 May 2017, pp. 239-243.

43 Representations, 9 May 2017, pp. 127-128.

from a member of the First Committee during Judge Girouard's *in-camera* testimony on May 5, 2015, the independent counsel did put questions to Judge Girouard about the Summary during cross-examination on May 13, 2015.

[62] A lengthy debate then followed during which counsel for Judge Girouard submitted the Doray Report should not be admitted without the testimony of its author.[44] He went on to explain he was not objecting to Judge Girouard being confronted with his prior statements[45] and that his objection related exclusively to the use of extracts from the Doray Report that recounted the author's conversations with third parties.[46]

[63] Following those clarifications, the independent counsel confirmed her sole purpose was to confront Judge Girouard with the statements attributed to him in the Doray Summary. Judge Girouard's counsel then reconfirmed he had no objection to this process.[47]

[64] That being so, we have some difficulty in grasping the thrust of the criticism levelled at the First Committee and the seriousness of the objection before us.

[65] First, our mandate obligates us to consider the findings of the majority of the First Committee that prompted its recommendation for removal of Judge Girouard from office. In furtherance of that obligation, it is proper, in our view, to consider the parts of the Doray Summary[48] that bear upon the alleged informational content of the "Post-it" that Mr. Lamontagne passed to M^{e} Girouard on September 17, 2010. To that end, and at the request of M^{e} Gravel, we agreed to receive in evidence the third and fourth paragraphs of the Doray Summary. We did likewise as regards the eighth paragraph, at the request of Judge Girouard's counsel. The other paragraphs were redacted.

[66] Second, M^{e} Doray testified before our Committee. Accordingly, the three paragraphs mentioned above were admitted in evidence after their author testified.

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44 Testimony of Judge Girouard, 13 May 2015, p. 468.
45 Testimony of Judge Girouard, 13 May 2015, pp. 476-477.
46 Testimony of Judge Girouard, 13 May 2015, p. 486.
47 Testimony of Judge Girouard, 13 May 2015, pp. 487-492.
48 Exhibit E-3.

[67] Third, the complaint of disregard for the confidentiality of the Doray Summary and the "separation" principle is without foundation. Assuming for the sake of argument that Council claimed a privilege over the document based upon its solicitor-client relationship with M[e] Doray, it waived any such privilege by providing Judge Girouard and his counsel with a copy. We suggest the theory pressed by Judge Girouard leads to an absurdity. A judge targeted by a complaint would be free to make false statements to an external counsel, with a view to provoking the shelving of the complaint, and then be able to successfully claim an absolute immunity from any subsequent consideration of this dishonesty by an inquiry committee.

[68] Furthermore, nothing in the *Complaints Procedures* precludes the admission in evidence of extracts from an external counsel's report for which no privilege is claimed by Council.[49] The same is true of the *Canadian Judicial Council Inquiries and Investigations By-Laws (2002)*, in effect at the material time.[50] Finally, Judge Girouard's statements to M[e] Doray were not predicated on any explicit or implicit undertaking of confidentiality.

[69] The paragraphs of the Doray Summary to which objection was taken do not relate the author's opinion or conclusions. They purport to be an account of statements made by Judge Girouard at the August 13, 2013 meeting.

VIII. THE NOTICE OF ALLEGATIONS

A. FIRST ALLEGATION

> **Judge 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) **Judge Girouard failed to cooperate with transparency and forthrightness in the First Committee's inquiry;**
>
> b) **Judge Girouard failed to testify with transparency and integrity during the First Committee's inquiry;**

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49 *Complaints Procedures*, in force 14 October 2010.
50 SOR/2002-371.

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

1. Description of the video recording and general observations

[70] During the 2000s, the Abitibi-Témiscamingue region was plagued by a major problem of drug trafficking under the control of organized crime. In 2009, the Sûreté du Québec instigated "Operation Crayfish", targeting alleged members of the criminal organization responsible for drug trafficking in the region, including Mr. Lamontagne. Once the Operation had run its course, Mr. Lamontagne was arrested and charged with drug trafficking and gangsterism. He pled guilty and was sentenced to nine years in jail.

[71] Prior to his incarceration, Mr. Lamontagne operated a video rental business. During a search of the business premises on October 6, 2010, the police seized the digital recorder of the closed-circuit camera surveillance system Mr. Lamontagne had installed. The recorder contained video recordings for the period from September 9 to October 6, 2010.[51]

[72] One of the sequences shows an exchange between M[e] Girouard and Mr. Lamontagne in the rear office of the business.[52] The exchange took place on September 17, 2010.

[73] In the fall of 2010, M[e] Girouard was representing Mr. Lamontagne in a dispute with the tax authorities. As part of his brief, M[e] Girouard was trying to negotiate a settlement for a sum that Mr. Lamontagne would be able to pay.

[74] At all material times, Mr. Lamontagne had the reputation of being a drug trafficker. M[e] Girouard was aware of that reputation when he met him on September 17, 2010. Indeed, several years earlier, M[e] Girouard had successfully defended Mr. Lamontagne on a charge arising from the seizure of 350 cannabis plants from his residence.

[75] We carefully viewed the video recording of September 17, 2010, which is described in detail in the First Committee's Report.[53]

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51 Testimony of Sergeant-Supervisor Éric Caouette, 4 May 2015, p. 182.
52 Exhibit E-4.1 (P-26).
53 Report of the First Committee at para. 85.

[76] At the start of the sequence, Mr. Lamontagne is alone in the office. He takes a seat at his desk, which is more or less opposite the door leading to the store. The objects on the desk include a desk pad immediately in front of Mr. Lamontagne and, to the left, a computer screen on which he could view images captured by his surveillance cameras.[54] Two chairs are also placed on the other side of the desk.

[77] A few seconds after sitting down, Mr. Lamontagne takes a medium-sized "Post-it" self-stick note from a block and places it on the desk in front of him. He then takes a small object from his front right pants pocket and places it on the "Post-it". He folds it to make a small package, which he then puts back in the front right pocket of his pants.

[78] There then follows a sequence of approximately forty minutes before M^{e} Girouard's arrival during which nothing of interest is observed. Mr. Lamontagne remains seated for practically the whole sequence, except for a few seconds when he leaves the office. He then returns and is briefly out of camera range.

[79] During that whole sequence, Mr. Lamontagne does not put anything else in the front right pocket of his pants.

[80] M^{e} Girouard enters about forty minutes after the pocketing of the "Post-it", previously folded to form a small package.

[81] As soon as he enters the office, M^{e} Girouard searches in the left pocket of his jacket or his shirt (it is impossible for us to know from the camera angle) and takes out some bank notes, as well as a small piece of paper. He transfers the money to his left hand, but keeps the small piece of paper in his right hand. He goes up to Mr. Lamontagne's desk. His back is to the door.

[82] M^{e} Girouard then bends down toward Mr. Lamontagne and slides his right hand forward as if he were about to deposit the small piece of paper on the desk near the desk pad. Then, in an uninterrupted movement, he pulls his right hand back, still holding the small

[54] Testimony of Yvon Lamontagne, 7 May 2015, pp. 302-303.

piece of paper, and, at the same time, slips the bank notes (which he is holding in his left hand) under the desk pad.

[83] Once the money is concealed under the desk pad, M[e] Girouard sits in one of the two chairs in front of Mr. Lamontagne and places his right hand on the surface of the desk, keeping the small piece of paper under his thumb.

[84] Simultaneously, Mr. Lamontagne digs into the front right pocket of his pants and takes out the "Post-it" folded into a small package, which he holds in the palm of his right hand. He then places his hand on the surface of the desk and slides it toward M[e] Girouard. The latter slides his right hand toward Mr. Lamontagne's hand at the same time, causing the small piece of paper to slide under his fingers, as if he wanted to show it to Mr. Lamontagne.

[85] When their hands touch, M[e] Girouard closes his over that of Mr. Lamontagne and retrieves the folded "Post-it". The exchange is done hand over hand. While M[e] Girouard retrieves the folded "Post-it", Mr. Lamontagne seems to be looking at the small piece of paper M[e] Girouard showed him. Then, while still examining the small piece of paper, he pulls his empty hand back and recovers the money left by M[e] Girouard under the desk pad. With the money in hand, Mr. Lamontagne stands to reach for something behind him. The sequence in evidence ends at that instant.

[86] In his testimony before the First Committee and this Committee, Judge Girouard acknowledged he put the "Post-it", folded into a small package, in the pocket of his pants without opening it.[55]

[87] As will be seen, the members of the First Committee unanimously rejected Mr. Lamontagne's account of what he wrapped in the "Post-it" before M[e] Girouard's arrival.[56] The majority also found it was this "Post-it", folded into a small package, that Mr. Lamontagne passed to M[e] Girouard immediately after the latter slid money under the

[55] Testimony of Judge Girouard, 12 May 2017, pp. 766-768; Testimony of Judge Girouard, 13 May 2015, p. 396.
[56] Report of the First Committee at para. 166.

desk pad,[57] thereby rejecting Judge Girouard's and Mr Lamontagne's statements to the contrary.

[88] The members of the First Committee nevertheless unanimously dismissed Allegation 3 because: (1) the video recording did not constitute clear and convincing evidence that M[e] Girouard purchased an illicit substance on September 17, 2010; and (2) they were required to apply the criminal law principle positing that the rejection of the testimony of an accused cannot constitute inculpatory evidence.[58] Parenthetically, we question the applicability of that principle to an inquiry under the *Judges Act*, which is subject to the evidentiary standard applicable to civil proceedings. We understand that where a party to a civil proceeding testifies and is not believed, the judge may consider the rejected assertions as denials and the denials as admissions:

> In a civil proceeding, where the rule is that of a preponderance of the evidence and the balance of probabilities, when a party testifies and is not believed, it is possible for the trial judge to regard his assertions as denials and his denials as admissions, taking into account contradictions, hesitations, the time the witness takes to answer, his expression, circumstantial evidence and the evidence as a whole. The witness' answers then tend to establish the opposite of what the witness wants the judge to think.[59]

Obviously, that principle was not brought to the attention of the First Committee.

[89] To ensure the proper conduct of future inquiries, the Council may perhaps wish to settle this issue in due course.

[90] That said, it is worthwhile to recall the reasoning undergirding the majority's recommendation for removal from office. According to the majority, the dismissal of Allegation 3 could not, in the circumstances, put an end to the Committee's mandate. After all, the Committee members had <u>unanimously</u> refused to grant Judge Girouard's request for a declaration that the video recording did not capture the purchase of an illicit substance, and the majority had made the serious findings referenced in the **First Allegation**.

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57 Report of the First Committee at para. 229(5).
58 *R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445, *R.* v. *Nedelcu*, 2012 SCC 59, [2012] 3 S.C.R. 311.
59 *Stoneham and Tewkesbury v. Ouellet*, [1979] 2 S.C.R. 172, p. 195.

[91] Although it determined the key allegation, namely Allegation 3, was unproven, the majority of the First Committee formulated conclusions that are particularly serious for a judge:

> [227] […] In our opinion, Judge Girouard deliberately attempted to mislead the Committee by concealing the truth.
>
> […]
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> [236] Through his lack of candour during his testimony, Judge 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. He did not set an example of integrity. Instead, he lacked integrity. By acting in this manner, he placed himself in a position incompatible with the due execution of the office of judge, which amounts to misconduct under paragraph 65(2)d) of the *Judges Act*.[60]

[92] The majority summarized as follows the findings that underlie those conclusions:

> [223] Taken together, the contradictions, inconsistencies and implausibilities in Judge 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.
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> [224] After reviewing all the evidence, we are of the opinion that the constellation of contradictions, inconsistencies and implausibilities in Judge Girouard's testimony raises serious questions about his credibility. These contradictions, inconsistencies and implausibilities relate to each of the important elements of the transaction recorded on video and, therefore, are central to this inquiry, in particular: (i) the moment when Me Girouard and Mr. Lamontagne began to discuss the tax matter that concerned them; (ii) why Me Girouard paid the sum he owed for previously viewed movies directly to Mr. Lamontagne, instead of paying the cashier of the movie rental store; (iii) why Me Girouard slipped money under Mr. Lamontagne's desk pad; (iv) what Mr. Lamontagne gave Me Girouard immediately after the latter put the money down; and (v) the reason why Me Girouard did not look at what Mr. Lamontagne gave him.
>
> [225] It is improbable that Judge Girouard did not read Me Doray's summary of their meeting. Considering Judge Girouard's personality, his nature as a trial lawyer and his diligence as a judge, this would be completely out of character for him. Furthermore, it would also suggest that counsel for Judge Girouard, who are both experienced lawyers, did not discuss Me Doray's summary of August 13, 2013 with Judge Girouard, which seems inconceivable.

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[60] Report of the First Committee at paras. 227 and 236.

> [226] In addition, at the *voir dire* on the admissibility of the video recording, on May 4, 2015, Judge Girouard stated that only purpose of the meeting of September 17 was to discuss the tax matter and that nothing was said about the payment of previously viewed movies. Similarly, at the *in camera* hearing on the issue of solicitor-client privilege, Judge Girouard stated that, during their entire meeting, Mr. Lamontagne and him spoke only about the tax matter that concerned them. All Committee members preferred Mr. Lamontagne's testimony, in which he stated that the discussion about the tax matter probably began after he got up to retrieve a document located behind him. This must be added, in our opinion, to the constellation of significant inconsistencies and implausibilities in Judge Girouard's testimony regarding the issues stemming from the transaction recorded on video on September 17, 2010.[61] [Footnotes omitted]

[93] As can be seen, the majority identified contradictions, inconsistencies and implausibilities in connection with six topics. Although addressed individually in the text that follows, the topics are inter-related, and the significance of those contradictions, inconsistencies and implausibilities stands to be appreciated as a whole. Considered in isolation, each may seem to be of debatable significance, but their cumulative effect compels the conclusion Judge Girouard did not testify truthfully about the nature of the September 17, 2010 video-taped exchange.

[94] The following analysis necessarily focuses on the objective plausibility of Judge Girouard's testimony in the light provided by the rest of the evidence. The main problem with Judge Girouard's testimony is that each of his explanations is disharmonious with the most reasonable conclusion. In connection with each controversy, Judge Girouard would have us park our incredulity to accept his version of the facts. At any rate, this essentially intellectual process of evaluating the objective plausibility of Judge Girouard's explanations is supplemented by our observation of his demeanour while testifying. That demeanour buttressed our finding that his explanations are not credible.

[95] One of the main objectives of the inquiry was to provide Judge Girouard with an opportunity to respond to the unfavourable findings of the majority of the First Committee. Considering the stakes, it is hardly surprising that Judge Girouard proved cautious in his testimony and sought to make sure he understood the questions and their context before answering. There is, however, a difference between caution and stone-

[61] Report of the First Committee at paras. 223 to 226.

walling. Judge Girouard was duty bound to testify in a frank and transparent manner. Instead, he proved to be an uncooperative and obstinate witness, who was often disinclined to answer promptly and fully questions put to him.

[96] It was sometimes necessary to repeatedly, and unnecessarily, reformulate the questions before Judge Girouard finally saw fit to answer them, a lack of cooperation that caused the Committee to underscore his obligation to respond. At other times, we had to remind Judge Girouard of his status as a witness, urging him to leave the task of arguing questions of law to his counsel.[62] As well, the Committee had to intervene during cross-examination to instruct Judge Girouard to set aside a compendium prepared by his counsel. The Committee did so because he persisted in systematically referring to the compendium rather than spontaneously answering questions.[63]

[97] Moreover, on the very first day of Judge Girouard's testimony, a debate unfolded over his consultation of handwritten notes he previously prepared to help him answer questions.[64] The Committee asked counsel for Judge Girouard whether a copy of the notes should be provided to counsel for the Committee and to Committee members. In the ensuing debate, Judge Girouard intervened to deny he had consulted the notes[65]. That denial was at odds with what Committee members had observed[66].

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62 Testimony of Judge Girouard, 12 May 2017, pp. 441-442 and 557-558.
63 Testimony of Judge Girouard, 17 May 2017, pp. 1103-1104, 1120-1121 and 1127-1132.
64 Exhibit G-4.
65 Testimony of Judge Girouard, 12 May 2017, pp. 506-507.
66 Testimony of Judge Girouard, 12 May 2017, pp. 512-526.

2. Chief Justice Chartier's dissent with respect to the analysis of Judge Girouard's testimony

[98] In our respectful view, Chief Justice Chartier's dissent cannot prevail because, *inter alia*, the record available to us is materially different from the one at his disposal. Indeed, Chief Justice Chartier explained his reasons for not subscribing to the unfavourable findings of the majority included: (1) the Doray Report had not been admitted in evidence; and (2) its author had not testified.[67] The record at our disposal includes the key portions of the Doray Report and the author's sworn testimony, and that additional evidence provides direct support for one of the majority's findings, and indirect support for its general conclusion that Judge Girouard attempted to mislead the First Committee by concealing the truth. We are confident Chief Justice Chartier would have endorsed the findings and conclusions of the majority, which are targeted by the **First Allegation**, if he had at his disposal the amplified record available to us.

[99] Correlatively, we underscore the reservations Chief Justice Chartier expressed in relation to some features of Judge Girouard's testimony: (1) he acknowledged the video recording could "certainly cast a doubt on the explanations provided by Judge Girouard";[68] (2) he conceded there were "some inconsistencies"[69] in Judge Girouard's testimony; and (3) he confessed to some difficulty in believing Judge Girouard's claim he had not read the Doray Summary of August 13, 2013, the judge's explanation being "weak and ambiguous".[70]

[100] Finally, it bears remembering Chief Justice Chartier began his dissenting opinion by confirming his full agreement "with the Committee's analysis as set out at paragraphs 1 to 178".[71] The First Committee made the following findings at paragraphs 160 and 172:

> [160] Judge Girouard asked the Committee to lift the cloud of uncertainty that hangs over him. It is understandable why Judge Girouard would have wanted the Committee to state that no illegal substance transaction took place on

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67 Report of the First Committee at paras. 258 and 266.
68 Report of the First Committee at para. 262.
69 Report of the First Committee at para. 249.
70 Report of the First Committee at para. 260.
71 Report of the First Committee at para. 243.

> September 17, 2010. However, the Committee is unable to draw such a conclusion. […]
>
> * * *
>
> [172] Nor can the Committee conclude, **on the basis of the evidence on the record**, that the exchange was not an illegal substance transaction, as requested by Judge Girouard. [Footnotes omitted, emphasis added]

[101] The "evidence on the record" included Judge Girouard's sworn testimony that the video recording did not capture an illegal drug transaction.

[102] We now turn to the discrepancies, inconsistencies and implausibilities identified by the First Committee.

3. Discrepancies, inconsistencies and implausibilities identified by the majority of the First Committee

a) The start of the discussion dealing with the tax dispute

[103] The precise moment when Mr. Lamontagne and M^{e} Girouard began discussing the tax dispute became an issue before the First Committee because Judge Girouard contested the admissibility in evidence of the entire video recording of the September 17, 2010 meeting on the ground, *inter alia*, of Mr. Lamontagne's right to solicitor-client confidentiality.

[104] In that regard, Judge Girouard asserted his discussions with Mr. Lamontagne pertained exclusively to the tax dispute from the moment he entered the office.[72]

[105] That version was contradicted by Mr. Lamontagne and the First Committee unanimously preferred his evidence to that of Judge Girouard.[73] This testimonial choice opened the door to the admission in evidence of the video recording segment which, according to Mr. Lamontagne's testimony, did not concern the tax dispute.[74]

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72 Testimony of Judge Girouard, 4 May 2015, p. 412; Testimony of Judge Girouard, 5 May 2015, *in camera*, pp. 39, 48 and 77.

73 *Décision relative à la requête du juge Girouard en exclusion d'un élément de preuve*, 14 May 2015 at para. 62.

74 *Décision relative à la requête du juge Girouard en exclusion d'un élément de preuve*, 14 May 2015 at para. 62.

[106] In the First Committee's Report to Council, the majority indicated Judge Girouard's evidence regarding the starting point for discussions protected by solicitor-client privilege should be added to the other inconsistencies, discrepancies and implausibilities in his testimony.[75]

[107] In his testimony before our Committee, Judge Girouard suggested it was of no moment whether those discussions began five, twelve or eighteen seconds after his entrance into the office.[76] He attended at Mr. Lamontagne's business premises for the sole purpose of discussing the tax file, and the question of the exact second at which the conversation on that topic commenced seemed trivial to him.[77]

[108] A discrepancy of a few seconds as regards the exact time when a discussion relating to a particular topic began may indeed be a trivial detail in most cases. In this case, however, Judge Girouard's testimony – that the whole discussion of September 17, 2010 with Mr. Lamontagne dealt with the tax file – was designed to substantiate a legal basis for the exclusion of the video recording evidence in its entirety. By his sworn testimony, Judge Girouard was seeking to persuade the First Committee that the whole video recording was subject to solicitor-client privilege and, therefore, none of the images recorded was admissible in evidence.

[109] The majority noted the following: (1) in the *voir dire* on the issue of solicitor-client privilege, Judge Girouard stated under oath that, during the whole discussion, Mr. Lamontagne and he spoke only about the tax dispute; (2) all the members of the Committee preferred Mr. Lamontagne's testimony that the conversation in connection with the tax dispute probably began when he stood up to retrieve a document from behind him;[78] and (3) the rejection of Judge Girouard's evidence on that issue had to be added "to the constellation of significant inconsistencies and implausibilities in Judge

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75 Report of the First Committee at para. 226.
76 Testimony of Judge Girouard, 12 May 2017, p. 772.
77 Testimony of Judge Girouard, 18 May 2017, p. 1400.
78 *Décision relative à la requête du juge Girouard en exclusion d'un élément de preuve*, 14 May 2015 at para. 62.

Girouard's testimony regarding the issues stemming from the transaction recorded on video on September 17, 2010".[79]

[110] Nothing in Judge Girouard's testimony before our Committee justifies setting aside the findings of the majority. Moreover, they are not tainted by error, and are entirely reasonable. We adopt them without hesitation.

b) The payment directly to Mr. Lamontagne

[111] Before the First Committee, Judge Girouard testified the money was for the purchase of previously viewed movies. As will be seen, and as more fully appears from the following findings of the majority, he described the nature of those purchases in different ways at different stages of the inquiry:

> [181] As soon as he entered Mr. Lamontagne's office on September 17, 2010, M[e] Girouard slipped what appeared to be money under the desk pad. At the inquiry, Judge Girouard testified that it was a sum of money he owed his client for previously viewed movies that he had decided to purchase from him.
>
> [182] At the *voir dire* on the admissibility of the video recording, on May 4, 2015, Judge Girouard stated that he went to Mr. Lamontagne's place of business to discuss the legal matter that concerned them, and that this was the only reason for his visit.
>
> [183] The following day, on May 5, 2014 [sic], at the *in camera* hearing to determine whether the video recording was protected by solicitor-client privilege, Judge Girouard specified that he did not go to Mr. Lamontagne's place of business to pay him for the movies. Instead, he used the opportunity of his business meeting to give Mr. Lamontagne the amount he owed for the movies. He paid the money directly to Mr. Lamontagne because he did not want the movies to appear on his customer file at the movie rental business. He therefore implied that they were adult movies.
>
> [184] During his main testimony, Judge Girouard nevertheless indicated that he purchased all sorts of movies from Mr. Lamontagne, including commercial films and children's movies. He also mentioned that he rarely purchased adult movies. However, we note that Judge Girouard did not mention commercial films or children's movies when he wrote to the Council's Executive Director in January 2013.

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[79] Report of the First Committee at para. 226.

> [185] Judge Girouard's testimony as to why he purchased movies directly from Mr. Lamontagne is therefore not entirely consistent. If he always purchased adult movies, as suggested in his letter to the Council, his motivation would be obvious. However, he stated that he rarely purchased such movies.
>
> [186] It is plausible that Judge Girouard, while he was a lawyer, purchased all sorts of previously viewed movies from Mr. Lamontagne. It is true that Judge Girouard mentioned that he did not feel it necessary to provide details of all his movie purchases to the Council's Executive Director. Nonetheless, what emerges is that, at different stages, Judge Girouard described the nature of these purchases in different ways.[80]

[112] Before us, Judge Girouard reiterated the money paid to Mr. Lamontagne was for the purchase of previously viewed adult movies acquired in the preceding days or weeks, and for which he wanted no trace in his customer file.[81]

[113] Judge Girouard conceded he could have explained himself better in his letter of January 11, 2013 to M[e] Norman Sabourin, the Executive Director and General Counsel of the Canadian Judicial Council. However, he did not see the need to detail his movie viewing habits.[82]

[114] As the First Committee underscored, some features of the account provided by Mr. Lamontagne and Judge Girouard do not match.

[115] In his letter to M[e] Sabourin, Judge Girouard acknowledged the purchase of adult movies [TRANSLATION] "by the dozen" ["*par dizaines*"] from Mr. Lamontagne.[83] Yet, in his testimony before the First Committee, Mr. Lamontagne stated it was [TRANSLATION] "very, very rare" that M[e] Girouard would choose this type of movie.[84] Judge Girouard subsequently testified before the First Committee and before us that he rarely purchased movies from Mr. Lamontagne, and even more rarely adult movies.[85]

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80 Report of the First Committee at paras. 181 to 186.

81 Testimony of Judge Girouard, 12 May 2017, p. 771; Testimony of Judge Girouard, 17 May 2017, p. 1127 and 1133-1136.

82 Testimony of Judge Girouard, 17 May 2017, pp. 1145-1146.

83 Letter from Judge Girouard to M[e] Norman Sabourin, 11 January 2013, Exhibit E-4.1 (P-28).

84 Testimony of Yvon Lamontagne, 7 May 2015, p. 125.

85 Testimony of Judge Girouard, 13 May 2015, pp. 265-268; Testimony of Judge Girouard, 18 May 2017, p. 1383.

[116] As well, the two witnesses did not agree on the frequency with which M^e^ Girouard rented videos in accordance with the procedure applicable to all customers. Mr. Lamontagne recalled M^e^ Girouard [TRANSLATION] "very, very rarely" rented movies on display,[86] whereas the latter stated he rented them frequently.[87]

[117] Finally, Mr. Lamontagne testified M^e^ Girouard always paid him with hundred dollar bills,[88] whereas the latter denied doing so.[89]

[118] That said, we can understand why Judge Girouard would not have deemed it necessary to detail all his movie purchases in his letter to M^e^ Sabourin, inasmuch as he contends the payment made on September 17, 2010 related exclusively to adult movies.[90] Nevertheless, he did fail to mention in his letter the payment of money to Mr. Lamontagne. That payment, immediately followed by the transfer of an object, is unquestionably an important feature of their meeting. We note, as well, that the sentence in the letter to M^e^ Sabourin referencing purchases of adult movies "by the dozen" is formulated in general terms and that no specific connection is made with the events of September 17, 2010.[91] It is also noteworthy that, at the first meaningful opportunity he had to shed light on the video-recorded exchange, which he acknowledged was suspicious, Judge Girouard provided no specific explanation concerning the payment to Mr. Lamontagne.[92]

[119] In his letter to M^e^ Sabourin, Judge Girouard described the meeting of September 17, 2010 as involving [TRANSLATION] "exchanges of information, memoranda, notes and documents, all under the seal of confidentiality." The letter is drafted to convey the message that the whole recording of Judge Girouard's visit shows an interaction covered by solicitor-client privilege. We reject the hypothesis that the description in quotation

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86 Testimony of Yvon Lamontagne, 7 May 2015, p. 105.

87 Testimony of Judge Girouard, 5 May 2015, p. 14; Testimony of Judge Girouard, 12 May 2015, pp. 262; Testimony of Judge Girouard, 18 May 2017, p. 1383.

88 Testimony of Yvon Lamontagne, 7 May 2015, pp. 310-311.

89 Testimony of Judge Girouard, 18 May 2017, pp. 1383-1388.

90 In passing, we note it is not clear why an in-store purchase (as opposed to a rental) of previously viewed movies would have been recorded in the customer file. However, the question was not raised with Mr. Lamontagne before the First Committee, and we make no finding on point.

91 Letter from Judge Girouard to M^e^ Norman Sabourin, dated 11 January 2013, Exhibit E-4.1 (P-28).

92 Report of the First Committee, para. 95.

marks is the product of poor drafting. In our view, the letter was drafted with a view to deterring a deeper investigation into his meeting with Mr. Lamontagne.

[120] The majority made the following findings: (1) the explanations provided by Judge Girouard for his purchase of movies directly from Mr. Lamontagne are "not entirely consistent"; and (2) Judge Girouard, at different stages of the process of investigation and inquiry into the initial complaint, described the nature of his movie purchases in different ways. In our judgment, those findings are free from error, and are reasonable. Finally, nothing in Judge Girouard's testimony warrants their setting aside. We adopt them without hesitation.

c) Placing the money under the desk pad

[121] As soon as he entered the office, M^{e} Girouard took out some bank notes and slipped them under the desk pad, rather than handing them directly to Mr. Lamontagne, who was sitting immediately in front of him.

[122] Before the First Committee, Judge Girouard was given an opportunity to square this process with his claim that the video recording captured a meeting and an exchange that were completely above board. The majority made the following findings with respect to his explanations:

> [188] At the *in camera* hearing on the issue of solicitor-client privilege, Judge Girouard provided the two reasons to explain why he did this. First, he testified that he slipped the money under the desk pad so that it would not be obvious he was giving money to a trafficker. He then added that, regardless of this first reason, he slipped the money under the desk pad because it was his way of doing things: he never leaves cash lying around on a table. He makes sure to slip money under an object so that the person it is intended for will find it. He gave the example of leaving money on a table so that his children can use it to take taxis.
>
> [189] However, during his main testimony, in both direct and cross-examination, Judge Girouard, when asked about his action, spoke only about his habit of slipping money under an object.
>
> [190] It was only after the Chairperson of the Committee, on the last day of the hearings, reminded him of the initial explanation he gave at the *in camera* hearing that Judge Girouard went back to it, saying that he did not want to be

> seen giving money to a trafficker. In a further cross-examination following questions asked by the Committee, Judge Girouard confirmed that he acted in such a manner for those two reasons, but still more out of habit.
>
> [191] Beyond the inconsistency in Judge Girouard's testimony as to the reason why he slipped money under the desk pad, we also question the plausibility of this explanation. Naturally, if the person to whom the money is intended for is not present, the thought of not leaving it lying around would seem insignificant, even quite appropriate. However, if the person to whom the money is intended for is present, as Mr. Lamontagne was, such an action becomes unusual.
>
> [192] When pressed in further cross-examination by the independent counsel about the logic of slipping the money under the desk pad while Mr. Lamontagne was less than three (3) feet away from him, Judge Girouard replied that he did so because he did not want to be seen giving money to a trafficker.
>
> [193] We are perplexed by this response: did Judge Girouard act in this manner mostly because he did not want to be seen, or mostly out of habit?
>
> [194] Furthermore, if Judge Girouard, while he was a lawyer, did not want to be seen giving money to a trafficker, why did he not pay the cashier for previously viewed movies that he purchased? And why did he not close the door to Mr. Lamontagne's office in order to avoid being seen? Judge Girouard testified that he purchased a lot of movies, but rarely ones of the kind that he did not want appearing on his customer file. If Judge Girouard did not want to be seen giving money to Mr. Lamontagne, his testimony regarding the payment he made directly to Mr. Lamontagne raises some doubt.[93]

[123] Before us, Judge Girouard stood by the explanations he provided to the First Committee, adding that, in his view, they were "plausible and not contradictory."[94] He [TRANSLATION] "adopted as his own" the view of the dissenting member that there may be more than one reason for a single act.[95]

[124] The incongruity of the act of sliding money under the desk pad stands out when one watches the video recording. Mr. Lamontagne is seated right in front of M[e] Girouard. He could have handed him the money, or simply deposited it on the desk. There is no need of expert evidence to substantiate the view that either course of action would be expected of a person involved in a run-of-the-mill transaction like the purchase of videos.

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93 Report of the First Committee at paras. 188 to 194.
94 Testimony of Judge Girouard, 12 May 2017, p. 686.
95 Testimony of Judge Girouard, 12 May 2017, p. 692.

[125] Judge Girouard claimed he was not in the habit of leaving money on a table. By way of illustration, he referred to a gratuity left under an ashtray or a coffee cup in a restaurant, and cash slipped under an object on the dining room table for the benefit of the cleaning lady or his children.[96]

[126] The examples cited by Judge Girouard all involve situations where money is left under an object for subsequent retrieval by an intended recipient who is absent. As the majority of the First Committee found, if the practice described by Judge Girouard may be understandable where the intended recipient is absent, it is entirely otherwise when he or she is present. The examples proffered by Judge Girouard only serve to highlight the incongruity of his action, if it truly related to a payment for movies.

[127] We are of the view, as were the majority members of the First Committee, that the "main" reason given by Judge Girouard to explain his action is implausible and that his testimony on point is not credible.

[128] The second reason advanced by Judge Girouard to explain his decision to slide money under the desk pad is that he did not want to be seen giving money to an individual whose reputation as a drug trafficker was widespread.[97] That explanation would be fully compatible with the purchase of an illicit substance but, needless to say, it was not put forward to substantiate that scenario.

[129] When asked why he did not simply close the office door, Judge Girouard responded he was not about to participate in an illegal transaction and therefore saw no need to be particularly guarded.[98] Judge Girouard's testimony strikes us as contradictory. He slid money under the desk pad because he did not want to be seen handing money to a known drug trafficker, but he did not close the door because he had nothing to hide.

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96 Testimony of Judge Girouard, 12 May 2017, pp. 692-693; Testimony of Judge Girouard, 17 May 2017, pp. 1167-1168; Testimony of Judge Girouard, 5 May 2015, pp. 40-41.

97 Testimony of Judge Girouard, 17 May 2017, pp. 1161-1162 and 1166-1168.

98 Testimony of Judge Girouard, 17 May 2017, pp. 1166-1167.

[130] Nor do we believe Judge Girouard's claim that he acted in this way [TRANSLATION] "by reflex […] simply like that […] without thinking about it."[99] The totality of the circumstances leads us to conclude this was a premeditated act.

[131] Lastly, and with respect, the analysis of this issue by the dissenting member is incomplete, and cannot be accepted. Indeed, he did not go beyond noting there was nothing objectionable in providing two reasons for a single act, as Judge Girouard had done. Although we do not quibble with that proposition, it fails to address the concerns of the majority, which we fully share, regarding the lack of consistency in the explanations Judge Girouard put forward and their implausibility.

[132] The majority made the following findings: (1) Judge Girouard's testimony regarding the reasons for slipping the money under the desk pad is inconsistent and implausible; and (2) his testimony with respect to the payment directly to Mr. Lamontagne gives rise to doubts. In our view, these findings are untainted by error, and they are reasonable. Nothing in Judge Girouard's testimony justifies setting them aside. We adopt them without hesitation.

d) The nature of the object given to M^e^ Girouard immediately after he placed money under the desk pad

[133] Immediately after M^e^ Girouard slid money under the desk pad, Mr. Lamontagne took out the "Post-it" folded into a small package from the right pocket of his pants and slipped it into M^e^ Girouard's hand, and the latter inserted it into his own pants pocket without unfolding it.

[134] Before the First Committee, Judge Girouard claimed the "Post-it" featured a note in Mr. Lamontagne's handwriting that set out the amount he was prepared to offer in settlement of the tax dispute, as well as the name of the person who would lend him the sum in question.[100] Mr. Lamontagne, for his part, suggested it must have been a handwritten invoice for the movies M^e^ Girouard purchased, as he typically provided.[101]

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99 Testimony of Judge Girouard, 17 May 2017, p. 1167.
100 Testimony of Judge Girouard, 12 May 2015, pp. 302 and 308-309.
101 Testimony of Yvon Lamontagne, 7 May 2015, pp. 309 and 312.

[135] According to the majority, "one of the important inconsistencies in this matter is the explanation of what was written in the note, if any, that Mr. Lamontagne allegedly gave to Me Girouard".[102] [Emphasis added]

[136] In this regard, the majority pointed to the contradictions between the testimony of Judge Girouard and Mr. Lamontagne, before finding implausible the claim that the "Post-it" did not contain an object:

> [200] With regard to the object that he gave to Me Girouard during the exchange recorded on video, Mr. Lamontagne testified that it may have been an invoice for previously viewed movies that Me Girouard had decided to purchase from him. By contrast, Judge Girouard, as we know, stated that it was a note on which was written the amount to settle the tax matter and the name of the lender.
>
> [201] Yet, Mr. Lamontagne said that it was Me Girouard who informed him of the final amount to settle the tax matter, and not the other way around. He added that he had asked Me Girouard to calculate how much he owed, so that he could borrow enough money to proceed with the settlement. Mr. Lamontagne also said that Me Girouard must have written the settlement amount, because Me Girouard was sometimes absent-minded about numbers. Furthermore, when asked if, on September 17, 2010, he may have given Me Girouard a document containing information related to his tax matter, Mr. Lamontagne said that he did not think so. However, it must be remembered that Mr. Lamontagne did specify that he had no recollection of the content of the note and assumed it was an invoice for previously viewed movies.
>
> [202] We see no reason why Mr. Lamontagne would have lied about this aspect of the case, unless, of course, it was not a written note. It is certainly possible that he did not remember it well, as five (5) years have passed since his brief meeting with Me Girouard. However, this inconsistency raises some questions. It would obviously make no sense that the note he gave to Me Girouard contained the loan amount to settle the tax matter, if Mr. Lamontagne did not know what the settlement amount was.
>
> [203] We note that Judge Girouard specified, in cross examination, that he may have told Mr. Lamontagne about the settlement amount prior to their meeting September 17, 2010, but that he could not confirm it because he did not remember.
>
> [204] It must also be repeated, that if it was actually a written note from Mr. Lamontagne, whether it was an invoice for previously viewed movies or information regarding the tax matter, Mr. Lamontagne is not seen using a pen or

[102] Report of the First Committee at para. 199.

pencil to write a note in any of the three video scenes recorded on September 17, 2010 that were submitted in evidence to the Committee.

[…]

[229] That said, in the event that evidence independent of the witness's testimony is required to draw a conclusion regarding his credibility, we are of the opinion that the evidence submitted to the Committee includes evidentiary elements which support our conclusion that Justice Girouard lacked candour during the inquiry. This includes the following:

1) a prior statement made by Justice Girouard to Me Doray which is inconsistent with his testimony at the hearing;

2) a prior statement made by Justice Girouard to the Executive Director of the Council, in his letter of January 2013, which is not entirely consistent with his testimony before the Committee;

3) Mr Lamontagne's testimony about the moment when the privileged discussion between lawyer and client began, which differs from Justice Girouard's testimony;

4) Mr Lamontagne's testimony about what was written in the note, which is inconsistent with Justice Girouard's version of the facts;

5) the fact that, in the three video scenes of September 17, 2010 submitted in evidence, at no time is Mr Lamontagne seen holding a pen and writing a note, then putting the note in the right pocket of his trousers. In our opinion, Mr Lamontagne gave to Me Girouard the very same object that he had folded and put in that same pocket a few minutes before their meeting;

6) the fact that Me Girouard, although an assiduous person who is very meticulous in his work, did not read the note in the presence of Mr Lamontagne, even though urgent action was required to avoid seizure – Me Girouard, as he was described by several witnesses who appeared before the Committee, would have looked at such a note in Mr Lamontagne's office, even if the latter had given him the information orally; and

7) the testimony of Sergeant-Supervisor Y, who observed that, from his experience, things that are done in a concealed manner are, most of the time, either immoral or illegal. His testimony sheds light on the furtive gesture between Mr Lamontagne and Me Girouard, and the fact that Justice Girouard did not look at what Mr Lamontagne gave him.[103] [Footnotes omitted, emphasis added]

[103] Report of the First Committee at paras. 199 to 204 and 229.

[137] Before us, Judge Girouard repeated the suggestion that Mr. Lamontagne simply made a mistake in his testimony. He submitted it would be inappropriate to distill a contradiction between his testimony and that of a witness who admitted not having any specific recollection of the event.[104] Not only did Mr. Lamontagne not give him an invoice that day, he was mistaken in asserting an invoice was always provided for each movie purchase.

[138] It bears recalling that, at the time Mr. Lamontagne testified to this effect before the First Committee, Judge Girouard had already stated, during the complaint review process and in the course of his *in camera* testimony, the object Mr. Lamontagne turned over was a handwritten note specifying the amount he would need to borrow to settle the tax dispute and identifying the name of the lender.[105] Mr. Lamontagne, who did not meet with the independent counsel or the judge's counsel before testifying, may have been unaware of the explanation provided by Judge Girouard.

[139] Mr. Lamontagne testified he did not recall providing M[e] Girouard with any document bearing handwritten notes related to his tax case.[106] Rather, what he provided M[e] Girouard was probably a handwritten invoice for the movies he had purchased. Obviously, that testimony was problematic for Judge Girouard, who had already made his bed on the issue.

[140] It is true, as Judge Girouard stressed, that Mr. Lamontagne acknowledged he did not remember precisely what was written on the "Post-it".[107] The majority acknowledged that point in the First Committee's Report.[108] That said, Mr. Lamontagne testified he always prepared an invoice for M[e] Girouard detailing the movies he purchased, since that was important to him.[109] Accordingly, even if Mr. Lamontagne had no specific recollection of the exchange, the images captured on video corresponded, according to him, to their

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104 Testimony of Judge Girouard, 12 May 2017, pp. 698-699.
105 Testimony of Judge Girouard, 5 May 2015, *in camera*, p. 53.
106 Testimony of Yvon Lamontagne, 7 May 2015, pp. 323-325.
107 Testimony of Yvon Lamontagne, 7 May 2015, pp. 316-317.
108 Report of the First Committee, at para. 200.
109 Testimony of Yvon Lamontagne, 7 May 2015, p. 309.

usual way of doing things.[110] Consequently, he saw no other explanation for the object he passed to M[e] Girouard.[111]

[141] As mentioned, it is Judge Girouard's contention that Mr. Lamontagne was mistaken in stating he always provided an invoice for the videos he purchased.[112] Judge Girouard ventures the hypothesis that this "erroneous" testimony by Mr. Lamontagne was traceable to the several general anesthetics he was subjected to over the years.[113]

[142] The members of the First Committee saw Mr. Lamontagne testify, and they unanimously rejected his explanation with respect to the object he put in his pants pocket before M[e] Girouard's arrival.[114] More specifically, the majority of the First Committee concluded that what Mr. Lamontagne passed to M[e] Girouard was the same "Post-it" in which he wrapped an object, and that he put into his pants pocket earlier.[115] It flows from that finding, which is entirely reasonable, that the majority viewed Judge Girouard's testimony on point as bereft of credibility: there was an object in the Post-it.

[143] In that regard, and with respect, we were perplexed by the dissenting member's criticism of the majority's preference for Mr. Lamontagne's version of the facts over that of Judge Girouard.[116] The dissenting member seems to have analyzed the question as if it were a matter of choosing between the contradictory explanations of the two witnesses (invoice for movies or note re the tax dispute). That is not the issue: the fact that Mr. Lamontagne's testimony is more plausible than Judge Girouard's does not mean it is true. In our view, neither Mr. Lamontagne nor Judge Girouard testified truthfully regarding the nature of the object handed over in the key scene of the video recording.

[144] As with the concealment of the money under the desk pad, the surreptitious transfer of the "Post-it" is simply incompatible with the delivery of an invoice or a handwritten note. In our view, the method employed was part and parcel of a common operation aimed at

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110 Testimony of Yvon Lamontagne, 7 May 2015, pp. 312-313.
111 Testimony of Yvon Lamontagne, 7 May 2015, pp. 319-320.
112 Testimony of Judge Girouard, 13 May 2015, pp. 272-274; Testimony of Judge Girouard, 17 May 2017, pp. 1206-1207.
113 Testimony of Judge Girouard, 13 May 2015, p. 274.
114 Report of the First Committee at para. 166.
115 Report of the First Committee at para. 229 5).
116 Report of the First Committee at paras. 254-255.

concealing the true nature of the exchange, and the testimony of Mr. Lamontagne and Judge Girouard on the subject is not credible.

[145] Questioned with regard to the surreptitious method used to pass the object taken out of Mr. Lamontagne's pants pocket immediately after sliding money under the desk pad, Judge Girouard conceded the whole operation looked suspicious, but claimed he had nothing to do with it, Mr. Lamontagne being the one who initiated the exchange in that manner.[117] The explanation does not withstand scrutiny, given that: (1) it was M[e] Girouard who got the ball rolling by the furtive remittance of money to Mr. Lamontagne; and (2) he was complicit in the equally furtive transfer of the object that immediately followed the payment.

[146] In addition, the fact that neither Mr. Lamontagne nor Judge Girouard was able to explain the purpose of the small piece of paper M[e] Girouard was holding in his right hand is one more factor casting doubt on the credibility of their testimony regarding the nature of the exchange captured on video.

[147] During his testimony before the First Committee, Mr. Lamontagne suggested the piece of paper was perhaps a document on which M[e] Girouard had written the amount he would have to pay to settle the tax dispute.[118] In his own testimony before the First Committee a few days later, Judge Girouard proposed the same hypothesis.[119]

[148] Before us, Judge Girouard rejected that hypothesis, asserting he informed Mr. Lamontagne of the settlement amount before their meeting.[120]

[149] He ventured another explanation. Perhaps it was a block of "Post-its" he brought to take notes.[121] Yet, that possibility seemed highly improbable to him when he testified before the First Committee.[122]

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117 Testimony of Judge Girouard, 18 May 2017, pp. 1411-1412 and p. 1459.
118 Testimony of Yvon Lamontagne, 7 May 2015, pp. 314-315.
119 Testimony of Judge Girouard, 13 May 2015, pp. 429-430.
120 Testimony of Judge Girouard, 18 May 2017, pp. 1448-1456.
121 Testimony of Judge Girouard, 17 May 2017, pp. 1103-1107.
122 Testimony of Judge Girouard, 13 May 2015, pp. 430.

[150] Obviously, if it was a block of blank "Post-its", there would be no reason for Mr. Lamontagne to consult it as he stealthily slid an object over to M[e] Girouard.

[151] Having considered Mr. Lamontagne's and Judge Girouard's testimony before the First Committee and heard Judge Girouard's explanations, we adopt the majority's finding of a lack of consistency between the explanations given by both witnesses. That is likewise the case for the finding of implausibility in relation to the claim that the "Post-it" did not contain an object, but only handwritten notes. In our view, these findings are not the product of any error, and they are reasonable. Finally, nothing in Judge Girouard's testimony justifies setting them aside. We adopt those findings without any hesitation.

e) Judge Girouard's explanation for his failure to immediately ascertain the contents of the "Post-it"

[152] Another implausibility identified by the majority of the First Committee arises from M[e] Girouard's failure to read the alleged note in the "Post-it", while in the office.

[153] The majority made the following findings on the subject:

> [216] In the video recording, Me Girouard can be seen placing his hand on the object that Mr. Lamontagne slipped to him, taking possession of it, and not looking at it. This raises an important question.
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> [217] Judge Girouard testified that the note contained information that he urgently needed to resolve the tax matter. He specified that it had become urgent to settle the tax matter, because of a risk of seizure of Mr. Lamontagne's assets by government authorities. And yet, Judge Girouard stated that he did not look at the note because he knew what it contained.
>
> [218] In our opinion, it is unlikely and improbable that Judge Girouard would have waited until returning to his office to read the note, rather than taking the opportunity to discuss this information with his client, while they were together.
>
> [219] As Judge Girouard suggested in his testimony, it is possible, since the video recording had no sound track, that Me Girouard and Mr. Lamontagne talked about this information when they met in Mr. Lamontagne's office. However, it must be remembered that Mr. Lamontagne testified that it was Me Girouard who informed him of the amount required to settle the tax matter. He added that he had asked Me Girouard to calculate how much he owed, so that he would know how much he had to borrow.

> [220] Judge Girouard stressed that his record of fees, including an entry made on September 17, 2010, was evidence corroborating his version of the facts. The entry for September 17, 2010 reads as follows: [TRANSLATION] "Review of the file; Telephone conversation with Claire Boucher, Revenue Canada"
>
> [221] The meeting with Mr. Lamontagne is not mentioned in the entry for September 17, even though it appears in other entries made by Me Girouard. Judge Girouard said that he did not always bill for everything. He added that his meeting with Mr. Lamontagne, which lasted six (6) minutes, was probably included in the entry, although it was not specifically mentioned.
>
> [222] In our opinion, Me Girouard's record of fees is evidence of the fact that he worked on this case on September 17, 2010. However, this evidence is insufficient to draw an inference as to the nature of the object that was exchanged.[123] [Footnotes omitted]

[154] Before us, Judge Girouard reiterated that, at the time of the September 17, 2010 meeting, there was some urgency in resolving the tax dispute because Mr. Lamontagne's accounts were under threat of seizure.[124] He needed information from Mr. Lamontagne before contacting the tax authorities that same day.[125] In Judge Girouard's version of events, the "Post-it" contained that information.

[155] Judge Girouard points out the lack of a sound track makes it impossible to know with certainty what Mr. Lamontagne said when he slipped him the "Post-it". Judge Girouard offers the following hypothesis for his failure to read the alleged note while in the office: Mr. Lamontagne must have verbally communicated its contents.[126]

[156] However, at the *in camera* hearing before the First Committee, Judge Girouard testified he supposed Mr. Lamontagne had given him the "Post-it" in a surreptitious manner because he did not want to reveal out loud the loan amount or the name of the lender.[127]

[157] At any rate, that information was going to be made public in the following days by means of a registered instrument. When questioned by a member of the First Committee

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123 Report of the First Committee at paras. 216 to 222.
124 Testimony of Judge Girouard, 17 May 2017, pp. 1176-1178.
125 *Ibid.*
126 Testimony of Judge Girouard, 12 May 2017, pp.766-767; Testimony of Judge Girouard, 17 May 2017, pp. 1190-1192.
127 Testimony of Judge Girouard, 5 May 2015, *in camera*, p. 53-54.

concerning the loan, Mr. Lamontagne confirmed he understood the transaction would be made public, adding he had nothing to hide.[128]

[158] If Mr. Lamontagne truly had [TRANSLATION] "nothing to hide", it beggars belief that he thought necessary to slip the alleged note furtively. Why act in this fashion if the "Post-it" contained nothing more than an invoice for videos or, for that matter, a handwritten note about a loan that would soon be made public?

[159] Finally, the overlapping actions we observed while viewing the video recording satisfies us there is a direct connection between the payment by M^{e} Girouard and the folded "Post-it" provided by Mr. Lamontagne. Indeed, as soon as M^{e} Girouard took the bank notes out of his pocket, Mr. Lamontagne rummaged in his right pants pocket to take out the folded "Post-it". Once M^{e} Girouard was seated, Mr. Lamontagne slipped the "Post-it" to him and then retrieved the money from under the desk pad. We reject Judge Girouard's assertion to the contrary and find the payment of money and the slipping of the folded "Post-it" were part and parcel of one and the same transaction.

[160] In our view, the totality of the circumstances, including notably the surreptitious actions of the two men and the link between the payment of money and the passing of the folded "Post-it", contradicts Judge Girouard's explanations about the nature of the object he received and, correlatively, his explanations for failing to read the alleged note while in the office. Like the majority of the First Committee, we find it implausible that, in the context of urgency described by Judge Girouard, a diligent and experienced lawyer like him would have failed to immediately get acquainted with salient information being relayed by his client. In our view, there is no error in this finding of implausibility, and it is entirely reasonable. Finally, nothing in Judge Girouard's testimony justifies setting it aside. We adopt the finding without hesitation.

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[128] Testimony of Yvon Lamontagne, 7 May 2015, p. 349.

f) The failure to read the Doray Summary

[161] The relevance of the Doray Summary stems from M[e] Doray's report in that document that Judge Girouard told him the alleged Post-it note included the sentence: [LITERAL TRANSLATION] "I am bugged, I am tailed".[129]

[162] The majority found the sentence in quotation marks was incompatible with the version of the facts Judge Girouard had given under oath and his claim "that he did not read M[e] Doray's summary seems improbable":

> [205] In the summary prepared by Me Doray, who met with Judge Girouard on August 13, 2013, Me Doray stated that Judge Girouard told him that the note contained information regarding the tax matter, as well as a message for Mr. Lamontagne saying: [TRANSLATION] "I'm under surveillance, I'm being bugged".
>
> [206] At the *in camera* hearing on the issue of solicitor-client privilege, Judge Girouard testified that he told Me Doray that the note contained a message saying that Mr. Lamontagne thought he was under surveillance. However, he later added that he was not certain if the note contained such a message. He remembered having talked about surveillance with Me Doray, but stated that he could only recall with certainty the two (2) other pieces of information he was expecting, that is to say the settlement amount and the name of the lender. Judge Girouard stated that Mr. Lamontagne's behaviour led him to believe that the latter thought he was under surveillance. Judge Girouard then added that he realized he should explain himself.
>
> [207] In his main testimony, Judge Girouard made no mention of the message regarding surveillance.
>
> [208] When cross-examined on this issue, Judge Girouard replied that Me Doray must have misunderstood him and that he did not use the words "I'm under surveillance, I'm being bugged". Instead, he told Me Doray that Mr. Lamontagne's behaviour led him to believe that the latter was under surveillance.
>
> [209] Consequently, there seems to be a substantial inconsistency between Judge 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.
>
> [210] We question the explanation provided by Judge Girouard. The contents of the note, that is to say the nature of the object that was exchanged, is an essential

[129] Exhibit E-9.

element in analyzing the video recording. If Me Doray had incorrectly reported what Judge Girouard said, we believe that Judge Girouard or his counsel would have certainly reacted and written to Me Doray to ask for an amendment.

[211] Indeed, it was put in evidence that Me Doray made changes to the first draft of his summary. He would have undoubtedly, for the sake of accuracy, amended the summary of his meeting with Judge Girouard if it had not accurately reflected the nature of their discussions.

[212] Judge Girouard stated that he did not read the August 13, 2013 summary of his meeting with Me Doray. Judge Girouard said he was exhausted at the time when this summary was provided to his counsel. He stated that, after finding out that Me Doray's report was negative, he did not read it.

[213] Judge Girouard drew the Committee's attention to two things. Firstly, he noted that it was a confidential meeting that was being used by the independent counsel as a prior inconsistent statement. Secondly, he emphasized the distinction between the summary of his August 13, 2013 meeting with Me Doray and a statement made in due form. In his opinion, the summary of the meeting provided an account of discussions between parties involved and submissions made by his counsel. Therefore, in his opinion it was not, strictly speaking, a statement that he made. Such a distinction is appropriate. However, it remains true that this statement of facts, as we understand it, is contained in Me Doray's summary.

[214] The evidence has shown that Judge Girouard was an assiduous and meticulous lawyer with a fighting spirit. Judge Girouard described himself as a "warrior" lawyer. His record since his appointment to the judiciary all the more illustrates his diligence in his work. In our opinion, it is very likely that the man depicted by numerous witnesses, including Judge Girouard himself, would have read Me Doray's summary of August 13, 2013. In fact, Judge Girouard read Me Doray's preliminary report of May 6, 2013. The August 13 report contained more information, including the summary of the meeting between Me Doray and Judge Girouard. In the absence of evidence on this issue and of submissions from Judge Girouard's counsel in this regard, we understand that counsel for Judge Girouard made no objection to Me Doray's description of the message as stating [TRANSLATION] "I'm under surveillance, I'm being bugged" contained in his report.

[215] Considering the stakes for Judge Girouard, his claim that he did not read Me Doray's summary seems improbable.

[…]

[225] It is also improbable that Judge Girouard did not read Me Doray's summary of their meeting. Considering Judge Girouard's personality, his nature as a trial lawyer and his diligence as a judge, this would be completely out of

> character for him. Furthermore, it would also suggest that counsel for Judge Girouard, who are both experienced lawyers, did not discuss Me Doray's summary of August 13, 2013 with Judge Girouard, which seems inconceivable.[130] [Footnotes omitted]

[163] In his testimony before us, Judge Girouard recalled conveying to M[e] Doray his impression that Mr. Lamontagne thought he was under surveillance, but that he had added he was uncertain whether a note to that effect was included in the "Post-it".[131]

[164] In the judge's submission, there is no justification for the view expressed in the First Committee's Report that he would have insisted on the Doray Summary being immediately amended if it had truly distorted his words. In support of that contention, Judge Girouard points to new evidence that establishes neither he nor his counsel received the Doray Summary before the month of October 2013.

[165] Lastly, Judge Girouard states he did not acquaint himself with the contents of the Doray Summary when it was provided to him in October 2013 and twice in 2014. That failure would be sickness-related.[132] In support of that contention, Judge Girouard relied upon a medical note attesting to his incapacity to fulfill his duties as a judge from November 18, 2013 to March 17, 2014.[133]

[166] In his testimony on May 18, 2017, Judge Girouard summarized what he claimed has always been his position regarding the "Post-it". Yes, he advised M[e] Doray the note mentioned Mr. Lamontagne was under surveillance, but he admitted to being uncertain about that.[134] Hence, his criticism of M[e] Doray for having reported as a categorical statement an answer that had been given with reservations. Is it plausible that Judge Girouard would actually have made the quoted statement subject to this *caveat* and M[e] Doray failed to record the latter in his handwritten notes and in his Summary? We do not believe so.

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130 Report of the First Committee at paras. 205-215 and 225.
131 Testimony of Judge Girouard, 12 May 2017, pp. 711-712.
132 Testimony of Judge Girouard, 18 May 2017, pp. 1494-1496.
133 Exhibit G-1 *en liasse*.
134 Testimony of Judge Girouard, 18 May 2017, pp. 1501, 1509-1511.

[167] Here is what the evidence leads us to conclude. At his meeting with M^e^ Doray in August 2013, Judge Girouard stated Mr. Lamontagne handed him a note that included the sentence "I am bugged, I am tailed", in addition to information relating to the tax dispute. That version conveniently supported his objection, founded upon solicitor-client privilege, to the admissibility of the whole scene captured by the video of September 17, 2010, while providing a semblance of explanation for the furtive fashion in which Mr. Lamontagne handed the "Post-it".

[168] The first Notice of Allegations was drafted in March 2015. It specifically alleged Mr. Lamontagne "was unaware that he was under surveillance, was being wiretapped and filmed by the Sûreté du Québec and only learned that when he was arrested on October 6, 2010."[135] Thus, Judge Girouard was notified, prior to testifying before the First Committee, that the independent counsel would be leading evidence incompatible with the statement "I am bugged, I am tailed" reported in the Doray Summary.

[169] Once he was made aware of the existence of evidence contradicting his initial statement, Judge Girouard adjusted his version of events by providing additional "clarifications", as evidence was adduced and questions were raised.

[170] It bears mention that Judge Girouard's counsel asked no questions on this topic during M^e^ Doray's cross-examination. Rather, he attempted to show M^e^ Doray made an error in paragraph 8 of the Summary, concerning the identity of one Lusko. It goes without saying that any such error would, in no way, mean there was an error with respect to the handwritten note "I am bugged, I am tailed".

[171] Additionally, Judge Girouard's claim that he inferred Mr. Lamontagne thought he was under surveillance (by virtue of the latter's behaviour and perception of being tailed by the police a few weeks earlier)[136] is incompatible with Mr. Lamontagne's testimony. How could Mr. Lamontagne believe he was tailed by the police when he did not suspect he was under surveillance? We further note Mr. Lamontagne was never cross-examined

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[135] Detailed amended and modified Notice of Allegations against the Honorable Michel Girouard, 13 March 2015 at para. 7.

[136] Testimony of Judge Girouard, 17 May 2017, pp. 1234-1236.

on this subject, although Judge Girouard stated he had been very surprised by his testimony.[137]

[172] It is true that M[e] Doray's testimony established his Summary was not immediately sent to Judge Girouard and his counsel, so that neither can be blamed for not having immediately insisted upon a correction. However, the Doray Summary was provided to Judge Girouard and his counsel on three occasions prior to the hearings before the First Committee: in October 2013, when the Judicial Conduct Review Panel was constituted;[138] in February 2014, when the Report of the Review Panel was released;[139] and, finally, in the course of evidential disclosure.[140] And yet no one requested an immediate correction.

[173] The following facts emerged from M[e] Doray's testimony:

- M[e] Doray took handwritten notes during the meeting of August 13, 2013;[141]
- The Summary was dictated that same day;[142]
- The sentence "I am bugged, I am tailed" appears in quotation marks in both the handwritten notes and in the Summary;[143] and
- M[e] Doray put that sentence in quotation marks because he was repeating Judge Girouard's words *verbatim.*[144]

[174] Having regard to M[e] Doray's testimony, which is both credible and reliable, we find Judge Girouard told him the "Post-it" included the sentence "I am bugged, I am tailed". It seems to us particularly telling that the sentence appears in quotation marks in M[e] Doray's handwritten notes, which means he was citing textually what Judge Girouard said.[145] M[e] Doray's testimony, his handwritten notes and the relevant portions of his Summary, being three pieces of evidence additional to those that were available to the

137 Testimony of Judge Girouard, 17 May 2017, pp. 1234-1235.
138 Exhibit E-12.
139 Exhibit E-14.
140 Admission made at the hearing of 17 May 2017, pp. 951-952.
141 Testimony of M[e] Doray, 9 May 2017, p. 249. Exhibit P-9.
142 Testimony of M[e] Doray, 9 May 2017, pp. 250 and 297.
143 Exhibits E-3 and E-9.
144 Testimony of M[e] Doray, 9 May 2017, pp. 294-295.
145 Testimony of M[e] Doray, 9 May 2017, pp. 294-295.

First Committee, amply suffice to satisfy the balance of probabilities standard in this regard.

[175] Finally, we reject Judge Girouard's claim that he was unable to take cognizance of the Doray Summary because of sickness. The evidence adduced to establish that inability is unconvincing. It is a medical note attesting to an inability to work as a judge for a period of four months (November 18, 2013 to March 17, 2014). The specified timeframe does not cover all instances of the Summary's delivery to Judge Girouard. Moreover, the medical note does not describe a level of unfitness that might substantiate Judge Girouard's explanation for his alleged omission to read the Doray Summary and his failure to contest its "erroneous" contents at the first reasonable opportunity. Additionally, Judge Girouard's counsel received a copy of the Doray Summary in the fall of 2013 and in the winter of 2014, and they evidently did not see the need to contest its contents at the first reasonable opportunity.

[176] In our view, there is no error in the majority's finding of improbability regarding Judge Girouard's testimony that he did not read the Summary before the hearings by the First Committee. Furthermore, that finding is entirely reasonable. Finally, nothing in the explanations provided by Judge Girouard justifies setting it aside and the same applies to the other findings set out in paragraphs 205 to 215 and 225 of the First Committee's Report. We adopt them without any hesitation.

4. Our findings with regard to the First Allegation

[177] We have considered the contradictions, inconsistencies and implausibilities identified by the majority of the First Committee, in the light of the explanations provided by Judge Girouard in his testimony at this inquiry. We find the majority's findings unfavourable to the credibility and integrity of Judge Girouard, which are targeted by the **First Allegation**, are free from error and reasonable. Furthermore, no evidence in the record, including the testimony of Judge Girouard, justifies their setting aside. We adopt them fully and find the facts underlying the **First Allegation** have been established on a strong balance of probabilities, by clear and convincing evidence. Finally, we find the

misconduct identified in the **First Allegation** falls within ss. 65(2)(b) and (c) of the *Judges Act.*

5. Our conclusion with regard to the First Allegation

[178] Having found the misconduct identified in the **First Allegation** has been established on a balance of probabilities, we must now apply the *Marshall* test and determine whether that misconduct is "so manifestly and totally destructive of the concept of the impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render [Judge Girouard] incapable of executing the judicial office". We answer that question with an unequivocal "yes". Correlatively, we wish to express our complete agreement with the opinion of the majority of the First Committee that the "compromising of a judge's integrity through the giving [of] 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".[146]

[179] For these reasons, we recommend that Judge Girouard be removed from office.

B. SECOND ALLEGATION

> **Judge 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.**

1. Our findings regarding the Second Allegation

[180] The wording of the **Second Allegation** is unambiguous: it can only be established if Judge Girouard made at least one of the specified statements to the First Committee.

[181] In describing his relationship with Mr. Lamontagne before assuming his defence in the case of the 350 cannabis plants seized from his home in 1999, Judge Girouard stated:

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[146] Report of the First Committee at para. 240.

> [TRANSLATION] Perhaps like that, on sight, but… but I didn't know the activities that he was carrying on, although he had already led me to believe that he was carrying on another activity – **because he knew that I didn't take drugs**, so he didn't talk to me about that – he talked to me about a gold matter.
>
> […]
>
> So, if he had thought that I took drugs, I don't think that he would have led me to believe that he was doing another…you know.[147] [Emphasis added]

[182] In the course of a discussion regarding the admissibility in evidence of the September 17, 2010 video recording, Judge Girouard stated [TRANSLATION]: "I don't take drugs, so I don't know why I would buy any; that I can tell you …".[148]

[183] When his counsel asked if he purchased any drugs from Mr. Lamontagne on September 17, 2010, Judge Girouard answered [TRANSLATION]: "Absolutely not".[149]

[184] While referring to the payment of money shown on the video, Judge Girouard implied he had taken drugs at some point in his life:

> [TRANSLATION] "… me, I… wasn't taking drugs, **at that time**, so I didn't buy any." [150] [Emphasis added]

[185] That said, the First Committee was definitely under the impression that Judge Girouard stated he had <u>never</u> taken cocaine. At the hearing on May 13, 2015, Chief Justice Chartier summarized Judge Girouard's testimony as follows:

> [TRANSLATION]:
>
> And when [Mr. X] testified, he mentioned the frequency and how widespread the judge's consumption – the consumption of… of cocaine was… how the taking of cocaine, on the part of Judge Girouard, when he was a lawyer, was widespread and frequent, and… and that is… that is what he said; once again, I… we are going to decide the question of his credibility.
>
> But the question which… surrounds that, Judge Girouard took the witness stand and he said: "I have **never** taken any…any narcotics! I… I… **never** took any; I

147 Testimony of Judge Girouard, 5 May 2015, *in camera*, pp. 29 and 30.
148 Testimony of Judge Girouard, 5 May 2015, *in camera*, p. 64.
149 Testimony of Judge Girouard, 12 May 2015, p. 171.
150 Testimony of Judge Girouard, 14 May 2015 (extract), p. 53.

> didn't take any in eighty-seven (87), in ninety (90), in ninety-one (91), in ninety-two (92), I... I haven't taken any since!"
>
> And that is his testimony. So, the question as to whether there are rumours going around about that relates to some degree – it is not… it is not… no importance can be given to that, but there is… there is a relevance…
>
> […]
>
> [...] Judge Girouard has said that he has **never** taken drugs… […] ... narcotics. [Emphasis added]

[186] In its report to Council, the First Committee was categorical on the matter:

> **Judge Girouard proclaimed that he has never bought or used drugs**.
>
> […]
>
> As previously mentioned, **Judge Girouard, at every step of the process before the Council, claimed that he has never used drugs**. His counsel submitted that the exchange captured on video cannot possibly show an illicit substance transaction, since Judge Girouard has never used any such substance.[151] [Emphasis added]

[187] Judge Girouard did not see fit to contest or qualify that statement in the ensuing proceedings before Council.[152]

[188] Judge Girouard testified before us that he had taken drugs before taking his oath as a lawyer, but not since.

[189] As indicated, the **Second Allegation** requires evidence Judge Girouard actually stated, in the course of the proceedings before the First Committee, that he <u>never</u> took drugs or <u>never</u> obtained drugs.

[190] In his testimony before us, Judge Girouard insisted he had not made either of those statements. Having carefully examined Judge Girouard's testimony before the First Committee, we agree: he did not state he had <u>never</u> taken drugs or <u>never</u> obtained drugs.

[191] It follows that the **Second Allegation** has not been established.

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[151] Report of the First Committee at paras. 101 and 134.

[152] *Observations de l'honorable Michel Girouard au Conseil canadien de la magistrature*, 15 December 2015.

2. Our conclusion regarding the Second Allegation

[192] The **Second Allegation** is dismissed.

C. THIRD ALLEGATION

> **Judge 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.**

1. The Context

[193] The **Third Allegation** flows from Judge Girouard's sworn statement before our Committee that he never used cocaine while he was a lawyer.

[194] In the complaint filed with Council on July 15, 2016, L.C. asserted Judge Girouard was under the influence of cocaine on several occasions in the 1990s.[153] She repeated that assertion in her sworn testimony.

[195] We must therefore determine whether L.C.'s testimony is credible and reliable, and decide whether the **Third Allegation** has been established on a balance of probabilities by clear and convincing evidence.

2. The evidence

a) L.C.'s testimony

[196] Originally from Saint-Norbert, Manitoba, L.C. moved to Montreal in 1991 to work.[154]

[197] In her career, L.C. has held a variety of jobs in sales[155] and international business.[156]

[198] In March 1992,[157] L.C. met Alain Champagne.[158] L.C. and Mr. Champagne began a relationship in May 1992.[159] They would later have two children: a first daughter born in

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153 Exhibit E-10.
154 Testimony of L.C., 9 May 2017, p. 15-16.
155 Testimony of L.C., 9 May 2017, p. 16.
156 Testimony of L.C., 9 May 2017, p. 16-17.
157 Testimony of L.C., 9 May 2017, p. 19.
158 Testimony of L.C., 9 May 2017, pp. 28-29.
159 Testimony of L.C., 9 May 2017, p. 19.

1994 and a second one in 1996.[160] The relationship with Mr. Champagne ended around 2006.[161]

[199] L.C. testified her relationship with Mr. Champagne was tumultuous. He frequently used cocaine, was unfaithful to her and was imprisoned for importing 20 kilos of cocaine in 1993. Mr. Champagne was remanded into custody in 1993, while awaiting trial, and was subsequently sentenced to a 10-year prison term. The underlying conviction was set aside by the Quebec Court of Appeal and Mr. Champagne was released for several months in 1995, pending a new trial. He was then re-incarcerated for a period of approximately one year and a half.[162] The final outcome of the proceedings remains unclear, although the hypothesis of a pardon was mentioned without, however, being confirmed.

[200] L.C. testified she met M[e] Girouard and G.A. for the first time in the fall of 1992[163] at a party held at their home in Val-d'Or.[164]

[201] According to L.C., it was at this party that she realized Mr. Champagne was using cocaine.[165] During their relationship, she noticed he exhibited unusual patterns of behaviour, including an accelerated rate of speech, a runny nose, sniffling, hyperactivity, hypersexuality and dilated pupils.[166] L.C. recounted how, later that evening, Mr. Champagne admitted: (1) he had taken cocaine;[167] and (2) had taken it with M[e] Girouard.[168]

[202] According to L.C., the 1992 party was the first of several encounters with M[e] Girouard, which she estimated at between 12 and 20.[169] Those meetings generally took place in Montreal, but sometimes in Val-d'Or.[170]

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160 Testimony of L.C., 9 May 2017, p. 72.
161 Testimony of L.C., 9 May 2017, p. 67.
162 Testimony of Judge Girouard, 18 May 2017, p. 1558 and pp. 1582-1583. The evidence is not clear as to the specific period during which Mr. Champagne was imprisoned.
163 Testimony of L.C., 9 May 2017, pp. 36-37.
164 Testimony of L.C., 9 May 2017, pp. 23-24.
165 Testimony of L.C., 9 May 2017, p. 29.
166 Testimony of L.C., 9 May 2017, pp. 31-33
167 Testimony of L.C., 9 May 2017, pp. 34-35.
168 Testimony of L.C., 9 May 2017, p. 36.
169 Testimony of L.C., 9 May 2017, p. 26 and p. 41.
170 Testimony of L.C., 9 May 2017, p. 41.

[203] In the months that followed, L.C. came to believe Mr. Champagne was taking cocaine regularly with M^e^ Girouard.[171]

[204] She related an event that is significant for our purposes, when M^e^ Girouard and G.A. were on a trip to Montreal. The couples agreed to dinner at a restaurant, and L.C. and Mr. Champagne met M^e^ Girouard and G.A in their hotel room. At one point, Mr. Champagne, M^e^ Girouard and G.A. went into the bathroom together. A few minutes after their return, L.C. noticed all three were showing signs of cocaine consumption.[172] Later, at the restaurant, L.C. became very upset. She recalled a heated argument with Mr. Champagne following dinner.[173]

[205] Then, in 1994, during a visit to Mr. Champagne in prison, L.C. noticed M^e^ Girouard was under the influence of drugs.[174]

[206] Another significant incident occurred in 1998 during a visit by L.C., her mother, Mr. Champagne and their two children at the home of M^e^ Girouard and G.A.[175] While they were all in the same room, M^e^ Girouard and Mr. Champagne slipped away. G.A. soon followed. Shortly afterwards, L.C. went looking for the children; she found them in the garage, unsupervised and in their bare feet, with a box of nails overturned on the floor, and brought them to the kitchen.[176] When M^e^ Girouard, G.A. and Mr. Champagne returned, L.C and her mother were sitting at the kitchen table. Mr. Champagne took a seat next to L.C.'s mother, while M^e^ Girouard and G.A. remained standing before approaching L.C. While looking up at her hosts from her seated position, L.C. saw white powder in their nostrils.[177]

[207] L.C. deduced it was cocaine. She noticed M^e^ Girouard and Mr. Champagne had dilated pupils and were very talkative.[178]

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171 Testimony of L.C., 9 May 2017, p. 87. See also Testimony of L.C., 9 May 2017, pp. 29-30.
172 Testimony of L.C., 9 May 2017, pp. 42-43.
173 Testimony of L.C., 9 May 2017, pp. 42-43.
174 Testimony of L.C., 9 May 2017, p. 69.
175 Testimony of L.C., 9 May 2017, p. 49.
176 Testimony of L.C., 9 May 2017, pp. 51-52.
177 Testimony of L.C., 9 May 2017, pp. 52-53.
178 Testimony of L.C., 9 May 2017, pp. 53-55.

[208] After leaving the premises, L.C. confronted Mr. Champagne regarding what she observed, and he did not deny taking cocaine with M[e] Girouard and G.A.[179] He replied he was going to do as he pleased, he did not know why she was making such a big fuss, and she was uptight and no fun.[180] L.C. retorted she was fed up with the lies, and no longer wanted to socialize with M[e] Girouard and G.A.[181]

[209] L.C. believed M[e] Girouard was a frequent cocaine user.[182] She added Lieutenant Robert Cloutier, a long-time friend and RCMP officer stationed in Val-d'Or in the late 1980s, confided it was known in police circles that M[e] Girouard was a cocaine user.[183]

b) Judge Girouard's testimony

[210] Judge Girouard testified he met L.C. for the first time in Montreal, at a dinner at the Hélène de Champlain Restaurant in 1992 or 1993. He would have met her no more than five times.[184]

[211] Judge Girouard remembered visiting Mr. Champagne in prison in 1994 along with L.C. and her daughter, then between 9 and 13 months of age. When he attended at L.C.'s home, she initially refused to accompany him, but eventually relented.[185]

[212] According to Judge Girouard, he and G.A. hosted Mr. Champagne, L.C. and their daughter at their Val-d'Or home from July 9 to 12, 1995. They would have done so as a favour to Mr. Champagne, who was attempting to start over after his incarceration.[186]

[213] Judge Girouard remembers Mr. Champagne and his family's visit was stressful for G.A., who was 9 months pregnant.[187] G.A. would have given birth to twins in the hours following their departure.[188]

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179 Testimony of L.C., 9 May 2017, p. 58.
180 Testimony of L.C., 9 May 2017, pp. 57-58.
181 Testimony of L.C., 9 May 2017, pp. 55-56.
182 Testimony of L.C., 9 May 2017, p. 87.
183 Letter from L.C., dated 25 July 2016, Exhibit E-10.
184 Testimony of Judge Girouard, 12 May 2017, p. 612. Judge Girouard contended the first meeting with L.C. took place in Montreal and not in Val-d'Or (Testimony of Judge Girouard, 12 May 2017, p. 588 and p. 603).
185 Testimony of Judge Girouard, 18 May 2017, p. 1562 and Testimony of Judge Girouard, 12 May 2017, p. 593 to 596.
186 Testimony of Judge Girouard, 18 May 2017, pp. 1622-1623.

[214] According to Judge Girouard, that was the one and only time when L.C. attended at his home in Val-d'Or.[189]

[215] In his testimony before us, Judge Girouard affirmed he had never used cocaine while he was a lawyer.[190]

[216] He also denied witnessing Mr. Champagne use cocaine and, perforce, having used any with him.[191]

c) G.A.'s testimony

[217] G.A. testified she had very few memories of L.C. She recalled having met her on only two occasions.

[218] The first meeting was at the Hélène de Champlain Restaurant in Montreal[192] in 1992 or 1993. She immediately formed a dislike for L.C., because she [TRANSLATION] "lacked class". According to G.A., the two women had no affinity for each other.[193]

[219] The second meeting would have occurred from July 9 to 12, 1995 at her home in Val-d'Or. G.A. implied L.C.'s stressful presence triggered the premature birth of her twins, who were born during the night following her departure.[194]

[220] G.A would have no memory of meeting L.C.'s mother.[195]

[221] Finally, G.A. recalled M[e] Girouard visited Mr. Champagne in prison on a few occasions, but those meetings would have taken place after Mr. Champagne and L.C.'s visit in 1995.

[222] G.A. testified she never detected signs of drug use by her husband.[196]

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187 Testimony of Judge Girouard, 18 May 2017, p. 1621.
188 Testimony of Judge Girouard, 12 May 2017, p. 588.
189 Testimony of Judge Girouard, 12 May 2017, p. 578 and p. 588.
190 Testimony of Judge Girouard, 12 May 2017, pp. 659 and 661.
191 Testimony of Judge Girouard, 18 May 2017, pp. 1574 and 1575.
192 Testimony of G.A., 18 May 2017, pp. 1672-1673. She did not remember the exact date, but the meeting allegedly took place before her *in vitro* treatments in August 1993 (Testimony of G.A., 18 May 2017, p. 1676).
193 Testimony of G.A., 18 May 2017, pp. 1672-1673.
194 Testimony of G.A., 18 May 2017, p. 1675
195 Testimony of G.A., 19 May 2017, p. 1796.
196 Testimony of G.A., 18 May 2017, p. 1660.

[223] She also denied ever using cocaine.[197]

[224] G.A. added she had an aversion for drugs, because her brother became schizophrenic after taking drugs as a teenager. He died in 2011[198] when he was in his fifties.

[225] She would have no tolerance for flu medication or pain killers, and does not take any medication. Despite the significant stress experienced in recent years, she would have abstained from medication for anxiety or insomnia. She prefers long walks, praying and meditating.[199]

[226] Responding to questions from a member of our Committee, G.A. acknowledged she was stopped by the police for impaired driving in 2011.[200] Her explanation: she had just drunk, by herself, a bottle of wine and was travelling to pick up her children at school. She pled guilty to the charge[201] and readily concedes she made a mistake.[202]

d) The evidence before the First Committee

[227] Before the First Committee, Judge Girouard called four witnesses for the purpose of establishing he displayed no signs of cocaine use. The witnesses were Dr. Joël Pouliot, a friend since 1996, M[e] Robert-André Adam, his former partner, M[e] Jean McGuire, a colleague at work, and Guy Boissé, a friend for 30 years.[203] G.A. also testified to the same effect.[204] Finally, Judge Girouard produced two sworn statements, one by the Honorable Marc Ouimette of the Court of Québec, and the other from M[e] Wolfgang Mercier-Giguère, both of which were to like effect. These witnesses swore they had never detected symptoms or observed behaviour indicative of cocaine or other drug use by M[e] Girouard.

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197 Testimony of G.A., 18 May 2017, p. 1660. See also pp. 1676-1677.
198 Testimony of G.A., 18 May 2017, pp. 1661-1662. G.A. did not provide that explanation to the First Committee. She said she did not do so in order to respect her family (Testimony of G.A., 19 May 2017, pp. 1811-1812).
199 Testimony of G.A., 18 May 2017, p. 1677.
200 Testimony of G.A., 19 May 2017, p. 1845.
201 Testimony of G.A., 19 May 2017, pp. 1817 *et seq*.
202 Testimony of G.A., 19 May 2017, p. 1833.
203 Report of the First Committee at paras. 135 to 147.
204 Report of the First Committee at para. 144.

[228] Judge Girouard also tendered an expert report on the effects of regular cocaine consumption. The independent counsel countered with an expert report that sought to nuance the first expert's opinion.[205]

[229] Moreover, the independent counsel offered the testimony of an individual who had been sentenced to ten years in prison for drug trafficking as a result of legal proceedings stemming from Operation Crayfish. That witness asserted under oath he sold a large quantity of cocaine to M[e] Girouard between 1987 and 1992, and that they consumed cocaine together. Although that evidence is part of the inquiry record, we have attributed no probative value to it.

3. Our findings regarding the Third Allegation

e) L.C.'s testimony

[230] L.C.'s testimony accords with that of Judge Girouard and of G.A. on a number of points. In that regard, it bears recalling she was hosted at the home of M[e] Girouard and G.A.in Val-d'Or, and that her memory of the premises is unchallenged in significant respects.

[231] Nevertheless, Judge Girouard contends L.C.'s testimony regarding his cocaine use is not credible, having regard: (1) to contradictions between his and G.A.'s testimony, on the one hand, and that of L.C., on the other; (2) the derogatory comments she made in her complaint to Council with respect to some Québec institutions; and (3) her allegedly dishonest motives.[206]

[232] Our assessment of the "contradictions" in L.C.'s testimony referenced by Judge Girouard, and their incidence on the credibility and reliability of her testimony in relation to the key issues under consideration is informed by the principles enunciated in the leading case of *F.H. v. McDougall*, in particular:

> C. *The Inconsistency in the Evidence of F.H.*
>
> [57] At para. 5 of her reasons, the trial judge had regard for the judgment of Rowles J.A. in *R. v. R.W.B.* (1993), 24 B.C.A.C. 1, at paras. 28-29, dealing with

[205] Report of the First Committee at para. 148.

[206] *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at para. 79.

> the reliability and credibility of witnesses in the case of inconsistencies and an absence of supporting evidence. Although *R.W.B.* was a criminal case, I, like the trial judge, think the words of Rowles J.A. are apt for the purposes of this case:
>
> > In this case there were a number of inconsistencies in the complainant's own evidence and a number of inconsistencies between the complainant's evidence and the testimony of other witnesses. While it is true that minor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at the least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness' evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here. [para. 29]
>
> [58] As Rowles J.A. found in the context of the criminal standard of proof, where proof is on a balance of probabilities there is likewise no rule as to when inconsistencies in the evidence of a plaintiff will cause a trial judge to conclude that the plaintiff's evidence is not credible or reliable. The trial judge should not consider the plaintiff's evidence in isolation, but must look at the totality of the evidence to assess the impact of the inconsistencies in that evidence on questions of credibility and reliability pertaining to the core issue in the case.
>
> [59] It is apparent from her reasons that the trial judge recognized the obligation upon her to have regard for the inconsistencies in the evidence of F.H. and to consider them in light of the totality of the evidence to the extent that was possible. While she did not deal with every inconsistency, as she explained at para. 100, she did address in a general way the arguments put forward by the defence.[207]

[233] It should be noted that Judge Girouard chose not to raise the alleged contradictions during L.C.'s testimony, waiting instead for her departure from the hearing room before mentioning them, and then attempting to derive a related benefit by means of his own testimony and that of G.A.

[234] When a party intends to attack the credibility of a witness on a specific point, the failure to draw his or her attention to that point in cross-examination, thus depriving the witness of an opportunity to provide an explanation, may, in some cases, blunt the effectiveness of that attack.[208] The Committee reminded Judge Girouard's counsel of this fairness-

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[207] *F.H. v. McDougall*, [2008] 3 S.C.R. 41 at paras. 57 to 59.

[208] *Browne v. Dunn* (1894) 6 R. 67 (H.L.); *Takri c. R.*, 2015 QCCA 690 at para. 20; *Maloney-Bélanger c. R.*, 2013 QCCA 1345 at para. 3.

driven principle.[209] When the subject was broached,[210] Judge Girouard's counsel submitted it was within their discretion not to put the "contradictions" to L.C. directly[211] and that it would have been strategically unsound for them to do so.[212]

[235] Having reflected at length on the matter, we adopt the view that, as a general rule, the principle in question is ill-suited for an inquiry such as ours, and that it should not be applied in this case. After all, the Committee or its investigating counsel could have insisted on recalling L.C. to the witness stand. That said, proceedings cannot go on interminably and, at any rate, the Committee was satisfied that recalling L.C. was not required to ascertain the truth in respect of the key issues.

[236] Be that as it may, we are satisfied the "contradictions" do not undermine either the credibility or the reliability of L.C.'s sworn description of circumstances pointing to Judge Girouard's use of cocaine while he was a lawyer.

[237] We will now address each of those "contradictions" and the arguments put forward by Judge Girouard in favour of the rejection of L.C.'s testimony regarding his use of cocaine.

i) *L.C. remembered a swimming pool at the home of M^e^ Girouard and G.A. in Val-d'Or at a time when they claim there was none*

[238] Drawing from her memory of visits that occurred two decades earlier, L.C. testified the home of M^e^ Girouard and G.A. had two storeys, and that it was built on a slope. She added the layout of the house was inverted, in that the main floor was one floor up. Her recollection was of a grey house with wooden siding, that it was a pretty lakeside property and there was a swimming pool.[213]

[239] According to Judge Girouard, L.C. could not have seen a swimming pool at his Val-d'Or home, since it was only added in 2000. At that time, M^e^ Girouard and G.A. no longer had

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209 Testimony of Judge Girouard, 12 May 2017, pp. 549-567.
210 Pleadings, 10 July 2017, pp. 1902-1913.
211 Pleadings, 10 July 2017, p. 1908.
212 Pleadings, 10 July 2017, p. 2081.
213 Testimony of L.C., 9 May 2017, p. 25.

any contact with Mr. Champagne and L.C.[214] Judge Girouard suggested L.C. invented the swimming pool, and he argued that anyone capable of inventing a swimming pool was also capable of inventing drug-taking adventures and white powder in nostrils.[215]

[240] We are satisfied L.C. did not "invent" a swimming pool and, if her memory of a pool on the property is mistaken, there can be no doubt the mistake is honest. L.C.'s last visit to the home of M[e] Girouard and G.A. occurred almost 20 years ago and, at the time, she had no reason to pay attention to the premises' characteristics. If there was no swimming pool on the property at the time of L.C.'s visits, there may have been one on the property of another acquaintance in Val-d'Or, which might explain the confusion. L.C.'s recollection of a swimming pool on the premises is no more than an innocent mistake, if it is a mistake.

[241] We observed L.C. carefully when she testified and we are convinced she told the truth when she described the circumstances that led her, logically and reasonably, to deduce M[e] Girouard used cocaine. Any mistake regarding the swimming pool does not undermine L.C.'s testimony on the central issue, namely the veracity of Judge Girouard's sworn denial of cocaine use while he was a lawyer. The same applies to L.C.'s alleged error with respect to home alterations made after her first visit.

[242] According to Judge Girouard, L.C. testified his residence had not changed over the course of her visits. Yet, insists the judge, the square footage more than doubled following renovations made in 1994-1995.[216] We would point out, however, that the question put to L.C. was the following:

> Q. All right. And your recollection is that when you went... each time you went, it was the same... you would give the same description of the house?
>
> A. Most definitely, and I even remember, I think the street is called Des Scouts, or something like that.[217]

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214 *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at paras. 84 to 86.
215 Judge Girouard's rebuttal at para. 40.
216 Judge Girouard's rebuttal at para. 53.
217 Testimony of L.C., 10 May 2017, p. 72.

[243] In our view, that question is far too vague to fuel the judge's argument. Indeed, the house description L.C. "would give" might well be the same despite any increased square footage, if the characteristics she recalled and considered significant remained unchanged. After all, the home on the "chemin des Scouts" remained a pretty lakeside home with a main floor one level up.

[244] No other question was put to L.C. on the subject.

ii) *L.C. would have testified M^e^ Girouard's Corvette was red, whereas it was white*

[245] In Judge Girouard's submission, L.C.'s testimonial "mistake" about the colour of his Corvette (red instead of white) gives rise to a "contradiction" that undermines the credibility and reliability of her testimony regarding his use of cocaine.[218]

[246] Yet, that was not L.C.'s testimony: she never saw M^e^ Girouard's Corvette and merely shared her recollection of a conversation with Mr. Champagne in which he described the Corvette's colour as red:

> Q-Do you remember Mr. Girouard's car for instance?
>
> A-**I…I never saw his car**, but I remember Alain always joking about Michel joking about his red "Vet" on these terrible roads that his house happened to be on, because they were gravel …[219] [Emphasis added]

[247] As can be seen, L.C. simply related what she recalled Mr. Champagne told her about the Corvette. It is possible Mr. Champagne mentioned a white Corvette rather than a red one and that L.C.'s recollection is mistaken, but that would be a trifling matter in assessing the credibility and reliability of her testimony on the key issue, namely the veracity of Judge Girouard's sworn denial of cocaine use while he was a lawyer.

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[218] *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at para. 87.

[219] Testimony of L.C., 9 May 2017, p. 25.

iii) *L.C.'s testimony that she visited M^e^ Girouard and G.A.in the company of her mother in 1999-2000 would be false*

[248] According to Judge Girouard and G.A., that visit never took place. They testified: (1) to never meeting L.C.'s mother;[220] and (2) that L.C. came to their home only once, in July 1995, in the days preceding the birth of their twins. According to Judge Girouard, L.C.'s visit in the company of her mother is nothing but a pure [TRANSLATION] "fabrication".[221]

[249] By way of corroboration for that assertion, Judge Girouard describes himself as a [TRANSLATION] "father hen" who would never have allowed his "thirteen-month-old" daughter to play in the garage without supervision.[222] The logic of that statement escapes us. The evidence shows L.C.'s visit with her mother took place in 1998. At that time, Judge Girouard's oldest daughter was about four years old – and not 13 months of age – and the twins were approximately three years old.

[250] Judge Girouard also claimed L.C. could not have visited his home in 1999-2000 because he and Mr. Champagne severed all contact, at the latest in March 1999, after a bailiff, acting on M^e^ Girouard's instructions, "seized" property at Mr. Champagne's home. It is true that, early in her testimony, L.C. stated her last visit to the home of M^e^ Girouard and G.A. occurred in 1999-2000. Knowing her oldest daughter was four years old at the time, L.C. stated the visit occurred four years after the birth of her oldest daughter in January 1996.[223] L.C. was clearly mistaken when she said her oldest daughter was born in January 1996. It was her youngest daughter who was born in January 1996. Her oldest daughter was born in January 1994.[224]

[251] As Judge Girouard knows full well, L.C subsequently corrected her mistake about the date of birth of her daughters.[225]

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220 Testimony of Judge Girouard, 12 May 2017, p. 613 and Testimony of G.A., 19 May 2017, p. 1796.
221 Testimony of Judge Girouard, 12 May 2017, p. 613.
222 Testimony of Judge Girouard, 12 May 2017, pp. 613-614.
223 Testimony of L.C., 9 May 2017, p. 49.
224 Testimony of L.C., 9 May 2017, pp. 72-73.
225 Testimony of L.C., 9 May 2017, pp. 72-73.

[252] Given that L.C.'s oldest daughter was born in January 1994, the visit likely took place in 1998, and not in 1999-2000. That finding is harmonious with L.C.'s testimony that contacts with M[e] Girouard ceased at the latest with the bailiff's attendance at her home in March 1999.

[253] Significantly, Judge Girouard knows full well that L.C.'s oldest daughter was not four years old in 1999-2000. He testified to attending at L.C.'s home in 1994-1995 to take the oldest daughter on a visit to Mr. Champagne in prison. According to Judge Girouard, she was between 9 and 13 months of age at that time. On several occasions, Judge Girouard situated that visit in time by reference to the date of birth of L.C.'s oldest daughter as January 1994.[226]

[254] In short, Judge Girouard accused L.C. of giving false testimony on the basis of a statement he knew to be erroneous, and which she corrected. We can only conclude that this was an attempt to mislead us.

iv) *L.C. mistakenly testified that a bailiff attended at her home to seize her furniture*

[255] In March 1999, a bailiff attended, on M[e] Girouard's instructions, at L.C.'s residence to serve a notice of seizure before judgment of Mr. Champagne's shares in MedcomSoft and to draw up a property inventory. L.C. testified she learned then, for the first time, of the lawsuit between Mr. Champagne and M[e] Girouard and that she understood the bailiff was there to seize and carry away her children's bed. Judge Girouard perceives a "contradiction" because, in those circumstances, the bailiff draws up an inventory and seizes the property without, however, depriving the owner of its possession.[227]

[256] It nevertheless remains that to draw up the inventory, the bailiff had to enter the residence. L.C.'s understanding that the bailiff was about to seize and carry away her furniture is far from unreasonable, and cannot negatively affect the credibility and reliability of her testimony with respect to the key issue, namely the veracity of Judge Girouard's sworn denial of cocaine use while he was a lawyer.

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[226] Testimony of Judge Girouard, 12 May 2017, pp. 593-612.

[227] *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at paras. 93 and 94.

v) *L.C. would lack the expertise required to describe symptoms relating to cocaine use*

[257] Judge Girouard contended L.C. lacked the expertise required to infer cocaine use from the facts and behaviour she observed. Admittedly, L.C. is not a physician and lacks formal training that might confer expertise on point.[228]

[258] L.C. identified the following symptoms of cocaine use: hyperactivity, dilated pupils, a runny nose, sniffling, a sense of superiority, a rapid rate of speech and hypersexuality.[229] She claimed to know the symptoms associated with cocaine consumption because she observed them several times in a colleague at work and in customers of the bar where she had worked.[230]

[259] She also cohabited with Mr. Champagne who frequently used cocaine. She prevailed upon him to undertake therapy for problems related to his cocaine use.[231]

[260] The symptoms L.C. identified correspond to the description found in the two expert reports filed with the First Committee[232] and the one provided by Lieutenant Cloutier. Although, as Lieutenant Cloutier acknowledged, those symptoms are not necessarily exclusive to cocaine use, they must be considered in the light of L.C.'s testimony as a whole. She witnessed some of those symptoms: (1) when M[e] Girouard and G.A. still had white powder in their nostrils; (2) after Mr. Champagne, M[e] Girouard and G.A. went together into the bathroom of a hotel room; and (3) in other circumstances, particularly at the restaurant:

> So, at first, I was not the quickest to notice these... the very clear signs of people who use, and especially those who use a lot, the symptoms are more severe. And then, I started to see that it was a sort of thing between them [Girouard and Champagne], because we'd go for dinner, and because Alain knew, you know, because I really... had a very highly emotional conversation about the situation with him and this behaviour which I didn't approve of, he then started to do it, but he would hide it, but he wasn't successful at hiding it, because I mean, you

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228 *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at paras. 95 to 100.
229 Testimony of L.C., 9 May 2017, pp. 31, 35 and 55.
230 Testimony of L.C., 9 May 2017, pp. 32-33.
231 Testimony of L.C., 9 May 2017, p. 58.
232 Exhibit E-4.1 (P-27 and I-13).

> know, it doesn't take a genius to figure out when everybody piles into one (1) room to get there and they don't invite you, and then they come back and their behaviour is different.[233]

[261] L.C. testified as a witness of fact, and not as an expert witness. However, she was allowed to share the inferences she drew from facts and events she personally witnessed.[234] We find L.C. was truthful in relating the circumstances that led her to conclude M[e] Girouard had used cocaine, and her testimony is reliable, and the inferences she drew are entirely logical and reasonable.

vi) *L.C. never saw Judge Girouard use cocaine*

[262] Judge Girouard submits that, since L.C. never saw him use cocaine, her allegations are based on hearsay and speculation.[235]

[263] However, L.C. testified she saw white powder in M[e] Girouard's nostrils (in 1998) and that she had previously seen him (in 1992) go into the bathroom of a hotel room with Mr. Champagne and G.A. only to come out exhibiting behaviour characteristic of cocaine consumption. That is not hearsay.

[264] Moreover, L.C.'s inferences are not speculative. Having regard to her observations, and as indicated, the inferences in question are logical and reasonable.

[265] That said, L.C. does not have personal knowledge of facts establishing M[e] Girouard used cocaine at the party in Val-d'Or in 1992. What Mr. Champagne told her about that use constitutes hearsay.

[266] It is axiomatic that the strict rules of evidence need not be applied by administrative tribunals, except where compliance is prescribed.[236] Accordingly, and provided the

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233 Testimony of L.C., 9 May 2017, pp. 29-30.

234 *Graat v. The Queen*, [1982] 2 S.C.R. 819; Catherine Piché, *Jean-Claude Royer : La preuve Civile*, 5[e] éd., Montréal, Éditions Yvon Blais at n[o] 523 and 524. See, for example, *R. v. Polturak*, 1988 ABCA 306; *Infirmières et infirmiers (Ordre professionnel des) v. Provost*, 2003 CanLII 74313 (Qc CDOII) at paras. 98 to 100.

235 Judge Girouard's rebuttal at para. 45.

236 *Canadian Recording Industry Assn. v. Society of Composers, Authors and Music Publishers of Canada*, 2010 FCA 322 (CanLII) at paras. 20 and 21; *Alberta (Worker's Compensation Board) v. Appeals Commission*, 2005 ABCA 276 (CanLII) at paras. 63 and 64. See also Sara Blake, *Administrative Law in Canada*, 5[th] Ed., Markham, LexisNexis Canada, 2011 at p. 60 and Robert W. Macaulay and James L.H. Sprague, *Hearings Before Administrative Tribunals*, 5[th] Ed., Toronto, Thomson Reuteurs, 2016 at pp. 17-6 and 17-7.

principle of procedural fairness is respected,[237] an inquiry committee may receive evidence deemed reliable, even though its admissibility might be objectionable in a court of law. In that event, it is up to the committee to assess probative value.

[267] No provision of the *Judges Act* or of the *By-Laws* prescribes compliance with the rules of evidence commonly applied in court proceedings. The *Handbook of Practice and Procedure of CJC Inquiry Committees* contains provisions dealing with evidence, but none imposes an obligation of compliance with the usual rules governing the admissibility of hearsay. Consequently, we are of the view that hearsay evidence is, in principle, admissible before us as long as procedural fairness is ensured.

[268] We are satisfied L.C. was truthful when she testified Mr. Champagne told her he used cocaine with M^e^ Girouard at the party in 1992. However, we are unable to muster the same level of satisfaction regarding Mr. Champagne's statement to her. We therefore ascribe no probative value to L.C.'s testimony concerning that incident.

vii) *L.C.'s testimony concerning her conversation with Lieutenant Cloutier would have been contradicted by him*

[269] Lieutenant Robert Cloutier is a childhood friend of L.C., with whom she kept contact.[238] From 1986 to 1989, he was with the RCMP and stationed in Val-d'Or.[239] Lieutenant Cloutier was told by Municipal Police officers M^e^ Girouard was a cocaine user.[240] Lieutenant Cloutier was struck by that statement because, at the time, he thought all lawyers were law-abiding.[241] He shared that information with RCMP colleagues and his supervisor. The latter told him he was aware.[242] As underscored during Lieutenant

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237 See Patrice Garant, *La justice invisible ou méconnue : Propos sur la justice et la justice administrative*, Montréal, Éditions Yvon Blais, 2014 at pp. 633 to 636; Sidney N. Lederman et al., *The Law of Evidence in Canada*, 4th Ed. Markham, LexisNexis Canada, 2014 at n° 6.489 and 6.490; Robert W. Macaulay and James L.H. Sprague, *Hearings Before Administrative Tribunals*, 5th Ed., Toronto, Thomson Reuters, 2016 at pp. 17-6 and 17-7; James T. Casey, *The Regulation of Professions in Canada*, looseleafs (consulted 1st May 2017), Toronto, Thomson Reuters, 1994 at pp. 11-10.2 and 11-11; Jean-Guy Villeneuve et al., *Précis de droit professionnel*, Cowansville, Yvon Blais, 2007 at n° 1.11.1.

238 Testimony of Lieutenant Robert Cloutier, 10 May 2017, p. 359.

239 Testimony of Lieutenant Robert Cloutier, 10 May 2017, p. 341.

240 Testimony of Lieutenant Robert Cloutier, 10 May 2017, p. 350 and p. 352. He stated, however, that he did not remember the exact terms used: it may have been Michel Girouard "took coke" or "sniffed coke" (p. 353).

241 Testimony of Lieutenant Robert Cloutier, 10 May 2017, p. 353.

242 Testimony of Lieutenant Robert Cloutier, 10 May 2017, p. 356.

Cloutier's testimony, this hearsay evidence cannot be used to establish M[e] Girouard's cocaine use.[243] We attribute no probative value to it.

[270] At any rate, Lieutenant Cloutier remembered telling L.C. years later during a meeting at her home in Montreal, that he knew M[e] Girouard used cocaine.[244] Judge Girouard contended L.C.'s account of their discussion was not consistent with Lieutenant Cloutier's. In his submission, the wording of her July 25, 2016 complaint to Council suggested Lieutenant Cloutier was the one who described M[e] Girouard as a "coke-head".[245]

[271] Any confusion over which participant said what in a conversation that took place several years previously, does not lead us to doubt the credibility or the reliability of L.C.'s testimony on the key issue, which, as indicated, is the veracity of Judge Girouard's sworn denial of cocaine use while he was a lawyer. In any event, Judge Girouard's argument presupposes L.C. was mistaken, and that has not been shown to be the case. Contrary to what Judge Girouard asserted, Lieutenant Cloutier did not deny referring to him as a "coke-head". He simply testified he did not remember doing so.[246]

viii) *L.C. stated she spoke with G.A. in English, whereas the latter would not be able to speak that language at all*

[272] L.C. stated under oath that her discussions with G.A. were in English. For her part, G.A. testified she cannot speak English at all.[247]

[273] We reject G.A.'s testimony on point. Nothing in the record warrants the conclusion that the discussions between L.C. and G.A. involved complex topics. We are satisfied on the basis of L.C.'s testimony that G.A., without being fluently bilingual, was sufficiently adept in the English language to participate in simple discussions in that language.

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243 Testimony of Lieutenant Robert Cloutier, 10 May 2017, pp. 360-361.
244 Testimony of Lieutenant Robert Cloutier, 10 May 2017, pp. 359-360.
245 *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at paras. 101 to 104 and Judge Girouard's rebuttal at para. 46.
246 Testimony of Lieutenant Robert Cloutier, 10 May 2017, pp. 365-366.
247 Testimony of L.C., 10 May 2017, p. 31; Testimony of G.A., 19 May 2017, pp. 1739-1749.

[274] We are of the view that G.A. sought to minimize her knowledge of English in an attempt at discrediting L.C.'s testimony. That attempt has failed.

ix) *The "discrepancies" in L.C.'s testimony regarding the dates of certain events*

[275] As mentioned, L.C. did make a few errors regarding the dates of certain events. However, we find her testimony is credible and reliable with respect to the events she recounts.

[276] It appeared obvious to us that L.C. was not coached in advance of her testimony. She appeared in Québec City before a bench of five "judges" in a room occupied by a half-dozen lawyers. One can easily suppose she was intimidated and nervous, at least at the beginning of her testimony.

[277] L.C. testified with sincerity and honesty.

[278] Some errors with respect to dates are not surprising and in no way raise questions about L.C.'s credibility and the reliability of her testimony on the key issue, namely the veracity of Judge Girouard's sworn denial of cocaine use while he was a lawyer.

x) *L.C.'s "dishonest" motives*

[279] In order to properly understand the circumstances surrounding the filing of L.C.'s complaint with Council, it bears recalling the First Committee was constituted by reason, *inter alia*, of allegations by an individual who had been sentenced to ten years in prison for drug trafficking. He claimed to have sold a large quantity of cocaine to M[e] Girouard between 1987 and 1990 and to have used cocaine with him. Those claims constituted the foundation of Allegations 1 and 2 before the First Committee.[248] That individual's testimony was proffered as similar fact evidence for the purposes of the analysis required under Allegation 3.[249] Ultimately, the First Committee decided it could not draw from his

[248] First Committee: Allegation 1: When he was a lawyer, M[e] Girouard allegedly used drugs on a recurring basis; Allegation 2: For a period of three to four years between 1987 and 1992, while he was a lawyer, M[e] Girouard allegedly purchased cocaine from Mr. X for his personal use, namely a total of about 1 kilogram, with an approximate value of between $90,000 and $100,000.

[249] First Committee: Allegation 3: On September 17, 2010, while his application for appointment as a judge was pending, and more specifically two weeks before his appointment on or about September 30, 2010, M[e] Girouard allegedly purchased an illicit substance from Yvon Lamontagne who was also his client.

testimony any conclusion relevant to Allegation 3.[250] In addition, the First Committee thought it inadvisable to pursue the investigation into the other Allegations, including Allegation 2 because of the lack of evidence pertaining to the period from 1987 to 1989,[251] which was the timeframe specified in that Allegation.

[280] L.C. testified she closely followed the progress of the First Inquiry into Judge Girouard's conduct. Having regard to its outcome, she concluded Council had not decided the question of cocaine use by Judge Girouard, notably because no witness, without a criminal record, had testified to that use.[252] Since she considered herself a good citizen in a position to attest to that drug use, L.C. came forward:[253] "[…] I just felt it was important to stand up and be truthful" [Emphasis added].

[281] When one reads her July 25, 2016 complaint, L.C.'s exasperation is patent. In both her letter of complaint and before us, she conveyed indignation for the corruption she believes is tolerated within a large number of institutions and among professionals in Québec society.

[282] Judge Girouard distilled from that belief a [TRANSLATION] "deep-seated contempt for Québec society and its physicians, lawyers, president of the Barreau, lieutenant-governor, former Mayor Gilles Vaillancourt, business people, etc."[254] He urged us to reject the opinions fueling that "deep-seated contempt", particularly the statement: "One thing I have found in Quebec many people are "dirty" and nothing gets done about it. Many professionals [do] cocaine, especially in high ranking positions […] I have zero faith in the Quebec Law System."[255] Judge Girouard submitted this "deep-seated contempt" should result in the rejection of L.C.'s testimony pertaining to his use of cocaine.

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250 Report of the First Inquiry Committee of the Canadian Judicial Council, at paras. 126 to 132.
251 First Committee at para. 177.
252 Testimony of L.C., 9 May 2017, pp. 11-12.
253 Testimony of L.C., 9 May 2017, p. 15.
254 Rebuttal of the Honorable Michel Girouard to the brief of the Council of the First Committee at para. 37.
255 *Observations de l'honorable Michel Girouard devant le Comité d'enquête du Conseil canadien de la magistrature* at para. 82.

[283] These are, quite obviously, personal opinions that L.C. reached as a result of events covered by the media. That said, it is common ground that the former mayor of Laval, Gilles Vaillancourt, pled guilty to a charge of gangsterism and was sentenced to six years in prison, and that Lieutenant-Governor Lise Thibault was sentenced to 18 months in jail for misappropriation of public funds. The observations of our investigating counsel, M[e] Gravel, with respect to L.C.'s critical opinions bear repeating:

> [TRANSLATION]
>
> And, on the other hand, there may be many people who keep silent, but I think that one must nevertheless be aware […] that Madame L.C. is not in a minority of people who find themselves to be – unfortunately, it is not a French word – but who are "écoeurés" [disgusted] – I will use the word, by behaviour like that of the lieutenant-governor, who was charged with theft and imprisoned; by the behaviour of the Mayor of Laval, Mr. Vaillancourt, who was charged with gangsterism, and imprisoned, and convicted; and with behaviours such as that seen in the Charbonneau Commission; […]
>
> I would hope […] that we have not yet reached the point of thinking that it is abnormal to be outraged by that type of behaviour.
>
> And I would think that, in a society like ours, the last thing that we would wish to discourage and condemn is the fact of reacting against or being upset by that type of behaviour.
>
> […] Madame L.C. may well be blamed for many things, but the fact that a person is shocked by that type of behaviour, in general, I find, on the contrary, to be good news in a democracy.[256]

[284] L.C. was called to testify with respect to M[e] Girouard's use of cocaine. We nevertheless allowed questions about her "social" opinions, being mindful of the stakes and the principle of procedural fairness, which calls for wide latitude in the exercise of the right to cross-examination.

[285] We are satisfied L.C.'s decision to come forward was motivated solely by a sense of duty and the need to shed light on the truth. L.C. cooperated with counsel for the Committee who was charged with investigating her allegations, and she travelled from Montreal to Québec City on two occasions to give evidence before us. She was obliged to testify about her personal life and subjected to questions which, among other things, led her to

[256] Pleadings, 10 July 2017, pp. 2039-2040.

disclose intimate details about her relationship with her children, details which, in the final analysis, had only a marginal connection with the issues that we were tasked with determining. L.C. showed exemplary poise and courage.

[286] Unlike Judge Girouard, L.C. stands to derive no personal, financial or other benefit from her testimony. Moreover, her testimony was nuanced. If L.C. had no respect for truth, as Judge Girouard contends, she might have invented more damaging facts about him. For example, she could have testified to witnessing M[e] Girouard actually use cocaine. She did not.

[287] In short, although it is true that L.C.'s testimony could have been better prepared, particularly with regard to the chronology of events, it compares favourably with that of Judge Girouard and of G.A., which appeared scripted and contrived.

[288] Finally, we note that, at the hearing, counsel for Judge Girouard raised the hypothesis that L.C. invented stories about cocaine use out of vengeance toward Judge Girouard.[257] This desire for vengeance would be traceable to Judge Girouard's refusal to provide information she needed to support her court application for child support. However, no evidence was adduced to give an air of reality to that hypothesis and it was not incorporated in Judge Girouard's subsequent oral and written submissions.

f) Judge Girouard's testimony

[289] We listened carefully to Judge Girouard's testimony and observed his demeanour. In several respects, his testimony was vague, ambiguous and intentionally selective.

[290] Thus, we are satisfied Judge Girouard deliberately minimized his friendship with Alain Champagne in order to undermine L.C.'s credibility.

[291] Sometime after moving his law practice to Val-d'Or, M[e] Girouard rented a room in Alain Champagne's house.[258] He lived there from the beginning of 1987 to the end of August of that year.

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257 Testimony of L.C., 10 May 2017, pp. 50-52.
258 Testimony of Judge Girouard, 12 May 2017, pp. 581-582.

[292] M^e^ Girouard invested in Mr. Champagne's projects, the latter being the promoter of some junior mining companies.[259] He also acted for him in some civil matters.[260]

[293] The two men kept contact and continued to do business together after Mr. Champagne moved to Montreal in 1990.[261]

[294] In the summer of 1993, Mr. Champagne was arrested for importing 20 kilos of cocaine.[262] M^e^ Girouard took it upon himself to find a criminal defence lawyer for him.[263]

[295] During Mr. Champagne's incarceration, M^e^ Girouard went to visit him on three occasions.[264]

[296] One of those visits would have occurred in 1994. The judge recounted that, at Mr. Champagne's request, he went to L.C.'s home to bring her and her daughter, aged between 9 and 13 months, to visit him in the penitentiary in Saint-Jérôme.[265] It is difficult to imagine a more personal request.

[297] Recall as well Judge Girouard's testimony that, from July 9 to 12, 1995, he hosted Mr. Champagne and his family at his home in Val-d'Or. He would have done so in order to assist Mr. Champagne who was attempting to [TRANSLATION] "start over" after his incarceration.[266] G.A. was nine months pregnant with twins, under doctor's orders to rest[267] and their home was undergoing renovations.[268] If that stay really happened, it is, to say the least, surprising, since G.A. testified she had no affinity with L.C.[269] Be that as it

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259 Testimony of Judge Girouard, 12 May 2017, pp. 582-583.
260 Testimony of Judge Girouard, 12 May 2017, pp. 583-584.
261 Testimony of Judge Girouard, 12 May 2017, p. 583 and pp. 585-586 and Testimony of Judge Girouard, 18 May 2017, p. 1541 and p. 1579.
262 According to the newspaper articles adduced in evidence, Mr. Champagne was apprehended on 30 July 1993. The exact date of Mr. Champagne's arrest is unstated. Judge Girouard said that he thought that he had been arrested afterwards (Testimony of Judge Girouard, 12 May 2017, p. 600).
263 Testimony of Judge Girouard, 18 May 2017, pp. 1564-1565.
264 Testimony of Judge Girouard, 18 May 2017, pp. 1561-1562.
265 Testimony of Judge Girouard, 18 May 2017, p. 1562 and Testimony of Judge Girouard, 12 May 2017, pp. 593-596.
266 Testimony of Judge Girouard, 18 May 2017, pp. 1622-1623.
267 Testimony of G.A., 18 May 2017, p. 1675.
268 Testimony of G.A., 18 May 2017, pp. 1674-1675.
269 Testimony of G.A., 18 May 2017, pp. 1672-1673.

may, such an imposition on G.A. for the benefit of a man convicted of one of the most serious crimes can only be justified by a deep friendship.

[298] In addition, M[e] Girouard subsequently made an interest-free loan of $100,000 to Mr. Champagne in February 1998, so that they could jointly invest in a company called MedcomSoft.[270] Lacking the funds required, M[e] Girouard contracted a personal line of credit (with interest) for the total amount.

[299] We find, as well, that Judge Girouard understated the closeness of his relationship with Mr. Lamontagne. He tried to have us believe their relationship was confined to solicitor-client interactions and to the purchase of movies.

[300] However, the evidence shows the two men frequently called each other on the telephone for reasons other than professional[271] and addressed each other using nicknames: M[e] Girouard called Yvon Lamontagne "Yvonneau" and Mr. Lamontagne called M[e] Girouard "Miguel" or "Mike".[272]

[301] Our mandate does not extend to the precise delineation of the relationship between M[e] Girouard and Mr. Champagne or the former's relationship with Mr. Lamontagne. That said, the implausibility of Judge Girouard's testimony regarding those relationships is one factor, among many others, that impugns his credibility on the key issue.

g) G.A.'s testimony

[302] G.A.'s testimony in connection with her spouse's use of cocaine is not credible. We noted that, on many occasions, G.A. and Judge Girouard testified in unison, leading us to conclude G.A.'s testimony was scripted. During his testimony, Judge Girouard alerted the Committee to what G.A. was going to say under oath about L.C.[273]

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270 Exhibit E-16; Testimony of Judge Girouard, 18 May 2017, pp. 1556-1557.

271 The evidence shows that between 26 January 2010 and 24 April 2010, M[e] Girouard called Mr. Lamontagne nine times in order to get movies. The recordings of those calls reveal an obvious familiarity between the two men. See Exhibit E-4.1 (P-12).

272 Wiretapped telephone conversations between Michel Girouard and Yvon Lamontagne on 24 April 2010, at 13:23 and 16:12 and on 12 February 2010 at 11:40 (Exhibit E-4.1 (P-12). G.A. confirmed that one of the judge's nicknames was "Miguel" (Testimony of G.A., 19 May 2017, pp. 1808-1809).

273 Testimony of Judge Girouard, 18 May 2017, pp. 1579-1581.

[303] We also perceived stonewalling in G.A.'s testimony. The question had to be put to her about 20 times before she answered whether she discussed L.C.'s letter with Judge Girouard before giving evidence.[274]

[304] Finally, despite her claim of total intolerance for drugs, we find her conduct suggests otherwise. Suffice it to point out that G.A. had no objection to her spouse borrowing $100,000, with interest, and lending it, interest-free, to Mr. Champagne, who had been convicted and imprisoned for cocaine importation. G.A. saw a good investment opportunity:[275]

> [TRANSLATION] Well, that, - me, I was aware of that, yes, and that is because it was a deal that could make a lot of money.

[305] Our mandate does not require a precise characterization of the relationship between G.A. and Mr. Champagne, a determination of what she knew about the illegal activities of Mr. Champagne and Mr. Lamontagne or a resolution of the question whether she used cocaine.

[306] Unlike L.C., Judge Girouard and G.A have much to gain by giving false testimony concerning his use of cocaine.

h) The evidence adduced before the First Committee

[307] We have considered the evidential record before the First Committee, including the testimony of friends and colleagues favourable to Judge Girouard. All of them stated they never saw M^{e} Girouard engage in behaviour suggesting cocaine use.

[308] That said, those witnesses could not rule out cocaine use by M^{e} Girouard. In that regard, we prefer the expert opinion of Dr. Claude Rouillard, PhD, to that of the chemist Jean Charbonneau tendered by Judge Girouard before the First Committee. According to Dr. Rouillard, M^{e} Girouard could have easily concealed an occasional use of low to moderate doses of cocaine:[276]

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274 Testimony of G.A., 19 May 2017, pp. 1799-1805.
275 Testimony of G.A., 19 May 2017, p. 1789.
276 Dr. Rouillard referred to an occasional usage as something that could lead to a weekly usage.

> [TRANSLATION] A professional man attempting to conceal his use will therefore be wise to use only low to moderate doses and to control his pattern of consumption as much as possible.
>
> […]
>
> Since the effect of cocaine lasts approximately 60 minutes, that would represent, over a week's time, only a limited period of intoxication and relatively moderate effects. It is unlikely that the consumption of such a quantity would cause notable behavioural changes in the individual concerned. […]
>
> In the light of the information available in this case and the scientific knowledge available concerning cocaine use, it appears to us to be possible that there was cocaine consumption by M[e] Girouard for a period of a few years, without it being possible for his immediate family and friends to detect any signs that would have given rise to a suspicion of such use.[277]

[309] All things considered, we find L.C. told the truth when she described the events, actions and behaviour that led her to deduce, quite logically and reasonably, that M[e] Girouard used cocaine. That use occurred during the 1990s, while he was a lawyer. We likewise find L.C.'s description of those events, actions and behaviour is reliable. Her testimony constitutes clear and convincing evidence establishing the **Third Allegation** on a strong balance of probabilities.

[310] There can be no doubt that the wrongdoing identified in the **Third Allegation** constitutes misconduct by Judge Girouard and a failure to perform the duties of his office, within the meaning of sub-sections (b) and (c) of s. 65(2) of the *Judges Act*.

4. Our conclusion regarding the Third Allegation

[311] Having found the misconduct identified in the **Third Allegation** has been established on a balance of probabilities, it falls upon us to apply the *Marshall* test, and to determine whether that misconduct is "so manifestly and totally destructive of the concept of the impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render [Judge Girouard] incapable of executing the judicial office". As with the **First Allegation**, we answer that question with an unequivocal "yes", and unanimously recommend Judge Girouard's removal from office.

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[277] Exhibit P-27, pp. 5-6.

D. FOURTH ALLEGATION

> **Judge 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!"**

1. Our findings regarding the Fourth Allegation

[312] The Doray Summary is "Volume 3 of the Doray Report". In the Summary, M[e] Doray reports statements made by Judge Girouard, in the presence of his counsel, at their meeting of August 13, 2013. M[e] Doray reports Judge Girouard told him the "Post-it" contained the handwritten note [LITERAL TRANSLATION]: "I am bugged, I am tailed".

[313] M[e] Doray testified he did not forward the Summary to Judge Girouard or his counsel.[278] He sent it to M[e] Sabourin.

[314] During Judge Girouard's testimony on May 12, 2017, his counsel used a question by a Committee member as a springboard to underscore that aspect of M[e] Doray's testimony.[279] Judge Girouard then claimed he saw the Doray Summary for the first time on May 8, 2017. He added, in case we entertained any doubts, [TRANSLATION] "that's the truth".[280] That assertion was designed to eliminate any basis for the statement by the majority of the First Committee that if "M[e] Doray had incorrectly reported what Judge

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278 Testimony of M[e] Doray, 9 May 2017, p. 301 and p. 311.
279 Testimony of Judge Girouard, 12 May 2017, pp. 719 et seq.
280 Testimony of Judge Girouard, 12 May 2017, p. 722.

Girouard said […], we believe that Judge Girouard or his counsel would have certainly reacted and written to M[e] Doray to ask for an amendment".[281]

[315] Judge Girouard's sworn statement that he had not seen the Doray Summary before May 8, 2017 is not credible. In fact, the Doray Summary was shared with him on several occasions before the end of the First Committee's hearings, and, therefore, well before May 8, 2017:

- On October 22, 2013, via a letter from M[e] Sabourin informing him that the file had been referred to a Review Panel including all the documents relating to the file;[282]
- On February 11, 2014, via a letter from M[e] Sabourin informing him that the Review Panel had decided to constitute an Inquiry Committee;[283]
- On March 13, 2015, through disclosure of evidence in the context of the First Inquiry Committee's work;[284] and
- In May 2015, during his testimony before the First Committee.[285]

[316] During cross-examination on May 18, 2017, Judge Girouard admitted his testimony of May 12 was false. He insisted, however, that it was not a lie[286] and claimed he had not taken cognizance of the Summary because he was sick.[287] We rejected that claim in analyzing the **First Allegation** and have nothing to add on point.

[317] We find Judge Girouard perceived in M[e] Doray's acknowledgement (that he had not provided him with a copy of the Summary) an opportunity to muddy the waters, before being forced to backtrack by contradictory and irrefutable evidence indicating the Summary had been provided to him before May 8, 2017.

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281 Report of the First Committee at para. 210.
282 Exhibit E-12.
283 Exhibit E-14.
284 Admission made at the hearing of 17 May 2017, pp. 951-952.
285 Testimony of Judge Girouard, 13 May 2015, pp. 507-510, 516-517; Testimony of Judge Girouard, 14 May 2015, pp. 16-17.
286 Testimony of Judge Girouard, 18 May 2017, p. 1494.
287 Testimony of Judge Girouard, 18 May 2017, pp. 1497-1498.

[318] We find Judge Girouard did indeed receive and see the Doray Summary and that he took cognizance of its contents before May 8, 2017. We also find he failed to tell the truth when he testified he had seen the Doray Report [TRANSLATION] "for the first time, Monday, May 8, this week". In light of our findings in connection with the **First Allegation** and the **Third Allegation**, such disdain for the truth is far from isolated.

[319] All things considered, we unhesitatingly find there is clear and convincing evidence establishing the **Fourth Allegation** on a strong balance of probabilities.

2. Our conclusion regarding the Fourth Allegation

[320] We will not repeat our observations about the incompatibility of lying under oath with the office of judge. Applying the *Marshall* test, we conclude the misconduct described in the **Fourth Allegation** compels a recommendation for removal from office.

Signed:

The Honourable J. Ernest Drapeau

Signed:

The Honourable Glenn D. Joyal

Signed:

The Honourable Marianne Rivoalen

Signed:

M^{e} Bernard Synnott, Ad.E.

Signed:

M^{e} Paule Veilleux