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Comité d'enquête
au sujet de
l'hon. Michel Déziel

Inquiry Committee
concerning
the Hon. Michel Déziel

Rapport du Comité d'enquête au Conseil canadien de la magistrature

Report of the Inquiry Committee to the Canadian Judicial Council

(Original French version)

Le 3 juin 2015

3 June 2015

REPORT TO THE CANADIAN JUDICIAL COUNCIL

OF THE INQUIRY COMMITTEE CONSTITUTED PURSUANT TO SUBSECTION 63(3) OF THE *JUDGES ACT* TO INVESTIGATE THE CONDUCT OF JUSTICE MICHEL DÉZIEL OF THE SUPERIOR COURT OF QUEBEC

The Honourable Ernest J. Drapeau
Chief Justice of New Brunswick and
Chief Justice of the Court of Appeal of New Brunswick
Chairperson

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

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3 June 2015

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I. GENERAL OBSERVATIONS AND SUMMARY

[1] Public confidence in the judiciary is essential to ensure the rule of law and promote the values of a democratic society.

[2] Judicial independence, as a constitutional principle, aims at sustaining public confidence and allows judges to render justice according to law, without any improper influence.

[3] Judicial independence is a prerequisite for impartiality and must be protected because of its critical role in the pursuit of fundamental social objectives.

[4] In our society, the concept of judicial independence features three constituent elements: security of tenure, financial security, and institutional or administrative independence.

[5] The principle of security of tenure does not preclude the removal of a judge from office, but that outcome can only be justified following the application of a stringent standard. The *Judges Act* (the "*Act*")[1] provides that a judge of a superior court may be removed from office only if he or she has become incapacitated or disabled from the due execution of the office of judge for any of the reasons set out therein. Pursuant to paragraph 65(2)(*b*) of the *Act*, misconduct is one of those reasons.

[6] The review of a judge's conduct usually relates to actions on his or her part in the performance of judicial duties. However, nothing in the *Act* precludes an Inquiry Committee or the Canadian Judicial Council from dealing with an allegation of misconduct that predates a judge's appointment[2].

[7] In the case at hand, the two allegations in the *Amended Notice of Allegations* relate to conduct by Justice Michel Déziel in 1997, a few years before his appointment to

[1] *Judges Act*, R.S.C., 1985, c. J-1.
[2] *Therrien (Re)*, 2001 SCC 35, paras. 53-58.

the judiciary. However, when Me Déziel engaged in that conduct, he knew full well it contravened provisions of Quebec's legislation regulating the funding of municipal political parties. That legislation prohibited corporations from making financial contributions to municipal political parties and capped contributions by individuals at $750.

[8] The first allegation (allegation 1) is that Justice Déziel, while a lawyer, engaged in misconduct when he retained the services of one Gilles Cloutier to convert the sum of $30,000 into cheques of $750, issued by individuals and made payable to the *Parti de l'Action civique* of the municipality of Blainville. The sum in question had been remitted to Me Déziel by an engineering firm as a contribution to the electoral campaign of the *Parti de l'Action civique*. Allegation 1 also states that Mr Cloutier subsequently gave Me Déziel cheques of $750 totaling $30,000.

[9] Justice Déziel categorically denies the version of events that forms the substratum for the misconduct targeted by allegation 1.

[10] The second allegation (allegation 2) imputes misconduct to Justice Déziel on the basis that he agreed to act as an intermediary for the purpose of transferring cash contributions from the engineering firm mentioned above to the person responsible for organizing the electoral campaign of the *Parti de l'Action civique*. The contributions in question would have totaled between $30,000 and $40,000. Be that as it may, it bears emphasizing that the funds in question include the $30,000 targeted by allegation 1.

[11] Justice Déziel accepts as correct the version of the facts underlying the charge of misconduct in allegation 2.

[12] Even though the *Amended Notice of Allegations* articulates two distinct charges of misconduct, it is common ground that allegations 1 and 2 relate to the same infractions and that the two allegations are mutually exclusive, since they both bring into play the same funds ($30,000). Moreover, there is no doubt that a full-blown hearing into allegation 1 would have been problematic for the pursuit of the

just, least expensive and most expeditious determination of the proceeding. On that score, suffice it to acknowledge that the orders the Inquiry Committee would have had to issue in connection with a complete hearing into allegation 1 would, in all likelihood, have been contested before the courts by the affected parties. The result: significant outlays of public resources and a delay, likely for several years, of a just resolution of the matter.

[13] At the request of Independent Counsel, the Inquiry Committee agreed to proceed first with allegation 2. Ultimately, the Inquiry Committee concluded that the facts undergirding allegation 2 were substantiated. This conclusion was drawn on the basis of the record as a whole, and reflects the Inquiry Committee's conviction that the version of the facts underlying allegation 1 is, at the very least, improbable.

[14] Bearing in mind the facts as found by the Inquiry Committee, and taking into account the importance of a judge's role in our democratic system, Justice Déziel's admission that he knowingly and repeatedly violated the provincial law in question, and the Independent Counsel's submission on point, the Inquiry Committee concluded that the misconduct described in allegation 2 had been established.

[15] The Inquiry Committee then considered whether, having regard to the test adopted in the *Marshall* case, Justice Déziel has become incapacitated or disabled from the due execution of the office of judge by reason of that misconduct. The *Marshall* test forecloses any such conclusion unless the following question is answered in the affirmative: "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?"[3] This is unquestionably a high standard.

[3] Canadian Judicial Council, *Report to the Canadian Judicial Council of the Inquiry Committee regarding Justices Hart, Jones and Macdonald*, August 1990, at p. 27 [the *Marshall* case].

[16] Considering the objective seriousness of the infractions (all non-criminal and commonly sanctioned by the minimum fine of $100), the time elapsed since their commission, the fact that any prosecution was time-barred before Justice Déziel's appointment to the judiciary, and the numerous mitigating circumstances, including his irreproachable career, his apology, the unequivocal support of the Chief Justice and the Associate Chief Justice of the Superior Court of Quebec, and the absence of any risk of recidivism, the Inquiry Committee concluded that Justice Déziel has not become incapacitated or disabled from the due execution of the office of judge by reason of the misconduct described in allegation 2.

[17] Finally, the Inquiry Committee turned to the determination of allegation 1. The underlying complaint is based on a version of key events that is incompatible with the facts as found by the Inquiry Committee in the course of its consideration of allegation 2. Moreover, it is a version that conflicts with the documentary record, the correctness and reliability of which are in no way questioned.

[18] As indicated, and underscored by the Independent Counsel, it is a version that [TRANSLATION] "seems implausible in light of the financial statements in the record". That being so, the Inquiry Committee could not accept the version in question.

[19] Ultimately, and in the sole interest of justice and the public interest, the Inquiry Committee decided to put an end to the proceedings by summarily dismissing allegation 1.

II. BACKGROUND

A) *THE COMPLAINT, ITS PRELUDE AND JUSTICE DÉZIEL'S RESPONSE*

[20] In a letter dated May 2, 2013[4], the Honourable François Rolland, Chief Justice of the Superior Court of Quebec, informed the Canadian Judicial Council of the following: [TRANSLATION] "*At the proceeedings of the Charbonneau Commission, a witness named Gilles Cloutier made serious allegations against a judge of our Court, the Honourable Michel Déziel, in regard to events that occurred when Justice Déziel was a lawyer*".

[21] Chief Justice Rolland asked the Council to review these allegations, without otherwise providing details of the alleged misconduct or any opinion on the issue of whether it warranted removal from office. As discussed later in this report, Chief Justice Rolland subsequently provided a letter of support for Justice Déziel.

[22] For purposes of clarity, the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (the "Charbonneau Commission") was established by the Government of Quebec through an order in Council issued on November 9, 2011.

[23] The Charbonneau Commission's mandate is described on its Web site as follows:

> [TRANSLATION]
>
> *1) To examine the existence of schemes and, where applicable, develop a profile of those involved in possible collusion and corruption in the awarding and management of public contracts in the construction industry, including possible links to the financing of political parties;*
>
> *2) To develop a profile of possible organized crime infiltration in the construction industry;*

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[4] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 6.

> 3) *To examine possible solutions and make recommendations towards establishing measures to detect, reduce and prevent collusion and corruption in the awarding and management of public contracts in the construction industry as well as its infiltration by organized crime*.

[24] Mr Gilles Cloutier, a former vice-president of business development for the engineering firm Roche, testified before the Charbonneau Commission. On the whole, his testimony dealt with his activities as a political organizer, the orchestration of so-called "turn-key" elections, various business development strategies, as well as the impact of such strategies on the awarding of certain public contracts.

[25] Relevant to our purpose is the testimony given by Mr Cloutier on May 2, 2013. At that time, the witness spoke of actions taken by Me Déziel in October 1997, some six years before his appointment to the Superior Court of Quebec in November 2003.

[26] Of particular interest, when questioned about financial contributions that he and his spouse made to municipal political parties in 1997, Mr Cloutier stated the following:

> [TRANSLATION]
> *I often made contributions, (…) I was always trying to obtain retainers in Blainville, but it was difficult, it was always Dessau, Dessau, Dessau and Dessau*[5].

[27] Mr Cloutier went on to add that in October 1997, he was contacted by Me Déziel, a lawyer he was acquainted with and whom he knew to be [TRANSLATION] "*a close associate of the mayor*" of Blainville, particularly with regard to the "*funding of his electoral campaigns*". Me Déziel asked Mr Cloutier to come to his office for a meeting[6].

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5 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 5, at p. 49.
6 *Idem*, at pp. 49 and 50.

[28] At that meeting, Me Déziel had a white envelope containing a sum of $30,000, in $100 bills, from the engineering firm Dessau[7].

[29] Mr Cloutier stated that Me Déziel asked him if he would agree to convert the entire sum into cheques in the amount of $750 made payable to the "*Parti de l'Action civique de Blainville*"[8].

[30] Mr Cloutier said that he agreed to do this, that he personally took care of converting a sum of between $20,000 and $22,000, and that he enlisted the help of a man called Daniel Mieli to convert the rest[9].

[31] When questioned about the persons he approached for this purpose, Mr Cloutier said he called on his close relations, such as nieces, relatives, his brother, friends and neighbours, wasting no time with people who were not very politicized. In short, he explained that he arranged to meet with people over whom he had control[10].

[32] The process having been completed in less than a week, Mr Cloutier testified that he returned to Me Déziel's office and, behind closed doors, handed him all the cheques that had been written[11]. If, as stated by Mr Cloutier, the entire sum of $30,000 was converted into cheques in the amount of $750, he would have handed over to Me Déziel forty (40) cheques made payable to the *Parti de l'Action civique*.

[33] In accordance with Chapter XIII of *An Act Respecting Elections and Referendums in Municipalities*, C.Q.L.R., c. E-2.2 (the "*Elections Act*"), a chartered accountant named Sylvain Bédard audited the financial statements of the *Parti de l'Action*

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7 *Idem*, at pp. 55 and 62.
8 *Idem*, at p. 49.
9 *Idem*, at pp. 51, 52 and 53.
10 *Idem*, at pp. 53 and 54.
11 *Idem*, at pp. 63 and 64.

civile de Blainville and submitted his "auditor's report" for the fiscal year ended December 31, 1997[12].

[34] Appendix 3 of this report contains a list of names and adresses of all electors who made one or more contributions totalizing more than $100.

[35] This list shows thiry-nine (39) cheques in the amount of $750, one (1) in the amount of $500, one (1) in the amount of $700, and one (1) in the amount of $150, for a grand total of $30,600.

[36] Mr Gilles Cloutier and his spouse are listed among those who contributed $750, as well as mayor Pierre Gingras, his wife Christiane, Me Déziel's wife, and a number of municipal councillors, including Pierre Bertrand and Normand Finley. At the hearing, it was observed as being implausible that the latter would have contributed to the *Parti de l'Action civique*'s election fund through Mr Cloutier.

[37] In accordance with section 4.1 of the *Complaints Procedures* (the "*Procedures*"), Chief Justice Rolland's request was referred to the Honourable Edmond Blanchard, then Chief Justice of the Court Martial Appeal Court of Canada and Vice-Chairperson of the Council's Judicial Conduct Committee.

[38] At the request of Chief Justice Blanchard, Justice Déziel was asked to submit his comments concerning the matter. In order to facilitate the process, Justice Déziel was provided with a copy of Chief Justice Rolland's letter dated May 2, 2013, a copy of a *Canadian Press* news report regarding Mr Cloutier's testimony before the Charbonneau Commission on May 2, 2013, and a copy of a press release published by the Canadian Judicial Council on this matter[13].

[39] In a letter dated June 19, 2013, Justice Déziel responded to the request and submitted his comments to Chief Justice Blanchard[14].

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12 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 4.
13 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 9.
14 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 10.

[40] In his letter, Justice Déziel states that, in March 2013, two investigators from the Charbonneau Commission met with him to inform him that his name would be mentioned during Mr Cloutier's upcoming testimony.

[41] Investigators told Me Déziel about Mr Cloutier' claim that, at his request, he had given him a number of cheques in the amount of $750 in exchange for cash. In response, Justice Déziel told investigators that he had no recollection of such an occurrence and categorically denied any such allegation.

[42] The following excerpts from Justice Déziel's letter provide a context for his involvement in the municipal election held in Blainville in November 1997:

> [TRANSLATION]
>
> *(…)*
>
> *I told investigators that I acted as an intermediary between Mr Rosaire Sauriol, of the engineering firm Dessau, and Mr Michel Monette, a field organizer for the Blainville municipal election in 1997.*
>
> *Indeed, Dessau was involved in funding the electoral campaign of the Parti de l'Action civique de Blainville, led at the time by Mr Pierre Gingras, who had been mayor since 1993.*
>
> *The amount of Dessau's contribution had been agreed between Mr Sauriol and Mr Gingras. My only involvement was therefore to transfer this money to Mr Monette.*
>
> *Following meetings I had with Mr Sauriol in his office, he gave me sums of money ranging between $3,000 and $5,000. As I recall, I received from Mr Sauriol a total amount of between $30,000 and $40,000, which I handed over to the field organizer, Mr Monette, who is now deceased.*
>
> *Mr Monette was responsible for the daily organization of the Parti de l'Action civique de Blainville's electoral campaign, which involved recruiting volunteers, collecting donations, organizing activities, etc.*

[43] Further in his letter, Justice Déziel responded to the allegations made by Mr Cloutier in his testimony. He unequivocally refuted Mr Cloutier's remarks from

May 2013, and unhesitatingly described his testimony as false, untruthful and implausible:

> [TRANSLATION]
>
> *I am shocked to learn that it is no longer a few cheques, but rather $30,000 that I allegedly asked him to "launder" or convert into amounts of $750.*
>
> *(…)*
>
> *As I recall, the amount of electoral contributions was then sufficient to cover electoral expenses, and I consider it improbable that forty contributions would have been deposited in October 1997, especially at the same time, all the more so since I believe that Mr Sauriol gave me the sums of money before October 1997 for the purposes of the electoral campaign. Ultimately, there was certainly not $30,000 remaining from those sums of money in October 1997.*
>
> *(…)*
>
> *If Mr Cloutier's allegations are taken as true, those forty contributions would have been made under other names that he obtained.*
>
> *This is completely ridiculous, unreasonable, and a total fabrication.*
>
> *(…)*
>
> *Mr Cloutier's allegations against me are entirely false, untruthful and implausible.*
>
> *At the time, it was common knowledge that Mr Cloutier was in charge of business development for Roche, a Quebec engineering firm, and I knew that the City of Blainville was doing business with the engineering firms of Dessault and Tecsult. Therefore, it was out of the question for me to deal with a representative of another engineering firm, all the more so since I was never authorized by mayor Pierre Gingras to approach anyone for potential retainers; this was mayor Gingras' role, and not mine.*

[44] Justice Déziel deemed it helpful to attach to his letter two documents suggesting that Mr Cloutier's credibility was questionable. One of these documents was a copy of a news report published in the May 25, 2013 edition of *La Presse*, entitled [TRANSLATION] "*Gilles Cloutier faces another charge of perjury*", and the

other an excerpt from a testimony given by Mr Cloutier before the Charbonneau Commission on May 13, 2013.

[45] In the aforementioned testimony, Mr Cloutier acknowledged from the outset that he had lied to the Charbonneau Commission when he stated, under oath, that he owned a house in La Malbaie, when in fact, he was only renting it. Mr Cloutier formally apologized for having lied, which he attributed to the sin of pride[15].

[46] After review, Chief Justice Blanchard decided to refer the matter to a Review Panel, pursuant to the authority provided by the *Canadian Judicial Council Inquiries and Investigations By-laws*, SOR/2002-371 (the "*By-laws*").

B) *THE REVIEW PANEL*

[47] The Review Panel was constituted on November 19, 2013, under the chairmanship of the Honourable Richard Chartier, Chief Justice of Manitoba, assisted by the Honourable Ronald Veale, Senior Judge of the Supreme Court of Yukon, and the Honourable Marc Monnin, judge of the Manitoba Court of Appeal.

[48] On December 17, 2013, the Review Panel asked Justice Déziel to provide further information and clarification following his letter of June 19, 2013[16]. Justice Déziel quickly provided the requested information in a letter dated January 14, 2014[17].

[49] After having reviewed the circumstances in the matter and considered the additional information provided by Justice Déziel on January 14, 2014, the Review Panel unanimously decided that an Inquiry Committee should be constituted, in accordance with subsection 63(3) of the *Act*.

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15 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 10, see excerpts of Mr Gilles Cloutier's testimony of May 2, 2013, at p. 24.
16 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 12.
17 Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 13.

[50] In its report dated April 4, 2014, the Review Panel described its primary mandate, which was to consider any available information regarding the complaint and decide whether an Inquiry Committee should be constituted.

[51] The Review Panel also pointed out the intrinsic limits of its mandate, in that it could not hear evidence, nor make findings of fact or draw inferences from the facts. Thus, it rightly noted that the information it obtained was not subjected to the rules of evidence and/or the rules of adversarial debate, and could not be considered as conclusive.

[52] However, on the basis of the information as a whole, the Review Panel was of the opinion that if Mr Cloutier's remarks were taken as true, or alternatively, if Justice Déziel's version of events, to the effect that he "*agreed to act as an intermediary and received illegal contributions from Mr Sauriol that he later transferred to Mr Monette, the political party's field organizer*", was to be considered, there would be cause for concern[18].

[53] In view of the circumstances, the Review Panel unanimously concluded that "*the conduct at issue may undermine the principles of integrity and honour and, therefore, public confidence in the judge, to such an extent that Justice Déziel may find himself in a position incompatible with the due execution of the office of judge.*"[19]

C) *THE INQUIRY COMMITTEE*

[54] In accordance with provisions of the *By-laws*, the Chief Justice of New Brunswick was appointed as a member and Chairperson of the Inquiry Committee, and the Chief Justice of the Court of Queen's Bench of Manitoba was appointed as a member of the Inquiry Committee. Subsequently, the Minister of Justice, the

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[18] Canadian Judicial Council, *Report of the Review Panel Constituted by the Canadian Judicial Council Regarding the Honourable Michel Déziel*, April 4, 2014, at para. 20.

[19] *Idem*, at para. 23.

Honourable Peter Mackay, appointed Me René Basque, QC, a lawyer from New Brunswick, as a non-judicial member of the Committee.

[55] Also in accordance with provisions of the *By-laws*, Me Suzanne Gagné, Ad. E., was appointed as Independent Counsel responsible for presenting the case to the Inquiry Committee, and Me JoAnn Zaor was engaged as legal counsel to provide advice and other assistance to the Inquiry Committee.

[56] Subsequently, the Inquiry Committee was notified that Justice Déziel would be represented by Me André Gauthier and Me Michel Massicotte.

D) *PRELIMINARY STAGES OF THE INQUIRY*

[57] On November 14, 2014, the Independent Counsel provided the Inquiry Committee and counsel for Justice Déziel with a document describing the essence of each complaint referred to the Inquiry Committee by the Review Panel.

[58] This document, entitled *Notice of Allegations*, reads as follows:

> ***A. BACKGROUND***
>
> *1. On April 4, 2014, a Review Panel consisting of three judges, including two members of the Canadian Judicial Council, decided that an Inquiry Committee should be constituted regarding the conduct of the Honourable Michel Déziel, Judge of the Superior Court of Quebec.*
>
> *2. Notice is hereby given to Justice Déziel of the allegations that will be the subject of the inquiry.*
>
> *3. None of the following alleged facts have been proven before the Inquiry Committee.*
>
> *4. At the hearing, in accordance with the requirements of the Canadian Judicial Council Inquiries and Investigations By-laws, the Canadian Judicial Council Policy on Inquiry Committees, and the Canadian Judicial Council Policy on Independent Counsel, the Independent Counsel will present before the Inquiry Committee all the evidence relevant to the allegations against Justice Déziel.*

B. ALLEGATIONS

(1) That Justice Déziel asked Mr Gilles Cloutier to convert $30,000 into contributions of $750.

5. *On May 2, 2013, Mr Gilles Cloutier testified before the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry.*

6. *Mr Cloutier stated the following:*

   a) *In 1997, Justice Déziel, who was then a lawyer, told Mr Cloutier that he required his services and asked him to come to his office for a meeting;*

   b) *In October 1997, Mr Cloutier went to Me Déziel's office, and Me Déziel gave him an envelope containing $30,000 in $100 bills;*

   c.) *Me Déziel told Mr Cloutier that this money was given to him by the Dessau engineering firm;*

   d) *Me Déziel asked Mr Cloutier to convert this money into cheques in the amount of $750 payable to the Action civique de Blainville party;*

   e) *Approximately a week later, Mr Cloutier gave Me Déziel cheques in the amount of $750 totalizing $30,000.*

7. *The request made by Me Déziel to Mr Cloutier to convert $30,000 into contributions of $750, if substantiated, could well support (1) the finding that Justice Déziel "has become incapacitated or disabled from the due execution of the office of judge" by reason of having been guilty of misconduct, within the meaning of subsection 65(2) of the Judges Act, and (2) a recommendation for removal from office.*

(2) That Justice Déziel acted as an intermediary for the purpose of receiving illegal contributions to a political party.

8. *On June 19, 2013, Justice Déziel sent a letter to the Executive Director and Senior General Counsel of the Canadian Judicial Council, in which he submitted his comments to the Vice-Chairperson of the Judicial Conduct Committee, the Honourable Edmond Blanchard.*

9. In his letter, Justice Déziel denied the allegations made by Mr Cloutier stated in allegation (1) above.

10. However, Justice Déziel acknowledged the following facts:

a) In 1997, Justice Déziel was a lawyer and held the title of chief organizer of the Action civique de Blainville party for the municipal election;

b) The Dessau engineering firm contributed to funding the electoral campaign of the Action civique de Blainville party, then led by Mr Pierre Gingras, who had been the mayor of Blainville since 1993;

c) The amount of this funding was agreed between Mr Rosaire Sauriol, of the Dessau engineering firm, and Mr Gingras;

d) Justice Déziel agreed to act as an intermediary by transferring to Mr Monette a sum of between $30,000 and $40,000 received from Mr Sauriol.

11. In a letter dated January 14, 2014 that he sent to members of the Inquiry Committee, Justice Déziel specified the following:

a) He does not believe that the Action civique de Blainville party disclosed that it had received the funds from the Dessau engineering firm;

b) In 1997, personal contributions were limited to $750 and only individuals qualified as electors could contribute; corporations were excluded from making such contributions.

12. Having acted as an intermediary between Mr Sauriol and Mr Monette, for the purpose of receiving contributions to a politicial party that he knew were illegal, could well support (1) the finding that Justice Déziel "has become incapacitated or disabled from the due execution of the office of judge" by reason of having been guilty of misconduct, within the meaning of subsection 65(2) of the Judges Act, and (2) a recommendation for removal from office.

[59] On January 15, 2015, the Inquiry Committee held a management conference on the matter.

[60] In addition to establishing a schedule for the hearing of preliminary motions and the hearing on the merits, the management conference was intended to clarify the issues involved.

[61] The Independent Counsel then informed the Inquiry Committee that the alleged offences were against the *Elections Act*[20].

[62] The Independent Counsel also observed that these offences were time-barred before Justice Déziel's appointment to the judiciary.

[63] Finally, the Independent Counsel confirmed that the following assertions made by Justice Déziel (particularly regarding his conduct in the performance of his judicial duties) were not challenged and would not be disputed at the hearing on the merits:

> [TRANSLATION]
> *Finally, as a superior court judge, my conduct has always been beyond reproach. I believe I am appreciated by my colleagues, as well as by counsel and litigants who appear before me. In May 2013, I was the coordinating judge for the judicial district of Laval. My Chief Justice, the Honourable François Rolland, suspended me from this position during the ongoing inquiry, a decision that I fully agreed with. Since then, I have been presiding settlement conferences and fulfilling my judicial duties with as much enthusiasm. I can tell you that several lawyers, as well as the President of the Bar of Laval, have expressed their unconditional support for me and their wish that I resume my duties as coordinating judge as soon as possible. Therefore, I still have the complete confidence of the Bar, my colleagues and the public. Moreover, the Honourable François Rolland will reinstate me in my position as coordinating judge in the event that this file is closed.* [21]

[64] On January 26, 2015, the Inquiry Committee and counsel for Justice Déziel received an *Amended Notice of Allegations*, in which paragraphs 7 and 12 were amended was follows:

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[20] C.Q.L.R., c. E-2.2.
[21] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 13.

> *7. The request made by Me Déziel to Mr Cloutier to convert $30,000 into contributions of $750, if substantiated, would contravene sections 610, 611 and 637 of An Act Respecting Elections and Referendums in Municipalities and could well support (1) the finding that Justice Déziel "has become incapacitated or disabled from the due execution of the office of judge" by reason of having been guilty of misconduct, within the meaning of subsection 65(2) of the Judges Act, and (2) a recommendation for removal from office.*
>
> *12. Having acted as an intermediary between Mr Sauriol and Mr Monette, for the purpose of receiving contributions to a politicial party that he knew were illegal, would contravene sections 610, 611 and 637 of An Act Respecting Elections and Referendums in Municipalities and could well support (1) the finding that Justice Déziel "has become incapacitated or disabled from the due execution of the office of judge" by reason of having been guilty of misconduct, within the meaning of subsection 65(2) of the Judges Act, and (2) a recommendation for removal from office.*

[65] It should be noted that the *Amended Notice of Allegations* is in keeping with the Review Panel's report, with one exception. The *Amended Notice of Allegations* reiterates the description of the alleged misconduct and offences set forth by the Review Panel. On the other hand, while the Review Panel concluded that the conduct at issue may cause Justice Déziel to find himself "in a position incompatible with the due execution of the office of judge" (the reason set out in paragraph 65(2)*(d*) of the *Act*), the *Amended Notice of Allegations* states that the alleged misconduct may cause Justice Déziel to have become incapacitated or disabled from the due execution of the office of judge by reason of "having been guilty of misconduct" (the reason set out in paragraph 65(2)*(b*) of the *Act*). Justice Déziel did not object to this amendment and, for its part, the Inquiry Committee agreed that the *Amended Notice of Allegations* provided "*a complete picture of the scope of the inquiry*"[22]. In the opinion of the Inquiry Committee, such a difference in reasons for removal has no effect upon the choice of disposition in the case in point. It follows that the Inquiry Committee does not intend to revisit this issue.

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[22] Canadian Judicial Council, *Ruling of the Inquiry Committee concerning the Hon. Lori Douglas with respect to certain Preliminary Issues*, May 15, 2012, at para. 31.

[66] To ensure a proper understanding, the Inquiry Committee deems it helpful to cite in full the related legislative provisions, as they read in 1997, when the alleged actions occurred:

An Act Respecting Elections and Referendums in Municipalities

610. The following persons are guilty of an offence:

(1) every official representative, delegate of an official representative or person designated by either to solicit and collect contributions who collects a contribution with the knowledge that

a) the person making the contribution is not an elector of the municipality;

b) the contribution is not being made by the elector himself;

c) the contribution is not being made at the elector's own expense, unless it consists in the furnishing of services;

d) the contribution causes the elector to exceed the maximum prescribed in section 431;

(2) every person who makes a contribution contemplated in paragraph 1.

611. Every person who solicits or collects contributions or incurs expenses other than election expenses for an authorized party or independent candidate without being its or his official representative, his delegate or a person designated in writing for that purpose by either, is guilty of an offence.

612. Every official representative, delegate of an official representative or person designated by either to solicit and collect contributions is guilty of an offence who

(1) collects contributions without issuing a receipt to the contributor;

(2) collects a contribution of money of $100 or more made otherwise than by cheque or other order of payment;

(3) collects a contribution made by cheque or by other order of payment that is not signed by the elector or not made payable to the order of the authorized party or independent candidate or that he knows not to

be drawn on an account of the elector in a financial institution having an office in Québec.

637. Every person who, by his act or omission, aids another person to commit an offence is guilty of the offence as if he had committed it himself if he knew or should have known that his act or omission would probably result in aiding to commit the offence.

Every person who incites or leads another person to commit an offence is guilty of the offence, and of any other offence the other person commits as a result of his encouragement, advice or order, as if he had committed it himself, if he knew or should have known that his encouragement, advice or order would probably result in the commission of the offences.

The fact that no means or plan for committing the offence was proposed or that it was committed otherwise than as proposed does not constitute a defence.

[67] Finally, the Inquiry Committee recalls that, in accordance with the *Elections Act*, more specifically sections 641 and 648, the alleged actions are statutory offences punishable by a minimum fine of $100 and prescribed by one year from the date on which the prosecutor became aware of the commission of the offence; however, "*no proceedings may be instituted where more than five years have elapsed from the commission of the offence*". Therefore, the Independent Counsel rightly observed that the alleged offences were time-barred, even before Justice Déziel was appointed to the Superior Court.

E) *THE ALLEGATION OF CONFLICT OF INTEREST*

[68] On March 10, 2015, the Inquiry Committee began its proceedings. As was indicated to the Independent Counsel and counsel for Justice Déziel, the Inquiry Committee wanted to deal firstly with the issue of a potential conflict of interest involving the Independent Counsel.

[69] On that particular point, it is worth specifying that the Inquiry Committee received no motion, formal or informal, seeking that Me Gagné be disqualified from acting

as Independent Counsel. Rather, the issue was submitted to the Inquiry Committee through a letter stating certain facts that, according to its originator, gave rise to questions of bias.

[70] Concerned with its responsibility, in the public interest, for actively pursuing a thorough search for the truth in the conduct of the inquiry[23], the Inquiry Committee addressed this issue and received in evidence four letters that need to be examined.

[71] The first letter, which gave rise to this issue, is dated February 9, 2015 and originated from Martin Cossette, a lieutenant in the *Service des enquêtes sur la corruption* of the *Sûreté du Québec's* Marteau squad. This letter, along with documents attached to it, were introduced into the record as Exhibit C-1 and are reproduced in annex to this report.

[72] The following excerpts from lieutenant Cossette's letter provide the context of his request and concerns regarding a potential conflict of interest involving the Independent Counsel:

> [TRANSLATION]
>
> *We have been informed that hearings regarding the aforementioned judge will soon take place. It has also been brought to our attention that Mr Gilles Cloutier will testify at these hearings. According to our information, Me Suzanne Gagné, of the law firm Létourneau & Gagné, will be sitting as a member of the Committee in case number CJC 13-0065.*
>
> *We wish to bring to your attention certain facts that, in our opinion, are important to consider regarding the conduct of hearings and the Committee's composition.*
>
> *(…)*
>
> *In case number 200-26-025245-144, police officers from the* Service des enquêtes sur la corruption *executed a search warrant at the home of Mr Marc-Yvan Côté. Lawyers from the media requested access to documents supporting the issuance of the warrant, through a motion*

[23] See *Douglas*, note 22 at paras. 45 and 46.

> *to unseal warrant materials. Mr Côté was involved in this proceeding and represented by Me Suzanne Gagné. As a result of this motion, certain excerpts from documents supporting the issuance of the warrant were made public. From these documents, it appears that Mr Gilles Cloutier implicated Mr Marc-Yvan Côté in a false invoicing scheme.*
>
> *(…)*
>
> *This situation gives rise to several questions regarding the appearance of bias. As a member of the Committee, could Me Gagné be called upon to express an opinion on the credibility and content of Mr Gilles Cloutier's testimony? If so, her client, Mr Marc-Yvan Côté, is implicated by Mr Cloutier's statements. In our opinion, there is clearly the appearance of a potential conflict of interest. The attached documents also support our concern.*
>
> *We feel it is our duty to inform the Council of this matter.*
>
> *(…)*
>
> (Emphasis added)

[73] For purposes of clarity, the documents attached to lieutenant Cossette's letter are copies of computerized minutes of proceedings, from case number 200-26-025245-144 of the registry of the Court of Quebec, Criminal and Penal Division, showing the procedures taken by the media in order to gain access to documents supporting the issuance of the search warrant executed at the home of Mr Marc-Yvan Côté.

[74] The second letter, dated February 19, 2015, originated from counsel for the Inquiry Committee. The purpose of this letter, introduced into the record as Exhibit C-2, was to provide the Independent Counsel with information received and ask for her views on the matter, as shown by the following excerpts:

> [TRANSLATION]
>
> *On February 3, 2015, we received a phone call from Me Mylène Grégoire, chief prosecutor of the* Bureau de la lutte anticorruption.
>
> *This phone call came after another entirely unexpected and unsollicited call was received a few days earlier from lieutenant*

> *Martin Cossette, a unit chief in the* Sûreté du Québec*'s* Service des enquêtes sur la corruption.
>
> *(…)*
>
> *Thus, we have been advised that Mr Gilles Cloutier provided the* Bureau de la lutte anticorruption *with information that, according to investigators, has led them to believe that a false invoicing scheme was set up in order to launder sums of cash.*
>
> *Mr Gilles Cloutier is the key witness in this entire investigation known as project* JOUG.
>
> *Even though no charge has yet been laid, we are aware that several searches have been carried out. One of those was made at the home of Mr Marc-Yvan Côté, a former Liberal minister, sometime in January 2014.*
>
> *We have been told by Me Grégoire that you have acted and are still acting on behalf of Mr Marc-Yvan Côté, and that this information is public.*
>
> *(…)*
>
> *Following this phone call, we received a letter from lieutenant Martin Cossette on February 6, 2015, accompanied by documents from case 200-26-025245-144, all of which are attached to my letter.*
>
> *(…)*
>
> *All of this information and material has been provided to the Inquiry Committee.*
>
> *(…)*
>
> *For the time being, the Inquiry Committee wishes to hear your views, as it moves forward.*
>
> *(…)*

[75] The third letter, dated February 23, 2015, is the Independent Counsel's response. In it, she informed the Inquiry Committee of her intention to carry on with her mandate as Independent Counsel and responded to all of lieutenant Cossette's concerns as follows:

[TRANSLATION]

This is in response to your letter of February 19, 2015, which was sent to me by email on February 20, 2015.

(…)

Lieutenant Cossette then told me that he had contacted the CJC [Canadian Judicial Council], at the request of Me Mylène Grégoire, a prosecutor in the Bureau de la lutte anticorruption *in charge of an investigation known as project* JOUG. *According to lieutenant Cossette, Me Grégoire wanted to ensure that the CJC was well aware that I was a counsel for Mr Marc-Yvan Côté, who is the subject of this investigation.*

I informed lieutenant Cossette that I was retained by Mr Côté to represent him before the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (the "Commission"). I represented him, among other instances, during his testimony before the Commission on June 10 and 11, 2014. At that time, the Commission's prosecutor questioned him about statements made by Mr Cloutier regarding a false invoicing scheme set up to launder sums of cash.

(…)

As for project Joug*, no charge has yet been laid against Mr Côté, more than a year after the search carried out at his home. He retained the services of another lawyer in the event he would be charged, which was well before my appointment as Independent Counsel. Incidentally, I represented Mr Côté for the purposes of the motion from the media to lift the publication ban on documents supporting the issuance of the search warrant, and I consented on his behalf to extending the detention of seized property. That was the end of my involvement in this matter.*

I informed lieutenant Cossette that I would not act on behalf of Mr Côté if criminal charges were brought against him as part of project JOUG, and I gave him the name of his other lawyer. I am surprised that he did not mention this in his letter of February 9, 2015 and that Me Grégoire did not talk to you about it.

(…)

Me Grégoire's concerns seem to be based on a misunderstanding of the role of Independent Counsel appointed in accordance with the Canadian Judicial Council Inquiries and Investigations By-laws. In

his letter of February 9, 2015, lieutenant Cossette raises the issue of whether, as a member of the Inquiry Committe, I could be called upon to express an opinion on the credibility and content of Mr Cloutier's testimony. Since Mr Côté is implicated by Mr Cloutier's statements, lieutenant Cossette concluded that there was the appearance of a potential conflict of interest.

First of all, I am not a member of the Inquiry Committee. (…)

Furthermore, contrary to lieutenant Cossette's premise, it is not up to the independent counsel to weigh the evidence. (…)

(…)

In view of the above, I consider that Me Grégoire and lieutenant Cossette's concerns are unfounded, and that there is no conflict of interest, nor any appearance of a conflict of interest, between my role as counsel for Mr Côté and my role as Independent Counsel, which consists in presenting, in a fair manner and in the public interest, all relevant and required evidence to the Inquiry Committee, whether it is adverse or favourable to Justice Déziel.

I would add that lieutenant Cossette's letter and the information provided by Me Grégoire do not establish that Mr Côté's potential defence – he has not yet been charged – rests on Mr Cloutier's credibility. In this regard, it is worth quoting the following excerpt from the testimony that Mr Côté gave to the Commission regarding allegations made by Mr Cloutier about his involvement in a false invoicing scheme:

> *[TRANSLATION]*
> *Q : [1035] Let's talk about Mr Cloutier. Earlier, you said that the only way illegal contributions, if I may use that expression, were made, was through expense accounts, false expense accounts. Mr Cloutier also told us about false invoices that he created, and that you approved, in order to launder cash, always for the purpose, in particular, of reimbursing certain contributions made to political parties. Is this true?*
> *A. Yes.*

Consequently, I intend to continue in my role as Independent Counsel in this matter, and I do not believe it would be useful to have, by my side, another counsel taking evidence and making required submissions regarding the allegation set out at item 1.

[76] This letter, along with documents attached to it, were introduced into the record as Exhibit C-3 and are reproduced in annex to this report.

[77] That same day, Me Gauthier advised the Inquiry Committee of Justice Déziel's position:

> [TRANSLATION]
>
> *My client, Mr Justice Déziel, is relieved at the position taken by Me Gagné, since he is keen to proceed as quickly as possible in dealing with events that already date back to May 2013.*
>
> *Not only would a change in Independent Counsel probably delay the hearings, but it would also prejudice the work done so far by both Me Massicotte and myself and by Me Gagné, following the management conference held on January 15, 2015.*

[78] This letter, along with documents attached to it, were introduced into the record as Exhibit C-4.

[79] After counsel were given the opportunity to complete their arguments, positions remained essentially the same, Me Gagné claiming that she was not in a conflict of interest and Justice Déziel objecting to a postponement of the hearings, which would have been the inescapable consequence of the Independent Counsel's disqualification.

[80] The Inquiry Committee concluded that Me Gagné was not in a conflict of interest for the following reasons.

[81] The Inquiry Committee's mandate is very clear. It must decide in a fair and transparent manner if either allegation set out in the *Amended Notice of Allegations* is founded, and if so, whether a recommendation for removal is warranted.

[82] For the purposes of its mandate, the Inquiry Committee is invested with the powers of a superior court. Therefore, it could refuse to hear the Independent

Counsel if it was demonstrated that she was in a conflict of interest. Such a conflict could give rise to a perception of bias on the part of the Inquiry Committee, which would seriously undermine confidence in the Canadian Judicial Council and the judiciary in general. Indeed, *"it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done"*[24].

[83] Lieutenant Cossette's email (C-1) suggests that he misunderstands Me Gagné's role as Independent Counsel. In his defence, the Inquiry Committee acknowledges that this role is unusual.

[84] In its ruling in the matter of *Justice Douglas*[25], the Inquiry Committee looked into the role of the Independent Counsel in the inquiry process and described it in this way:

> *[11] The role of independent counsel can only be understood in the context of the role of an inquiry committee established under the authority of s. 63(3) of the Judges Act. This understanding must be informed by the Council's Complaints Procedures, its By-laws and its related policies, including Policy on Inquiry Committees, Policy on Independent Counsel, and Policy on Counsel Conducting "Further Inquiries". In this respect, the pivotal function of a review panel, established under subsection 1.1(1) of the By-laws, must also be understood. In other words, the responsibilities of an independent counsel are necessarily shaped and circumscribed particularly by the role of an inquiry committee established under s. 63(3) of the Judges Act. It is also important to bear in mind the purpose for which the role of independent counsel was created and the interpretation of that role by the Council itself through its Policies. The history of the creation of that role and the related purpose has been documented in the book by Ed Ratushny, The Conduct of Public Inquiries (Irwin Law, 2009), at pages 230 et seq.*

[85] The *Policy on Independent Counsel*, adopted by the Canadian Judicial Council in 2010 and referred to in the above excerpt, elaborates on what is expected from the Independent Counsel:

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[24] See *R. v. Sussex justices*, [1924] 1 K.B. 256, at p. 259.
[25] See *Douglas*, note 22.

The central purpose for establishing the position of Independent Counsel is to permit such counsel to act at "arm's length" from both the Canadian Judicial Council and the Inquiry Committee. This allows Independent Counsel to present and test the evidence forcefully, without reflecting any predetermined views of the Committee or the Council. The Inquiry Committee relies on Independent Counsel to present the evidence relevant to the allegations against the judge in a full and fair manner.

The role of Independent Counsel is unique. Once appointed, Independent Counsel does not act pursuant to the instructions of any client but acts in accordance with the law and counsel's best judgement of what is required in the public interest. This is an important public responsibility that requires the services of Counsel who is recognized in the legal community for their ability and experience.

Independent Counsel is, of course, subject to the rulings of the Inquiry Committee, but is expected to take the initiative in gathering, marshalling and presenting the evidence before the Committee. As a preliminary issue, consideration should be given to the relevance of any other complaints or allegations against the judge, beyond the scope of the instant complaint or request under section 63(1). Additional witnesses may have to be interviewed and documents obtained.

The public interest requires that all of the evidence adverse to the judge, as well as that which is favourable, be presented. This also may require that evidence, including that of the judge, be tested by cross-examination, contradictory evidence or both. This should be done in a fair, objective and complete manner.

Independent Counsel is impartial in the sense of not representing any client but must be rigorous, when necessary, in fully exploring all issues, including any points of contention that might arise. Where necessary, Independent Counsel may need to adopt a strong position in regard to the issues. At the same time, it must be kept in mind that the judge could continue to serve as a judge in future, so that expressions about the judge's credibility or motives should be carefully considered.

Unlike other settings, such as civil litigation, Independent Counsel has no authority to negotiate a "resolution" of the issues before the Inquiry Committee. However, Independent Counsel's submissions will be considered by the Inquiry Committee.

[86] From the above, it can be seen that the Independent Counsel is a key player who participates in the Inquiry Committee process in his or her own way and according

to well-established parameters. The Inquiry Committee process, let us recall, is not an adversarial proceeding, but rather, as its name suggests, an investigative function. Indeed, the Inquiry Committee is asked to gather all relevant evidence, weigh this evidence and, ultimately, make appropriate findings in its final report.

[87] The Inquiry Committee' role must also be viewed in relation to its fundamental purpose, which, as emphasized in the ruling in the matter of *Justice Douglas*[26], serves only the public interest:

> *[46] The nature of an inquiry committee was described by the Supreme Court of Canada in* Ruffo *[1995] 4 SCR 267. There, Justice Gonthier, for the majority, discussed the role of a* Comité d'enquête *under the Quebec* Courts of Justice Act, *which is analogous to an inquiry committee under the* Judges Act. *He described its basic purpose as "relating to the welfare of the public". This observation emphasizes the strong public interest that is manifest in this Committee's mandate. Its role relates primarily "to the judiciary rather than the judge affected by the sanction". It is required to inquire into the allegations about a judge's conduct, determine whether they are justified and recommend the appropriate sanction to the* Conseil. *He elaborated on the nature of its inquiry at paras. [72] - [73]:*
>
> > *[…] the debate that occurs before it does not resemble litigation in an adversarial proceeding; rather, it is intended to be the expression of purely investigative functions marked by an active search for the truth.*
> >
> > *In light of this, the actual conduct of the case is the responsibility not of the parties but of the* Comité *itself. […] Any idea of prosecution is thus structurally excluded. The complaint is merely what sets the process in motion. Its effect is not to initiate litigation between two parties. This means that where the* Conseil *decides to conduct an inquiry after examining a complaint lodged by one of its members, the* Comité *does not thereby become both judge and party: as I noted earlier, the* Comité*'s primary role is to search for the truth, this involves not a* lis inter partes *but a true inquiry. […]*

[26] See *Douglas*, note 22.

> *This emphasizes the fundamental obligation of an inquiry committee to take responsibility in the public interest for actively pursuing a thorough search for the truth in the conduct of an inquiry.*

[88] Inasmuch as the Independent Counsel's role is part of this process, it is understood that his or her responsibilities must never encroach upon those of the Inquiry Committee.

[89] This delimitation is recalled, in no uncertain terms, at paragraph 69 of the ruling in the matter of *Justice Douglas*:

> *[69] The last point is driven home even more forcefully by the opening paragraph of this* Policy*, which states:*
>
> > *An Inquiry Committee has complete responsibility for, and control over, the scope and depth of its inquiry into the conduct of a judge. At the outset and over the course of the hearings, it relies heavily upon Independent Counsel to ensure that all relevant evidence is gathered, marshalled, presented and tested at its hearings. But it does not "abandon" its own responsibility to such counsel, since the Canadian Judicial Council relies upon the Committee for a complete report. One of the key functions of the Committee is to make findings of fact.*
>
> *In other words, it is the inquiry committee's inquiry and not that of the independent counsel. It also emphasizes that the inquiry committee must take full responsibility for fact-finding and cannot delegate this function to independent counsel.*

[90] Considering this established framework and the defined roles, the Inquiry Committe can state that the Independent Counsel is not part of the Committee and is not its mandatary.

[91] Also, witnesses that the Independent Counsel chooses to call are not "her" witnesses, but rather those that she deems appropriate for establishing the facts in the public interest.

[92] Finally, the explanations provided by Me Gagné show that lieutenant Cossette's concerns are unfounded.

[93] For all the above reasons, the Inquiry Committee concluded that allegations of fact made by lieutenant Cossette were unfounded, that established facts did not give rise to a conflict of interest, neither actual nor perceived, and that Me Gagné could continue in her role as Independent Counsel in this matter.

III. THE MERITS

[94] Following this preliminary decision, the Inquiry Committee continued its proceedings and received in evidence the *Joint Record of Proceedings, Exhibits and Legislation*, introduced into the record as Exhibit C-5.

[95] This book is divided into 18 tabs containing the following documents:

Procedure Amended Notice of Allegations, dated January 23, 2015	**Tab 1**
Exhibits Annual Reports of the Chief Electoral Officer of Quebec, in a bundle . 1996-1997 . 1997-1998 . 1998-1999 . 1999-2000 . 2000-2001 . 2001-2002	**Tab 2**
Report of the Inquiry Commission submitted by Me Jean Moisan on June 12, 2006	**Tab 3**
Document entitled: "*Parti de l'action civique de Blainville – Rapport du vérificateur et États financiers pour l'exercice terminé le 31 décembre 1997*"	**Tab 4**
Excerpt from Mr Gilles Cloutier's testimony before the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry on May 2, 2013, pages 42 to 70	**Tab 5**
Letter from the Honourable François Rolland, Chief Justice of the Superior Court of Quebec, to Me Normand Sabourin, Executive Director of the Canadian Judicial Council, dated May 2, 2013	**Tab 6**

Excerpt from Mr Gilles Cloutier's testimony before the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry on May 13, 2013, pages 22 to 27	**Tab 7**
Various newspaper articles published on May 13, 2013 and May 25, 2013	**Tab 8**
Letter from Me Normand Sabourin, Executive Director of the Canadian Judicial, to the Honourable Michel Déziel, Justice of the Superior Court of Quebec, dated May 23, 2013, and attached documents	**Tab 9**
Letter from the Honourable Michel Déziel, Justice of the Superior Court of Quebec, to the Canadian Judicial Council, dated June 19, 2013, and attached documents	**Tab 10**
Email from Ms Odette Dagenais to Ms Josée Gauthier of the Canadian Judicial Council, dated August 13, 2013	**Tab 11**
Letter from Me Normand Sabourin, Executive Director of the Canadian Judicial Council, to the Honourable Michel Déziel, Justice of the Superior Court of Quebec, dated December 17, 2013	**Tab 12**
Letter from the Honourable Michel Déziel, Justice of the Superior Court of Quebec, to the Canadian Judicial Council, dated January 14, 2014, and attached documents	**Tab 13**
Letters of support for the Honourable Michel Déziel, Justice of the Superior Court of Quebec, in a bundle: . letter from Me Martine Nicol, President of the Bar of Laval, year 2013-2014, dated October 2013; . letter from the Chief Justice of the Superior Court of Quebec, the Honourable François Rolland, dated January 20, 2015; . letter from the Associate Chief Justice of the Superior Court of Quebec, the Honourable Jacques R. Fournier, dated January 22, 2015;	**Tab 14**

. letter from Me Normand La Badie, currently President of the Bar of the Laval district, dated January 26, 2015;
. letter from the President of the *Barreau du Québec*, Me Bernard Synnott, dated January 27, 2015;
. Letter from Me Maryse Bélanger, President of the Bar of Laval, year 2012-2013, dated January 30, 2015

Various newspaper articles published on January 27, 2015 and February 18, 2015 **Tab 15**

Solemn declaration made by the Honourable Michel Déziel, Justice of the Superior Court of Quebec, on February 26, 2015 **Tab 16**

Relevant legislative provisions

An Act Respecting Elections and Referendums in Municipalities, C.Q.L.R. c. E-2.2 sections 403 to 436, 610, 611, 612, 637, 641 and 648 (version in force in 1997) **Tab 17**

Judges Act, R.S.C., 1985, c. J-1, sections 63 to 65 **Tab 18**

A) THE MOTION TO DIVIDE THE INQUIRY

[96] After this evidence was introduced, the Independent Counsel applied to the Inquiry Committee to submit a *Motion from Independent Counsel to divide the inquiry*.

[97] In her motion, the Independent Counsel set out the facts in this matter and stated, at paragraph 9, that [TRANSLATION] "*the inquiry focuses on the following facts*", that is to say the facts set forth in the *Amended Notice of Allegations*.

[98] Significantly, the Independent Counsel also stated the following at paragraph 10 of her motion:

> [TRANSLATION]
>
> "*It is worth noting that allegations 1 and 2 are not cumulative, in the sense that they relate to the same cash contributions that Justice Déziel is alleged to have either asked Mr Cloutier to convert into*

> *contributions of $750 (allegation 1), or handed over to Mr Monette, the field organizer for the* Parti de l'Action civique de Blainville *(allegation 2)*".
>
> (Emphasis added)

[99] From the above, the Inquiry Committee wanted to confirm its understanding that allegations 1 and 2 relate to versions of Justice Déziel's conduct that are different and, for the most part, contradictory, in connection with the same financial contribution ($30,000) made by the engineering firm Dessau to the *Parti de l'Action civique de Blainville*, which, from a legal point of view, leads to the premise that the alleged offences are mutually exclusive. The Independent Counsel and counsel for Justice Déziel were in agreement with this axiom.

[100] On the basis of this premise, the Independent Counsel set forth several new facts that occurred after the Review Panel submitted its report, which led her to propose, for the time being, that the Inquiry Committee proceed only with allegation 2 at this hearing. Although the underlying facts are numerous, the Inquiry Committee considers that they must be cited in full, in order to clearly outline the matter at issue and fully appreciate the implications of dismissing the motion to divide and attempting to immediately hear allegation 1, which is based on Mr Cloutier's oral testimony:

> [TRANSLATION]
>
> ***(…) NEW FACTS THAT OCCURRED SINCE THE INQUIRY COMMITTEE WAS CONSTITUTED***
>
> *11. Allegation 1 rests mainly on Mr Gilles Cloutier's testimony and the document entitled "Parti de l'Action civique de Blainville – Rapport du vérificateur et États financiers pour l'exercice terminé le 31 décembre 1997" (Joint Record of Proceedings, Tab 4).*
>
> *12. Mr Cloutier was also a key witness for the prosecution in a high profile criminal trial that began on January 5, 2015 in St-Jérôme, in cases 700-01-098882-114 and 700-01-101736-117 (the "**Boisbriand case**").*

13. *On January 26, 2015, the following facts were made public at the trial in the Boisbriand case (Joint Record of Proceedings, Tab 15):*

    a) *Mr Gilles Cloutier was arrested on September 2, 2014 and charged with fifteen counts of perjury, as a result of a complaint filed by the Charbonneau Commission;*

    b) *The same day, Mr Cloutier gave a five-hour video statement to investigators;*

    c) *Counsel for the defence in the Boisbriand case submitted two motions to compel the Charbonneau Commission to provide them with documents related to the alleged acts of perjury;*

    d) *The Charbonneau Commission, through its counsel Me Érika Porter, denied certain facts stated by Mr Cloutier in his video statement, such as the one to the effect that the Commission's chief counsel, Me Sonia LeBel, met with Mr Cloutier to reassure him.*

14. *On February 14, 2014, Me Michel Massicotte, one of Justice Déziel's lawyers, contacted Me Brigitte Bélair, counsel for the prosecution in the Boisbriand case, in order to obtain access to the police report, Mr Cloutier's video statement, and an affidavit made by Me Sonia LeBel (Annexe 1).*

15. *Me Bélair refused, seeing no reason why she would have the right or the obligation to provide him with this evidence (Appendix 1).*

16. *Moreover, Me Massicotte was in possession of more than fourteen prior statements made by Mr Cloutier, most of which were K.G.B. type statements, that he hoped to use in order to test Mr Cloutier's credibility before the Inquiry Committee.*

17. *These statements were given to Me Massicotte in his capacity as counsel for two defendants in the Boisbriand case, on the condition that he sign a non-disclosure agreement compelling him, among other things, to use these statements only for the purpose of defending his clients (Appendix 2).*

18. *In a letter dated February 9, 2015, counsel for Justice Déziel asked the Independent Counsel to intervene in order to release Me Massicotte from his non-disclosure agreement regarding prior statements made by Mr Cloutier in the Boisbriand case, and*

to obtain access to the police report, Mr Cloutier's video statement, and Me Lebel's affidavit (Appendix 3).

19. *The same day, the Independent Counsel contacted investigative sergeant Guillaume Cotte, who advised her that she had to submit a request for access to information.*

20. *On February 9, 2015, the Independent Counsel asked the Sûreté du Québec, Montérégie regional investigations division, for access to the entire investigation file that led to Mr Cloutier's arrest for perjury (Appendix 4).*

21. *On February 25, 2015, investigative sergeant Cotte confirmed to the Independent Counsel that Mr Cloutier was arrested on September 2, 2014 on fifteen counts of perjury allegedly committed before the Charbonneau Commission, and that Mr Cloutier had given a five-hour video statement.*

22. *Finally, in a letter dated March 4, 2015 and received on March 6, 2015, the Sûreté du Québec advised the Independent Counsel that the requested documents could not be provided to her, [TRANSLATION] "so as not to interfere with the conduct of a judicial proceeding" (Appendix 5).*

23. *Although the police report and the video statement are not directly related to the subject matter of the inquiry, they pertain to Mr Cloutier's credibility and could well be evidence relevant to allegation 1.*

24. *Since the Inquiry Committee is invested with the powers of the Superior Court of Quebec, it can summon investigative sergeant Cotte to appear and compel him to produce this evidence, so that it may be provided to the Independent Counsel and Justice Déziel.*

25. *If the Inquiry Committee deems it necessary, it also has the authority to release Me Massicotte from his non-disclosure agreement regarding prior statements made by Mr Cloutier in the Boisbriand case, for the sole purpose of providing a defense for Justice Déziel.*

26. *Under these circumstances, the Independent Counsel is not able to present all the evidence relevant to allegation 1 at the public hearings scheduled for March 10 to 17, 2015.*

27. *For the reasons that follow, the Independent Counsel considers that, in the interest of justice, the inquiry should be divided and allegation 2 should be heard first.*

28. *Such a measure would allow the Inquiry Committee to decide, on the basis of undisputed evidence, if as a result of violating the Elections Act in 1997 when he was a lawyer, Justice Déziel has become incapacitated or disabled from the due execution of the office of judge, and whether a recommendation for removal is warranted.*

(…) THE EVIDENCE SUPPORTING ALLEGATION 2

29. *Allegation 2 is the result of facts that Justice Déziel admitted in his letters to the CJC dated June 19, 2013 and January 14, 2014 (Joint Record of Proceedings, Tabs 10 and 13).*

30. *In a solemn declaration made on February 26, 2015, Justice Déziel also admitted that he had violated the Elections Act and apologized to his colleagues, his Chief Justice and the public for the embarrassment that his actions had caused (Joint Record of Proceedings, Tab 16).*

31. *In view of Justice Déziel's admission, the Independent Counsel considers it unnecessary to present oral evidence and recommends that the Inquiry Committee proceed with a summary hearing of allegation 2.*

32. *Justice Déziel will of course be present at the hearing to answer any questions that members of the Inquiry Committee may need to ask him.*

33. *Other evidence supporting allegation 2 has already been introduced (Joint Record of Proceedings, Tabs 2, 3, 4, 10, 11, 12, 13, 14 and 16).*

34. *On the basis of undisputed evidence supporting allegation 2, the Independent Counsel and counsel for Justice Déziel will make submissions to the Inquiry Committee on the issue of misconduct and the issue of removal from office.*

35. *Secondly, the Inquiry Committee can decide if it is in the public interest to hear allegation 1 and issue the orders described at paragraphs 24 and 25 of this motion.*

> *36. The Inquiry Committee being the master of its own procedure, nothing precludes it from dividing the inquiry and proceeding first with allegation 2.*

[101] Counsel for Justice Déziel did not object to the *Motion from Independent Counsel to divide the inquiry*.

[102] After having considered the information contained in this motion and further submissions made by the Independent Counsel and counsel for Justice Déziel, the Inquiry Committee allowed the motion, divided the inquiry into Justice Déziel's conduct, and ordered that allegation 2 be heard first.

[103] The Inquiry Committee also decided that, after hearing allegation 2, it would hear the parties on the advisability of proceeding with allegation 1, in the interest of justice and the public interest.

B) *THE HEARING OF ALLEGATION 2*

[104] The Independent Counsel produced solely documentary evidence.

[105] During the proceedings, the Independent Counsel mentioned that the version of events underlying the misconduct set out in allegation 2 was derived directly from the facts acknowledged by Justice Déziel in his letter of June 19, 2013[27].

[106] The Independent Counsel recalled that the solemn declaration made by Justice Déziel on February 26, 2015[28] reinforced this evidence, since it constituted a full and complete acknowledgment of this version of the facts.

[107] However, the Independent Counsel specified that the sum of money at issue in allegation 2, that is to say "a sum of between $30,000 and $40,000", includes the sum of $30,000 referred to in allegation 1.

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[27] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 10.
[28] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 16.

[108] Furthermore, the Inquiry Committee easily concluded that the different version of the facts put forward in allegation 1 was improbable, particularly in view of the information contained in the auditor's report[29]. We will revisit this issue later.

[109] Therefore, the Inquiry Committee concluded that the version of the facts set forth in allegation 2 is to be taken as true.

[110] On the basis of paragraph 10 of the *Amended Notice of Allegations* and with the necessary adaptations, the Inquiry Committee made the following findings of fact:

a) In 1997, Me Déziel held the title of chief organizer of the *Parti de l'Action civique de Blainville* for the municipal election;

b) The engineering firm Dessau was involved in funding the electoral campaign of the *Parti de l'Action civique de Blainville*, led at the time by Mr Pierre Gingras, who had been mayor since 1993;

c) The amount of this funding was agreed between Mr Rosaire Sauriol, of the firm Dessau, and mayor Gingras;

d) Me Déziel agreed to act as an intermediary by transferring a sum of between $30,000 and $40,000, received from Mr Sauriol, to Mr Monette, the *Parti de l'Action civique de Blainville*'s field organizer.

[111] The Inquiry Committee then focused its analysis on the issue of whether these facts constitute misconduct within the meaning of paragraph 65(2)(*b*) of the *Act*.

[112] The answer depends, first of all, on the meaning and scope of the term "misconduct".

[113] In our opinion, notwithstanding that the impugned conduct of a judge occurred prior to his or her appointment, an Inquiry Committee and the Council have full jurisdiction to act.

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[29] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 4.

[114] Just recently, another Inquiry Committee dismissed a claim to the contrary for the following reasons:

> [TRANSLATION]
>
> *[37] The issue of jurisdiction of a judicial council over alleged actions that occurred before the appointment of a judge is not new. The Supreme Court of Canada had the opportunity to look into this issue in Therrien. In this case, Justice Therrien of the Court of Quebec, when he was a lawyer and filled out an application for judicial appointment, failed to disclose his criminal record. The Supreme Court stated the following:*
>
> > *"53 The appelant argues that the Conseil de la magistrature [du Québec] has no jurisdiction to review his conduct, since the ethical breach occurred before he was appointed. He is accordingly of the opinion that the misconduct that is the source of the proceedings against him falls under the exclusive jurisdiction of the discipline committee of the Barreau du Québec. I am unable to accept this reasoning, for several reasons."*
>
> *[38] After reviewing statutory provisions relevant to the Conseil de la magistrature du Québec, the Supreme Court found that:*
>
> > *"54 […] The Conseil de la magistrature therefore had jurisdiction over the person and over the subject matter of the complaint. Whether or not the actions were prior to the appellant's appointment is not relevant under the Act."*
>
> *[39] Moreover, the Supreme Court emphasized that the responsibility for preserving the integrity of the judiciary must include the authority to examine the past conduct of a judge, prior to his or her appointment, which could undermine public confidence in the judge concerned. The Supreme Court also expressed the opinion that "[…] in the interests of judicial independence, it is important that discipline be dealt with in the first place by peers".*
>
> *[50] Therefore, this Inquiry Committee has the jurisdiction to investigate Justice Girouard's alleged actions. To conclude otherwise would unduly limit the Conseil and the Committee's mandate and diminish their ability to preserve the integrity of the judiciary.* [30]
>
> (Emphasis in original and citations omitted)

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[30] Canadian Judicial Council, *Inquiry Committee concerning the Hon. Michel Girouard – Ruling of the Inquiry Committee on certain preliminary matters*, April 8, 2015.

[115] We subscribe to this interpretation of the *Act*.

[116] In this regard, it is worth recalling what the Supreme Court of Canada stated in *Rizzo*, a landmark decision with respect to statutory interpretation:

> *Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, "Statutory Interpretation" (1997); Ruth Sullivan, "Driedger on the Construction of Statutes" (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, "The Interpretation of Legislation in Canada" (2nd ed. 1990)), Elmer Driedger in "Construction of Statutes" (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87, he states:*
>
> > *Today, there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*
>
> *Recent cases which have cited the above passage with approval include: R. v. Hydro-Québec, [1997] 3 S.C.R. 213; Royal Bank of Canada v. Sparrow Electric Corp., [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, [1996] 3 S.C.R. 550; Friesen v. Canada, [1995] 3 S.C.R. 103.*[31]

[117] The wording of paragraph 65(2)(*b*) ("having been guilty of misconduct") does not limit its scope to misconduct that occurred subsequent to a judge's appointment, and the overall context does not in any way support such a limitation. Furthermore, the principle of judicial independence, as it is perceived today, advocates that discipline "*be dealt with in the first place by peers*".[32] Finally, one of the purposes of Part II of the *Act* is to establish a system that gives the Canadian Judicial Council exclusive jurisdiction to conduct an inquiry into any circumstances that could result in the removal from office of a judge of a superior court.

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[31] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21.

[32] See *Therrien*, note 2, at para. 57.

[118] On the basis of this well-established jurisdiction, the Inquiry Committee unanimously concluded that Justice Déziel, when he was a lawyer, violated the *Elections Act* and that he knowingly committed these unlawful acts. These facts, the seriousness of which must be assessed in light of the important role of judges in our democracy, led the Inquiry Committee to conclude that Justice Déziel had engaged in "misconduct" within the meaning of paragraph 65(2)(*b*).

[119] The Inquiry Committee then considered the second step of the test for removal, which consists in determining whether *the alleged conduct is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office?*[33].

[120] The Independent Counsel expressed the view that Justice Déziel's misconduct has not rendered him incapacitated or disabled from the due execution of the office of judge, within the meaning of subsection 65(2) of the *Act*, and therefore, that a recommendation for his removal from office is not warranted.

[121] The Independent Counsel's argument is set out in a document entitled [TRANSLATION] *Independent Counsel's Written Submission regarding Allegation 2.*

[122] After setting out the background facts in the matter, the Independent Counsel recalls, at paragraph 19 and following of her document, the circumstances giving rise to removal.

[TRANSLATION]

(…) THE TEST FOR REMOVAL

[19] The removal of a judge of a superior court is justified when 1) the judge's conduct falls within subsection 65(2) of the Judges Act and 2) the judge's

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[33] Canadian Judicial Council, *Report of the Inquiry Committee concerning the Honourable P. Theodore Matlow*, May 28, 2008, at para. 113.

removal is necessary in light of the seriousness of the misconduct and the importance of preserving public confidence in the justice system.

[20] In the first stage, subsection 65(2) of the Act provides that the removal of a judge from office may be warranted by reason of (a) age or infirmity, (b) having been guilty of misconduct, (c) having failed in the due execution of the office of judge, or (d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of the office of judge.

[21] In order to determine if the conduct at issue constitutes more specifically an act of misconduct, we must bear in mind the importance of the role that judges play in our democracy. In this regard, the Supreme Court of Canada stated the following:

> *108 The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the Canadian Charter, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: Beauregard, supra, at p. 70, and Reference re Remuneration of Judges of the Provincial Court, supra, at para. 123.* ***Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.***
>
> *109 If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system.* ***The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them*** *(Justice Jean Beetz, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in Mélanges Jean Beetz (1995), at pp. 70-71).*
>
> *110* ***Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole***

and, therefore, the confidence that the public places in it. *Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:*

> *Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.*
>
> *(Canadian Judicial Council, Ethical Principles for Judges (1998), p. 14)*

111 ***The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.*** *This is eloquently expressed by Professor Y.-M. Morissette:*

> *[TRANSLATION] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of "elites" in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.*
>
> *("Figure actuelle du juge dans la cité" (1999), 30 R.D.U.S. 1, at pp. 11-12)*

In "The Canadian Legal System" (1977), Professor G. Gall goes even further, at p. 167:

> *The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary.* ***We expect our judges to be almost superhuman in wisdom, in propriety, in decorum and in***

> ***humanity.*** *There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.*
>
> *[Emphasis added]*

[22] In the second stage, if the Council concludes that the conduct at issue constitutes misconduct within the meaning of subsection 65(2) of the Judges Act, it must then determine, on the basis of the following test, whether the impugned conduct is serious enough to warrant the judge's removal from office:

> *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?*

[23] This test, developed in 1990 in the Marshall case, has since been generally applied by the courts and the Council in cases involving the potential removal of a judge from office by reason of misconduct.

[24] In the matter of Justice Matlow, the Council emphasized the prospective nature of the test:

> *Implicit in the test for removal is the concept that public confidence in the judge would be sufficiently undermined to render him or her incapable of executing judicial office in the future in light of his or her conduct to date.*

[25] The Council also referred to the Supreme Court of Canada's decision in Ruffo v. Conseil de la magistrature, which found that the impact of an impugned conduct on public confidence must be assessed from the objective standpoint of what an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude.

[26] In the matter of Justice Flynn, the Inquiry Committee considered the factors for assessing the seriousness of the conduct at issue, in order to determine whether it sufficiently undermined public confidence to warrant the judge's removal from office:

> *In answer to the second question, we now apply to the impugned conduct of Mr. Justice Flynn the test for removal set*

> *out in Marshall, which has been considered earlier in these reasons. The question may be posed as follows: is the breach of the duty to act in a reserved manner demonstrated by Mr. Justice Flynn so manifestly and profoundly destructive of judicial impartiality, integrity and independence that it undermines individual and public confidence in the justice system, thereby rendering the judge incapable of performing the duties of his office?* ***In this connection, we particularly noted the following: the irreproachable career of the judge in question, the isolated nature of the incident complained of, the unlikelihood of a similar incident reoccurring, the judge's acknowledgment of his remarks, his letter and the acknowledgment made by his counsel that the judge in question made a mistake in making the statements complained of to the journalist.*** *We remain convinced that the judge in question retains his independence and complete impartiality to continue deciding matters brought before him now and in the future. In view of all the circumstances, we are of the opinion that the conduct of Mr. Justice Bernard Flynn has not incapacitated or disabled him from the due execution of his office within the meaning of subsection 65(2) of the Judges Act, and thus we do not recommend the removal of Mr. Justice Flynn.*
>
> *[Emphasis added]*

[27] In the matter of Justice Cosgrove, the Council examined the potential effect of the following factors on the application of the test for removal: i) the apologies made by a judge to an Inquiry Committee; ii) the views expressed by Independent Counsel regarding removal; and iii) consideration of the judge's judicial career, character and abilities, as described in letters of support.

[28] With respect to apologies, the Council stated the following:

> *The Apologies*
>
> *[…]*
>
> *[29]* ***We agree that an apology is an important factor for Council to consider in assessing the future conduct of a judge and, specifically, whether the judge recognizes that they have engaged in misconduct and, futher, whether there is a reasonable prospect that the judge will sincerely strive to avoid inappropriate conduct in future.***

> *[30] Justice Cosgrove's apology in this case addresses both of these aspects. Even accepting that the judge's apology was sincere, we must consider an additional – more important – aspect in deciding whether a recommendation for removal is warranted: the effect upon public confidence of the actions of the judge in light of the nature and seriousness of the misconduct.*
>
> *[31] **For Council, therefore, the key question is whether the apology is sufficient to restore public confidence.** Even a heartfelt and sincere apology may not be sufficient to alleviate the harm done to public confidence by reason of serious and sustained judicial misconduct.*
>
> *[Emphasis added]*

[29] With regard to Independent Counsel's views, the Council was of the opinion that:

> *[53] At the hearing before us, Independent Counsel emphasized again that it was open to the Inquiry Committee to come to its own view and that both the majority and minority views regarding the judge's removal were defensible.*
>
> *[54] The mandate of Independent Counsel, it must be remembered, is not that of a lawyer retained to achieve a certain result. **His view is but one view, albeit a very important one, arrived at after considering all issues. It cannot be the case that the members of the Inquiry Committee are in a lesser position than Independent Counsel in coming to their own conclusion.** Four of the five members of the Inquiry Committee were of the view that public confidence in the judge's ability to discharge his duties impartially could not be restored. We agree. **Recommending that the judge be removed from office is a grave duty and, given the principle of judicial independence, one that must ultimately rest with Council.***
>
> *[Emphasis added]*

[30] Finally, with respect to letters of support, the Council expressed the following view:

> *[57] We are of the view that the opinions of individuals, be they judicial colleagues or otherwise, who do not have the benefit of the evidentiary record and a complete knowledge and appreciation of the issues before Council, will generally be of little assistance in determining whether public confidence has been undermined to such an extent as to render a judge incapable of discharging the duties of their office. In this particular instance, we accord little weight to the letters of support. They may provide insight into the judge's character and work ethic, but they do not address the decisive issue before us, namely the damage done to public confidence by virtue of the judge's judicial misconduct. This is an issue that rigthly rests with the Inquiry Committee and Council itself.*

[31] In the matter of Justice Matlow, the Council acknowledged the relevance of letters of support provided by the judge at the sanction phase of the proceedings:

> *[149] The reasons of the Inquiry Committee indicate that it viewed this evidence as partisan and, in any event, as representative of a small segment of the public only. We do not disagree with this assessment. But we also find the evidence to be relevant. Positing the opposite question, what if there were a deluge of letters from the local community, including Justice Matlow's peers and lawyers, to the effect that he was unfit to hold office? Would that be relevant as part of our deliberations? We think it may properly be. So too, are the support letters which have been accepted as evidence.*
>
> *[150] Character is certainly relevant to the assessment of a judge's attributes. The letters deal with various aspects of Justice Matlow's character, that is his integrity, honesty, conscientious work ethic, and commitment. While these letters are not relevant to whether the conduct complained of occurred, they may be relevant to why the acts occurred, the context of the acts, and whether the acts were committed without malice and without bad faith. Character is also highly relevant to the issue of what recommendations should flow from a finding of judicial misconduct. While the weight to be given to this evidence is admittedly for the inquiry committee, and while an inquiry committee may elect to give it little weight, still it is an error in principle to to simply ignore this kind of evidence for all purposes. In particular, the evidence is relevant to the sanction phase of the proceedings and ought to have been considered in that context. It was not.*

[32] In the context of the matter at hand, the Independent Counsel considers it relevant to also take into account the objective seriousness of the offences at the time they were committed, as well as the time that has elapsed since then.

[33] Indeed, although the consequences of the impugned conduct on public confidence are assessed in a present-day context at this inquiry, the Independent Counsel considers that an informed person, viewing the matter realistically and practically – and having thought the matter through – would take into account the social and legislative context that prevailed at the time of the impugned conduct.

[34] The passage of time must be also considered, since it has a bearing on the likelihood that a similar conduct will reoccur and the leniency that may stem from the fact that the offences were committed several years before the appointment of the judge who is the subject of this inquiry.

(Citations omitted)

[123] After recalling these principles, the Independent Counsel analyzed the evidence and explained why she considers that public confidence has not been undermined to the extent that Justice Déziel has become incapacitated or disabled from the due execution of the office of judge:

B. The second stage of the test for removal

[38] At the second stage of the test for removal, one must consider the aggravating and mitigating factors that are likely to affect the impact of Justice Déziel's conduct on public confidence.

[39] With respect to aggravating factors, the Independent Counsel notes the following:

a. The offences under the Elections Act;

b. The considerable sum at issue;

c. The intentional, well thought out and repetitive nature of the conduct;

d. The absence of regret and apology in Justice Déziel's letters of June 19, 2013 and January 14, 2014 (Joint Record of Proceedings, Tabs 10 and 13).

[40] Concerning the latter factor, the Independent Counsel notes that, in his letter of June 19, 2013, Justice Déziel did not admit having committed an offence under the Elections Act. Instead, he sought to minimize the seriousness of his actions by mentioning that his only involvement was to [TRANSLATION] "transfer this money to Mr Monette" and by emphasizing in the conditional that, even if Mr Cloutier's version of events was taken as true, [TRANSLATION] "it would then be an offence under the Elections and Referendums Act, which would long since have been time-barred (limitation period of five years)".

[41] Also, in his letter of January 14, 2014, Justice Déziel referred to hypothetical offences and emphasized that he had no legal obligation to declare to the Chief Electoral Officer that he had received sums of money from Dessau. As he later admitted, he was not designated to solicit or collect contributions, so that the mere act of collecting contributions from Dessau was an offence under section 611 of the Elections Act, in addition to aiding another person to commit an offence (sections 610, 612 and 637 of the Elections Act).

[42] That said, in his solemn declaration of February 26, 2015, Justice Déziel expressed regret for the tone of his previous letters and acknowledged that he should have simply admitted his wrongdoing and shown restraint. He explained that his reaction was caused by the hardship he had suffered at the time, as a result of his wife's illness and following her death on August 17, 2013. The Independent Counsel is of the view that Justice Déziel's explanations regarding his state of mind and the sense of unfairness he felt are convincing, such that little weight should be given to the absence of regret and apology in his letters of June 19, 2013 and January 14, 2014.

[43] With regard to mitigating factors, the Independent Counsel notes the following:

a. Justice Déziel's acknowledgment of the facts in his letter of June 19, 2013;

b. His admission, in his solemn declaration of February 26, 2015, that he violated the Elections Act;

c. His sincere apologies;

d. The absence of risk of reoffending;

e. The objective seriousness of the offences committed in 1997, particularly in regard to their endemic nature and the penalties provided for;

f. The time elapsed since the offences were committed and the fact that they are now time-barred;

g. Justice Déziel's irreproachable career;

h. The support expressed by Chief Justice Rolland, Associate Chief Justice Jacques R. Fournier, the President of the Barreau du Québec, Me Bernard Synnott, and three other members of the Barreau du Québec.

[44] As for the first four factors, Justice Déziel's apologies and recognition that he engaged in misconduct play an important role in assessing his future conduct and, specifically, "whether there is a reasonable prospect that the judge will sincerely strive to avoid inappropriate conduct in future".

[45] As the Council stated in the matter of Justice Cosgrove, "the key question is whether the apology is sufficient to restore public confidence".

[46] In the present matter, the Independent Counsel is convinced that there is no risk of reoffending and that Justice Déziel's sincere apologies are sufficient to reassure the public in this regard.

[47] The objective seriousness of the offences and the time elapsed since they were committed are also important factors to consider. In 1997, every person who committed or aided another person to commit an offence under sections 610, 611 and 612 of the Elections Act was liable to a fine of not less than $100 nor more than $10,000 (section 641of the Elections Act, Joint Record of Proceedings, Tab 17). The Chief Electoral Officer of Quebec's annual reports from 1996 to 1999 show that, in the vast majority of cases, persons convicted of such offences were ordered to pay the minimum fine of $100 (Joint Record of Proceedings, Tab 2).

[48] The context that prevailed in 1997 regarding the funding of political parties must also be considered. An informed person, viewing the matter realistically and practically – and having thought the matter through – would take it into account in assessing the seriousness of Justice Déziel's misconduct.

[49] In this regard, the report of the Moisan Inquiry Commission, released on June 12, 2006, reveals that [TRANSLATION] "the scheme used by corporations to fund political parties through contributions made under the names of their employees is well known and widespread" (Joint Record of Proceedings, Tab 3, page 16). Of course, the endemic nature of such schemes used by corporations to fund political parties does not excuse Justice Déziel's misconduct, but we must be careful not to assess his conduct from today's perspective.

[50] It is also worth noting that these offences are prescribed by five years (section 648 of the Elections Act), and therefore, that they were already time-barred when Justice Déziel was appointed to the judiciary on November 5, 2003.

[51] As emphasized by the Supreme Court of Canada in R. v. Dudley, the limitation period is an indication that an offence is not so significant that, after a time, a person should have to fear prosecution:

> *[76] As one academic has noted, it is primarily the interests of the defendant that animate limitation periods in criminal law: P.G. Barton, "Why Limitation Periods in the Criminal Code?" (1998), 40 Crim. L.Q. 188. A central purpose is to allow those who commit minor offences to rest easy after a period: "… if the matter is of a level of seriousness of a summary conviction offence, it is not so significant that, after a time, a person should have to fear prosecution. He or she should be able to get on with life without the threat of a criminal proceeding hanging over his or her head. The seriousness of indictable matters overweighs this factor" (p. 190).*

[52] Finally, the Independent Counsel emphasizes Justice Déziel's irreproachable career. As for the letters of support that were submitted, although such evidence is generally of little help in assessing the harm done to public confidence, it is nevertheless relevant to the sanction phase when assessing the judge's personal and professional qualities. In the case of Justice Déziel, his qualities are beyond question.

[53] Given all these circumstances, the Independent Counsel does not consider that public confidence in Justice Déziel has been sufficiently undermined to render him incapable of executing judicial office in the future, in light of his conduct to date. On the other hand, the Inquiry Committee should, in the view of the undersigned, express its

> *disapproval of a conduct that is nevertheless reprehensible and unworthy of a lawyer who later became a judge.*

(Citations omitted)

[124] After finding that the facts set forth in this excerpt from the *Independent Counsel's Written Submission regarding Allegation 2* were substantiated and that the legal opinions expressed in it were well-founded, the Inquiry Committee agreed with the Independent Counsel's conclusion. Therefore, although we are convinced that Me Déziel's actions described in allegation 2 constitute misconduct within the meaning of paragraph 65(2)(*b*) of the *Act*, such reprehensible conduct does not render Justice Déziel incapacitated or disabled from the due execution of the office of judge.

[125] Of course, implicit in the Inquiry Committee's finding is its conviction that public confidence in Justice Déziel has not been irreparably undermined.

[126] This belief is based, among other things, on the letters of support[34] for Justice Déziel that his counsel submitted on his behalf and that were introduced into the record with the consent of the Independent Counsel.

[127] The Inquiry Committee found this evidence to be relevant and instructive with regard to the issue of public confidence.

[128] In particular, the Inquiry Committee gave considerable weight to the letters originating from the Chief Justice and the Associate Chief Justice of the Superior Court of Quebec. For this reason, the Inquiry Committee deems it useful to cite these letters in full:

> [TRANSLATION]
>
> *Dear Me Gauthier:*
>
> *You asked me to send you a letter concerning the Honourable Michel Déziel and, more specifically, about his work at the Superior Court since 2003.*

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[34] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 14.

In my capacity as Chief Justice of the Court since 2004, I have had the opportunity to work with Jusitce Déziel on numerous occasions, and I have always been impressed by his rather exceptional availability.

Indeed, when Justice Déziel has no decisions to write and is in a period of deliberation, he does not hesitate to contact my office to generously offer his services. I also asked Justice Déziel to act as coordinating judge in Laval a few years ago, and he has performed this role brilliantly. Members of the law society of Laval hold him in high esteem and have nothing but praise for him.

Justice Déziel is generous and a genuine ambassador of the Court.

Sincerely,

François Rolland
Chief Justice

Dear Mr President of the Barreau,

I am presently Associate Chief Justice of the Superior Court. From 2007 to 2011, I was the coordinating judge for the judicial district of Laval, and it is during this time that I came to best know the Honourable Michel Déziel.

He is a competent and devoted judge who fulfilled his duties in an exemplary manner and on a timely basis. In addition, when his case assignments were completed and his decisions rendered, he never hesitated to voluntarily ask to have additional cases assigned to him.

When I sat on the Court of Appeal, I also had the opportunity to examine some of his decisions and noticed the diligence and conscientiousness he brings to his work.

In my opinion, Justice Déziel is a competent and valued colleague. I state this without any hesitation.

Sincerely,

Jacques R. Fournier
Associate Chief Justice

(Emphasis added)

[129] All things considered, the Inquiry Committee is of the opinion that the misconduct stated in allegation 2 does not warrant a recommendation for Justice Déziel's removal from office.

C) *THE HEARING OF ALLEGATION 1*

[130] Having made the above findings, the Inquiry Committee now turned its attention to assessing whether, in the interest of justice and the public interest, it was relevant to hear allegation 1 stated in the *Amended Notice of Allegations*.

[131] Although the Independent Counsel acknowledges that the versions of the facts set out in allegations 1 and 2 are mutually exclusive, she argues that the testimonial evidence underlying allegation 1 can still be justified.

[132] The Inquiry Committee did not agree with this argument for the following reasons.

[133] Firstly, the Inquiry Committee has already taken as true the version of the facts set out in allegation 2. This version is irreconcilable with the one suggested in allegation 1.

[134] Secondly, this latter version, which is based on Mr Cloutier's testimony before the Charbonneau Commission, is at the very least improbable, particularly in view of the auditor's report[35].

[135] Thirdly, counsel for Justice Déziel and the Independent Counsel agree that it would be problematic to hear witnesses in support of allegation 1. Such a hearing could not be conducted within a "reasonable" timeframe and would lead to an unjustifiable expenditure of public funds, because even if the version of the facts underlying allegation 1 were to be accepted, the Inquiry Committee would conclude that the resulting misconduct does not warrant the removal from office of Justice Déziel.

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[35] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 4.

[136] For these reasons, the Inquiry Committee found that it was not in the interest of justice nor the public interest to continue hearing allegation 1.

[137] That being said, it is worth emphasizing the evidence that led the Inquiry Committee to find that the version of the facts underlying allegation 1 is improbable.

[138] As we indicated, allegation 1, as stated, rests mainly on testimony given by Mr Cloutier before the Charbonneau Commission on May 2, 2013.

[139] This testimony is completely inconsistent with Justice Déziel's version of the facts. However, before we can even consider the truthfulness or falseness of a factual contention, it must at the very least be plausible. So what to make of the version of events offered by Mr Cloutier when compared to the auditor's report[36], the correctness and reliability of which are in no way questioned?

[140] In his testimony, Mr Cloutier claims to have received an envelope containing a sum of $30,000, in $100 bills, that he converted into cheques in the amount of $750 made payable to the *Parti de l'Action civique de Blainville*.

[141] Mr Cloutier also claims to have given these cheques to Me Déziel and, in his testimony, categorically states that the entire sum of $30,000 was laundered.

[142] Therefore, based on appropriate mathematical equations, Me Déziel should have received forty (40) cheques in the amount of $750 made payable to the *Parti de l'Action civique*.

[143] However, according to Appendix 3 of the auditor's report[37], the auditor counted thirty-nine (39) cheques in the amount of $750, one (1) in the amount of $700, one (1) in the amount of $500, and one (1) in the amount of $150, all of which add up to a total sum of $30,600.

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[36] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tabs 4 and 5.
[37] Exhibit C-5, Joint Record of Proceedings, Exhibits and Legislation, Tab 4.

[144] First of all, on the basis of established facts, there is no consistency regarding the "laundered" sum, the number of cheques, or their amount.

[145] But there is more. Appendix 3 of the auditor's report shows that not all the contributors were relations of Mr Cloutier, nor persons that he had control over.

[146] In fact, it is evident that several contributions (at least ten) simply cannot be attributed to Mr Cloutier, since they originated from mayor Gingras, his wife, municipal councillors, and even Justice Déziel's wife (the late Ghislaine Matteau).

[147] Without going into an assessment of Mr Cloutier's credibility, the Inquiry Committee clearly understood, from submissions made by counsel for Justice Déziel and the Independent Counsel, that Mr Cloutier admitted committing perjury before the Charbonneau Commission in May 2013, and that he was arrested in September 2014 in relation to fifteen allegations of perjury, following a complaint filed by the Charbonneau Commission.

[148] Mr Cloutier's arrest was confirmed to the Independent Counsel by investigative sergeant Cotte on February 25, 2015.

[149] All of this suggests that Mr Cloutier's credibility is clearly in doubt, even before the start of his cross-examination, which counsel for Justice Déziel are unable to conduct, for the reasons stated in the *Motion from Independent Counsel to divide the inquiry* and cited in full at paragraph 100 of this report.

[150] Faced with this situation, the Independent Counsel acknowledged that the evidence supporting allegation 1 had little weight, and that, even if it were given evidentiary value, the test for removal would be assessed against what has already been discussed.

[151] On the basis of the evidence as a whole, and in the interest of justice and the public interest, the Inquiry Committee summarily dismissed allegation 1 set out in the *Amended Notice of Allegations*.

IV. SUBSTANTIVE FINDING

[152] For these reasons, the Inquiry Committee found that a recommendation for removal from office of the Honourable Michel Déziel is not warranted.

[153] Having fulfilled our mandate, all that remains is for us to thank the Independent Counsel, Me Suzanne Gagné, Ad. E., counsel for Justice Déziel, Me André Gauthier and Me Michel Massicotte, and counsel for the Inquiry Committee, Me JoAnn Zaor, for their professionalism and excellent contribution to the orderly conduct of the proceedings.

[s*igned: Ernest Drapeau]*
The Honourable Ernest Drapeau, Chairperson
Chief Justice of New Brunswick and Chief Justice of the Court of Appeal of New Brunswick

[s*igned: Glenn Joyal]*
The Honourable Glenn D. Joyal
Chief Justice of the Court of Queen's Bench of Manitoba

[s*igned: René Basque]*
Me René Basque, QC
Counsel and member of the law firm
Actus Law-Droit