INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL IN THE MATTER OF THE CONDUCT OF THE HONOURABLE GÉRARD DUGRÉ, S.C.J.

MEMBERS OF THE INQUIRY COMMITTEE:

The Honourable J.C. Marc Richard (Chairperson), Chief Justice of New Brunswick

The Honourable Louise A.M. Charbonneau, Chief Justice of the Supreme Court of the Northwest Territories

M[e] Audrey Boctor, IMK s.e.n.c.r.l.

COUNSEL

For Justice Dugré:

M[e] Magali Fournier, Ad. E., Fournier Avocat inc.

M[e] Gérald Tremblay, Ad. E., McCarthy Tétrault S.E.N.C.R.L., s.r.l.

For the Inquiry Committee:

M[e] Giuseppe Battista, Ad. E., Battista Turcot Israel s.e.n.c.

M[e] Emmanuelle Rolland, Audren Rolland s.e.n.c.r.l.

REASONS FOR DECISIONS ON PRELIMINARY MOTIONS RENDERED ON NOVEMBER 17, 2020

(UNOFFICIAL TRANSLATION INCORPORING CORRIGENDUM AMENDMENTS)

Table of Contents

I. INTRODUCTION

[1] The Honourable Gérard Dugré, S.C.J., ("**Justice Dugré**") is a justice of the Superior Court of Québec, to which he was appointed on January 22, 2009 following a career as a lawyer and as a member of the Barreau du Québec since 1981.

[2] In August and September 2018, the Canadian Judicial Council ("**CJC**" or "**Council**") received two complaints concerning Justice Dugré, one pertaining to delay in rendering judgment and the other pertaining to his conduct and comments during a hearing. Following the early screening of the two matters, a Review Panel determined that a committee should be constituted to conduct an inquiry, which led to the constitution of this Committee. In addition to these two matters, the CJC was seized with five other matters which were referred to this Committee after it had been constituted. The nature and processing of these complaints will be explained in detail below.

[3] On March 4, 2020, the Inquiry Committee sent Justice Dugré a detailed Notice of Allegations ("**Notice of Allegations"**) informing him of the allegations that it intended to investigate.[1] The Notice includes allegations pertaining to six of the aforementioned matters.[2]

[4] Prior to the hearing on the merits, Justice Dugré made five preliminary applications, some of which are alternative applications:

- an application for the disqualification of the members of the Inquiry Committee;
- an application for a stay of the inquiry or, alternatively, for a partial striking out of allegations;
- an alternative application to split the inquiry;
- an alternative application for a stay of the inquiry;
- preliminary motions, in the alternative, pertaining to the evidence, i.e. (i) anticipated objections to certain evidence, (ii) an application for additional disclosure of evidence, and (iii) an application for a sealing order or for anonymization and requesting that the hearing be held in camera.

[5] This decision addresses all of these arguments, with the exception of the application for a sealing order or for anonymization and requesting that the hearing be held in camera, which will be heard at a later date in order to allow the interested parties to make submissions.

II. CONSTITUTIONAL AND LEGAL FRAMEWORK

A. THE *CONSTITUTION ACT, 1867*

[1] *Cahier de pièces du requérant au soutien de ses moyens préliminaires* in French only), Tab 21.
[2] Consistent with the Notice of Allegations, the complaints made in CJC-19-0374 will be considered in the context of one of the allegations made in CJC-18-0301.

[6] Subsection 99(1) of the *Constitution Act, 1867*[3] provides that the judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons. However, the *Constitution Act, 1867*, does not establish "guidelines for the procedure to be followed, or the principles to be applied."[4]

B. THE *JUDGES ACT*

[7] In 1971, through amendments to the *Judges Act,*[5] Parliament established the CJC and empowered it to conduct inquiries and investigations into the conduct of superior court judges and to report its findings and recommendations to Government. In this regard, the Act sets out the principles that should inform a recommendation to remove a judge and establishes a general framework for setting up and conducting inquiries and investigations, but imposes very few parameters with respect to the procedure to be followed.[6]

[8] Paragraph 60(2)(c) and subsection 63(2) empower the CJC to investigate "any complaint or allegation made in respect of a judge of a superior court." To this end, subsection 63(3) provides that the Council may constitute an Inquiry Committee consisting of one or more of its members together with such members, if any, of the bar of a province, having at least ten years standing, as may be designated by the Minister of Justice. This Committee was constituted under this provision.

[9] Further, section 62 allows the CJC to "engage […] the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 63." Counsel for the Inquiry Committee, M[e] Giuseppe Battista and M[e] Emmanuelle Rolland, were engaged under this provision.

[10] Section 64 states that during the course of the inquiry or investigation the judge has the following rights:

64 Le juge en cause doit être informé, suffisamment à l'avance, de l'objet de l'enquête, ainsi que des date, heure et lieu de l'audition, et avoir la possibilité de se faire entendre, de contre-interroger les témoins et de présenter tous éléments de preuve utiles à sa décharge, personnellement ou par procureur.	**64** A judge in respect of whom an inquiry or investigation under section 63 is to be made shall be given reasonable notice of the subject-matter of the inquiry or investigation and of the time and place of any hearing thereof and shall be afforded an opportunity, in person or by counsel, of being heard at the hearing, of cross-examining witnesses and of adducing evidence on his or her own behalf.

The Notice of Allegations was sent to Justice Dugré pursuant to this provision.

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[3] (UK), 30 & 31, Vict., c-3.
[4] *Cosgrove v. Canadian Judicial Council*, 2007 FCA 103, [2007] F.C.J. No. 352 (QL), at para. 44.
[5] R.S.C. (1985), c. J-1.
[6] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 28 (application for leave to appeal to the Supreme Court of Canada pending).

[11] Under section 65, after an inquiry or investigation has been completed, the CJC is required to report its conclusions to the Minister of Justice. In its report, it may recommend that the judge be removed from office where, in its opinion, the judge in respect of whom the inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge, including by reason of:

- having been guilty of misconduct (para. 65(2)(b))
- having failed in the due execution of that office (para. 65(2)(c))

[12] The CJC has only the power to make recommendations, the ultimate decision belonging to the Federal Government under the *Constitution Act*, *1867*.

C. THE 2015 BY-LAWS

[13] In addition to the foregoing, subsection 61(3) of the *Judges Act* empowers the CJC to make by-laws respecting, *inter alia*: (i) the establishment of committees of the Council and the delegation of duties to any such committees; (ii) the conduct of inquiries and investigations. The present inquiry is governed by the *Canadian Judicial Council Inquiries and Investigations By-Laws (2015)* ("***2015 By-Laws***")[7]. As a statutory instrument, these By-Laws have the force of law.[8]

[14] The *2015 By-Laws* give substance to the process, setting out its main parameters. It establishes a four-step process, namely (i) a summary review by the Chairperson or Vice-Chairperson of the Judicial Conduct Committee ("**Chairperson**"), (ii) an early screening by the Judicial Conduct Review Panel, (iii) an inquiry or investigation by the Inquiry Committee, and (iv) the CJC's report to the Minister of Justice.

1. Summary review by the Chairperson of the Judicial Conduct Committee

[15] With respect to the first step, subsection 2(1) simply provides that the Chairperson "may, if [he or she] determine[s] that a complaint or allegation on its face might be serious enough to warrant the removal of the judge, establish a Judicial Conduct Review Panel to decide whether an Inquiry Committee should be constituted [...]". The By-Laws are otherwise silent on this step of the process.

2. Early screening by the Review Panel

[16] With respect to the Review Panel, subsection 2(4) provides that it "may decide that an Inquiry Committee is to be constituted only if it determines that the matter might be serious enough to warrant the removal of the judge." If the Review Panel decides that an Inquiry

[7] SOR/2015-203.
[8] *Douglas v. Canada (Attorney General)*, 2014 FC 299, [2014] F.C.J. No. 311 (QL), at para. 9.

Committee is to be constituted pursuant to subsection 2(7), it must prepare "written reasons and a statement of issues to be considered by the Inquiry Committee" and send a copy of its decision, reasons and statement of issues to the judge and his or her Chief Justice, the Minister of Justice and the Inquiry Committee, once it is constituted.

3. Inquiry conducted by the Inquiry Committee

[17] Section 4 provides that the Inquiry Committee may, once it is constituted, "engage legal counsel […] to provide advice and to assist in the conduct of the inquiry", a power already provided for under section 62 of the *Judges Act*.

[18] Moreover, with respect to the investigative powers of the Inquiry Committee, subsection 5(1) provides the following:

5(1) Le comité d'enquête peut examiner toute plainte ou accusation formulée contre le juge qui est portée à son attention. Il tient alors compte des motifs écrits et de l'énoncé des questions du comité d'examen de la conduite judiciaire.	**5(1)** The Inquiry Committee may consider any complaint or allegation pertaining to the judge that is brought to its attention. In so doing, it must take into account the Judicial Conduct Review Panel's written reasons and statement of issues.

As we shall see, the meaning of this provision is key to some of the preliminary motions brought by Justice Dugré.

[19] Subsection 5(2) provides that the Inquiry Committee "must inform the judge of all complaints or allegations pertaining to the judge and must give them sufficient time to respond fully to them", whereas subsection 5(3) provides that it "may set a time limit to receive comments from the judge that is reasonable in the circumstances." Clearly, these provisions partially reiterate the requirements set out in section 64 of the Act.

[20] Furthermore, section 7 provides that the Inquiry Committee "must conduct its inquiry or investigation in accordance with the principle of fairness."

[21] Finally, pursuant to subsection 8(1), after its inquiry or investigation is completed, the Inquiry Committee must submit a report to the Council setting out its findings and its conclusions on whether to recommend the removal of the judge from office.

4. The CJC's Report to the Minister of Justice

[22] Once the Review Panel has submitted its report, section 9 provides that the judge may make a written submission to the Council. Sections 10 to 12 then set out the parameters governing the CJC's deliberations and the delivery of its final report to the Minister of Justice pursuant to section 65 of the Act.

D. THE 2015 REVIEW PROCEDURES

[23] In addition to the *Judges Act* and the *2015 By-Laws*, the CJC has also prepared the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges,* the most recent version, which came into force on July 29, 2015 ("***2015 Review Procedures***"), applies in this case.[9]

[24] The *2015 Review Procedures* govern the processing of the matter before a Review Panel is constituted. On the one hand, they establish a framework for the receipt and administrative processing of complaints or allegations by the Executive Director of the CJC. On the other hand, they clarify and give substance to the summary review process conducted by the Chairperson of the Judicial Conduct Committee referred to in subsection 2(1) of the *2015 By-Laws*. In this regard, the *2015 Review Procedures* provide, *inter alia*, that the Chairperson may, before making his or her decision, seek the judge's comments and those of his or her Chief Justice (para. 6(*b*)). In addition, section 8.5 provides that, where he or she decides to refer a matter to a Review Panel, the Chairperson must provide written reasons for the referral and invite the judge to provide comments in writing to the Review Panel, including comments on whether an Inquiry Committee should be constituted.

[25] Unlike the *Judges Act* and the *2015 By-Laws*, the *2015 Review Procedures* are not statutory instruments and are therefore not legally binding. The fact remains that "[a]n unjustifiable departure from a policy or procedure which adversely affects the interests of a party could amount to a breach of the legal principle of fairness".[10] It all depends on the nature of the departure and the circumstances.

E. THE 2015 HANDBOOK OF PRACTICE

[26] Finally, on September 17, 2015, the CJC also approved the *Handbook of Practice and Procedure of the Canadian Judicial Council Inquiry Committees* ("***2015 Handbook of Practice***").[11] According to its preamble, the *Handbook*'s "purpose is to provide clarity and consistency in respect of hearings and procedure" before an Inquiry Committee. However, it is for guidance purposes only, and section 2.1 expressly states that the Inquiry Committee may issue directions to the contrary, on the obvious understanding that its procedure remains subject to the requirements of the *Judges Act* and the *2015 By-Laws.*

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[9] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 3.
[10] *Douglas v. Canada (Attorney General)*, 2014 FC 299, [2014] F.C.J. No. 311 (QL), at para. 10.
[11] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 4.

F. SUMMARY

[27] Together, these statutory instruments and internal policy documents mean that a complaint or allegation will generally follow a five-step process before the CJC: (i) opening of the file by the Executive Director of the CJC; (ii) review by the Chairperson of the Judicial Conduct Committee; (iii) early screening by the Review Panel; (iv) inquiry and investigation by the Inquiry Committee and report to the CJC; and (v) analysis by the CJC and report to the Minister of Justice.

[28] This process shows, *inter alia*, that the Inquiry Committee does not determine the outcome of the inquiry or investigation. While it is for the Inquiry Committee to "hear the evidence, determine the facts and report on the facts" to the CJC, the CJC's role is to "make its own recommendation to the Minister in light of the facts as found by the Inquiry Committee, its recommendation as well as the submissions of the judge in question."[12] In other words, the CJC is not bound by the recommendations of the Inquiry Committee. Furthermore, as the Federal Court of Appeal recently noted in *Girouard v. Canada (Attorney General),* "the role of the Council and its committees is not to resolve a dispute between parties", rather, its object is "to make the inquiries and the investigation of complaints or allegations and to make recommendations, like any commission of inquiry."[13]

[29] Finally, the duty of procedural fairness applies to CJC proceedings, both with respect to the judge involved and to the complainant.[14] That said, the content of this duty and its specific requirements will vary according to the stage of the process, on the understanding that the formal inquiry or investigation will be conducted before and by the Inquiry Committee and that it is at this stage that the evidence will be heard and that findings of fact will be made.

[30] As we shall see, several of the arguments raised by Justice Dugré will require us to rule on the content of this duty of procedural fairness at various stages of this matter. Furthermore, some of these arguments also raise the question of whether or not each complaint or allegation pertaining to a judge must necessarily go through the stages leading to the constitution of an Inquiry Committee.

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[12] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at paras. 88-89 (application for leave to appeal to the Supreme Court of Canada pending).
[13] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 36 (application for leave to appeal to the Supreme Court of Canada pending).
[14] *Taylor v. Canada (Attorney General)*, 2003 FCA 55.

III. SUMMARY OF THE MATTERS AND THEIR PROCESSING

A. IN THE MATTER OF K.S. (CJC-18-0301)

[31] On August 31, 2018, the CJC received a complaint by e-mail from K.S. complaining that Justice Dugré was delaying rendering judgment in a matter that was urgent, causing him harm and causing him to lose confidence in the justice system. In accordance with the process established by the *2015 Review Procedures*, the Executive Director of the CJC opened the file and referred the matter to the Vice-Chairperson of the Judicial Conduct Committee, the Honourable Glenn Joyal, Chief Justice of the Court of Queen's Bench of Manitoba ("**Chief Justice Joyal**"), for review.

[32] As provided under the *2015 Review Procedures*, Chief Justice Joyal, as part of his review, sought comments from Justice Dugré and his Chief Justice, the Honourable Jacques Fournier ("**Chief Justice Fournier**"). In the letter sent to Justice Dugré, he was advised, *inter alia*, that in the course of his review [TRANSLATION] "the Vice-Chairperson may take into account prior decisions, if any, with respect to complaints about [him].[15]

[33] The CJC received comments from Justice Dugré on January 17, 2019[16] and from Chief Justice Fournier on February 1, 2019.[17] In his letter, Chief Justice Fournier observed that Justice Dugré's delay in rendering judgment was a [TRANSLATION] "chronic problem" that had been the subject of two prior complaints to the CJC by the former Chief Justice of the Quebec Superior Court, the Honourable François Rolland ("**Chief Justice Rolland"**), and that, despite progress made by Justice Dugré, [TRANSLATION] "has never been resolved."[18]

[34] On March 14, 2019, Chief Justice Joyal decided to refer the matter to a Review Panel as provided under subsection 2(1) of the *2015 By-Laws* and paragraph 8.2(*d*) of the *2015 Review Procedures.* In these written reasons, Chief Justice Joyal concluded that [TRANSLATION] "when reviewed in the context of prior complaints, Justice Dugré's conduct may be serious enough to warrant his removal from office."[19]

[35] On March 18, 2019, pursuant to section 8.5 of the *2015 Review Procedures,* the Executive Director sent Chief Justice Joyal's written reasons to Justice Dugré, inviting him to provide comments in writing for submission to the Review Panel, *inter alia,* comments on whether an Inquiry Committee should be constituted for the purpose of conducting an inquiry or investigation pursuant to subsection 63(3) of the *Judges Act*.

[36] At this stage of the process, Justice Dugré decided to retain counsel and was afforded additional time to submit his written comments.[20]

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[15] Letter from the Executive Director of the CJC to Justice Dugré, dated December 11, 2018.
[16] Letter from Justice Dugré to the Executive Director of the CJC, dated January 10, 2019.
[17] Letter from Chief Justice Fournier to the Executive Director of the CJC, dated January 28, 2019.
[18] Letter from Chief Justice Fournier to the Executive Director of the CJC, dated January 28, 2019.
[19] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 6, at p. 112.
[20] Letter from the Executive Director of the CJC to Justice Dugré, dated April 17, 2019.

[37] On May 2, 2019, counsel for Justice Dugré provided written comments in addition to those that were provided when the matter was under review by Chief Justice Joyal.[21] These comments provide, *inter alia,* a comparative analysis of Justice Dugré's output and of the output of five other anonymized judges in order to demonstrate his exceptional productivity. Counsel's letter also disputed the existence of a chronic problem in rendering judgment in a timely manner, while noting that this was not the subject-matter of K.S.'s complaint.

[38] On July 22, 2019, counsel for Justice Dugré was able to provide additional comments after receiving the sound recording of the hearing in the matter of K.S., which had been provided at the request of the Review Panel.[22] On August 1, 2019, further comments were provided on behalf of Justice Dugré, this time in response to questions submitted by the Review Panel.[23]

[39] On August 30, 2019, the Review Panel, consisting of the Honourable Alexandra Hoy, Associate Chief Justice of the Court of Appeal for Ontario and Chairperson of the Panel, the Honourable Mary Moreau, Chief Justice of the Court of Queen's Bench of Alberta, the Honourable Richard Chartier, Chief Justice of Manitoba, the Honourable Brigitte Robichaud, Justice of the Court of Queen's Bench of New Brunswick, and Mr. André Dulude, issued its report, in which it ruled as follows:

> For these reasons, the Review Panel finds that an Inquiry Committee should be constituted to investigate the conduct of Justice Dugré referred to in the complaint filed by […] in file number CJM-18-301 and proposes the following questions for the Inquiry Committee's consideration:
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> 1. Did Justice Dugré fail to perform the duties of his office in rendering judgment in […] more than nine months after reserving the case for judgment, whereas he had led the parties to believe that he would render judgment quickly and "hopefully" within a week, and whereas the *Code of Civil Procedure* provides that a judge must render a judgment on the merits within six months, except by leave of his or her chief justice?
> 2. Do the grounds relied on by Justice Dugré to justify his delay in rendering judgment in […] and, more specifically, the urgency in delivering judgment in other cases, particularly *Ville de Montréal-Est*, support the conclusion that Justice Dugré did not fail to perform the duties of his office?
> 3. Did Justice Dugré fail to perform the duties of his office in not responding to correspondence from one of the parties in […], who twice reminded him of the urgency in rendering judgment, his undertaking to do so quickly and his obligations in this regard under the *Code of Civil Procedure*?

[21] Letter from M[e] Fournier to the Executive Director of the CJC, dated May 2, 2019.
[22] Letter from M[e] Fournier to the Executive Director of the CJC, dated July 22, 2019.
[23] Letter from M[e] Fournier to M[e] Raymond Doray, dated August 1, 2019.

4. Does the fact that Justice Dugré was the subject of two complaints, in 2012 and 2014, by Chief Justice Rolland regarding his tardiness in rendering judgment, complaints which required the Council to intervene, and that Chief Justice Fournier, in 2019, was of the opinion that Justice Dugré's delay in rendering judgment is a [TRANSLATION] "chronic problem", increase the seriousness of the misconduct and, if so, to what extent?
5. Should the fact that Justice Dugré has not apologized or expressed any remorse be taken into consideration and, if so, to what extent?
6. If it is found that Justice Dugré failed to perform the duties of his office, is his misconduct serious enough to warrant his removal, having regard to the criteria prescribed by the *Judges Act* and the case law? [24]

[40] On October 4, 2019, Justice Dugré filed a Notice of Application for Judicial Review with the Federal Court with respect to the Review Panel's decision.[25] On December 13, 2019, the Federal Court (The Honourable Justice Luc Martineau) rendered judgment ordering that the Notice be struck out as being premature.[26] The appeal against this judgment is pending before the Federal Court of Appeal.

B. IN THE MATTER OF S.S. (CJC-18-0318)

[41] On September 11, 2018, the CJC received a complaint by e-mail from S.S. complaining about Justice Dugré's conduct and about comments that he made during a hearing in a family law matter over which he was presiding. Again, the Executive Director of the CJC opened a file and referred the matter to Chief Justice Joyal.

[42] On December 11, 2018, the Executive Director wrote separately to Justice Dugré and Chief Justice Fournier requesting their comments on the complaint.[27]

[43] On January 10, 2019, Justice Dugré forwarded his comments to the CJC.[28] Chief Justice Fournier's comments were sent on January 28, 2019, in the same correspondence as that which was sent in the matter of K.S.[29]

[44] On March 14, 2019, i.e. on the same date as for the matter of K.S., Chief Justice Joyal rendered his decision to refer the matter to a Review Panel, having concluded, after reviewing S.S.'s e-mail, Justice Dugré's comments and those of Chief Justice Fournier, as well as the content of the sound recordings of the hearing in question, that Justice Dugré's conduct might

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[24] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 10, at pp. 150 and 151.
[25] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 13.
[26] *Dugré v. Canada (Procureur général),* 2019 CF 1604, [2019] A.C.F. No. 1620 (QL).
[27] Letter from the Executive Director of the CJC to Justice Dugré, dated December 11, 2018; Letter from the Executive Director of the CJC to Chief Justice Fournier, dated December 11, 2018.
[28] Letter from Justice Dugré to the Executive Director of the CJC, dated January 10, 2019.
[29] Letter from Chief Justice Fournier to the Executive Director of the CJC, dated January 28, 2019.

be serious enough to warrant his removal from office.[30]

[45] On March 18, 2019, the Executive Director forwarded Chief Justice Joyal's written reasons to Justice Dugré, inviting him to provide him with his written comments for the Review Panel.[31]

[46] On May 2, 2019, counsel for Justice Dugré provided written comments in addition to those that had been provided when the matter was under review by Chief Justice Joyal.[32] On August 27, 2019, counsel for Justice Dugré was able to provide further comments.[33]

[47] On August 30, 2019, the Review Panel issued its report, in which it concluded as follows:

> [TRANSLATION]
>
> As a result, the Review Panel finds that an Inquiry Committee should be constituted regarding the conduct of Justice Dugré who is the subject of the complaint by Ms. […] in File No. CJC18-318 and formulates as follows the questions to be addressed by the Inquiry Committee:
>
> 1. Did Justice Dugré fail in the proper execution of his office in the hearing that he presided on September 7, 2018 in the matter of […], both in his behaviour towards the parties and in his comments during this hearing?
> 2. Do the reasons put forth by Justice Dugré to justify his conduct and comments and, in particular, his duty to conduct a conciliation of the parties, lead to the conclusion that Justice Dugré did not fail in the proper execution of his office?
> 3. Were Justice Dugré's failings in the proper execution of his office, if any, serious enough to warrant recommending his removal, in accordance with the criteria set out in the *Judges Act* and the case law?[34]

[48] On October 7, 2019, Justice Dugré filed a Notice of Application for Judicial Review with the Federal Court with respect to the Review Panel's decision.[35] The Notice was struck out on December 13, 2019 by the aforementioned judgment, and the matter is currently under appeal.

C. IN THE MATTER OF A (CJC-19-0014)

[49] On April 2, 2019, the CJC received a letter from the Honourable Eva Petras, Associate

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[30] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 7.
[31] Letter from the Executive Director of the CJC to Justice Dugré, dated March 18, 2019.
[32] Letter from M[e] Fournier to the Executive Director of the CJC, dated May 2, 2019.
[33] Letter from M[e] Fournier to M[e] Doray, dated August 27, 2019.
[34] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 11, at p. 112.
[35] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 15. File No. T-1637- 19 (Federal Court) and File No. A-485-19 (Federal Court of Appeal).

Chief Justice of the Quebec Superior Court ("**Associate Chief Justice Petras**"), which included a CD-Rom rerecording of a hearing held before Justice Dugré on April 3, 2018, as well as the transcript of the hearing.[36] Associate Chief Justice Petras mentioned therein that counsel present at the hearing had complained verbally to the Coordinating Judge for the District of Laval about Justice Dugré's conduct and comments he made at that hearing. The Executive Director of the CJC opened the file and referred the matter to Chief Justice Joyal.

[50] On April 3, 2019, the Acting Executive Director wrote to Justice Dugré inviting his comments.[37] On May 15, 2019, counsel for Justice Dugré forwarded the judge's comments to the CJC.[38] In addition to comments on the substance of the matter, these comments put forward that Associate Chief Justice Petras's letter does not comply with section 3.2 of the *2015 Review Procedures,* which provides that "the complaint must be in writing".

[51] On October 4, 2019, the Executive Director of the CJC informed Justice Dugré that Chief Justice Joyal had determined that, on its face, the matter might be serious enough to warrant his removal from office and decided to refer it directly to this Inquiry Committee so that the Committee could determine how to dispose of it.[39]

[52] On November 6, 2019, Justice Dugré filed a Notice of Application for Judicial Review with the Federal Court with respect to Chief Justice Joyal's decision.[40] On July 24, 2020, the Federal Court (The Honourable Justice Yvan Roy) ordered that the notice be struck out as being premature.[41] Justice Dugré has also appealed that decision to the Federal Court of Appeal.

D. IN THE MATTERS OF LSA AVOCATS (CJC-19-0358), GOUIN (CJC-19-0372), MORIN (CJC-19-0374) AND S.C. (CJC 19-0392)

[53] On September 17, 2019, the CJC received a letter from the law firm of Linteau Soulière & Associés, which had been instructed by its clients to file a complaint with respect to Justice Dugré's conduct and comments during a hearing over which he presided in March 2019.

[54] On September 26, 2019, the CJC received a complaint by e-mail from Mr. Marcel Gouin complaining about Justice Dugré's conduct and comments during a trial held in November 2017.

[55] On the same day, the CJC received a complaint by e-mail from Mr. François Morin complaining about Justice Dugré's delay in rendering judgment following a hearing held on June 11, 2013.

[56] On October 3, 2019, the CJC received a complaint by e-mail from Mr. S.C.

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[36] Letter from Associate Chief Justice Petras to the Executive Director of the CJC, dated March 27, 2019.
[37] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 9.
[38] Letter from M[e] Fournier to the Executive Director of the CJC, dated May 15, 2019.
[39] *Cahier de pièces du requérant au soutien de ses moyens préliminaires*, Tab 14.
[40] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 16.
[41] *Dugré v. Canada (Attorney General)*, 2020 FC 789, [2020] F.C.J. No. 807 (QL)

complaining about Justice Dugré's conduct and comments during a hearing heldin April 2018.

[57] On November 13, 2019, the Executive Director forwarded a copy of these four complaints to Justice Dugré and informed him that he was referring them directly to this Inquiry Committee so that the Committee could determine how to dispose of them.[42]

[58] On December 13, 2019, Justice Dugré filed a Notice of Application for Judicial Review with the Federal Court with respect to this Executive Director's decision.[43] On July 24, 2020, Justice Roy ordered that this Notice also be struck out, and the matter is currently under appeal.

E. THE DETAILED NOTICE OF ALLEGATIONS

[59] On September 6, 2019, the CJC announced the constitution of this Inquiry Committee as a result of the decisions of the Review Panel following the Panel's early screening of File No. CJC-18-0301 and File No. CJC-18-0318.[44]

[60] On March 4, 2020, the Inquiry Committee forwarded a Notice of Allegations to Justice Dugré pursuant to subsection 5(2) of the *2015 By-Laws*, informing him of the allegations that it intended to investigate. The Notice includes allegations pertaining to six of the aforementioned matters.[45]

[61] On April 6, 2020, Justice Dugré filed a Notice of Application for Judicial Review with the Federal Court with respect to the Notice of Allegations.[46] On July 24, 2020, Justice Roy ordered that this Notice also be struck out, and the matter is currently under appeal.

IV. ANALYSIS

[62] As mentioned above, this judgment addresses five preliminary applications brought by Justice Dugré, i.e.:

- an application for the disqualification of the members of the Inquiry Committee;
- an application for a stay of the inquiry or, alternatively, for a partial striking out of allegations;
- an alternative application to split the inquiry;
- an alternative application for a stay of the inquiry;
- preliminary motions, in the alternative, pertaining to the evidence, i.e. (i) anticipated

[42] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 18.
[43] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 19.
[44] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 12.
[45] Consistent with the Notice of Allegations, the complaints made in CJC-19-0374 will be considered in the context of one of the allegations made in CJC-18-0301.
[46] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 22.

objections to certain evidence, (ii) an application for additional disclosure of evidence.

[63] As several of the arguments raised by these different applications overlap, at least in part, we have, where possible, combined them by theme to avoid unnecessary repetitions.

A. SHOULD THE INQUIRY COMMITTEE STAY ITS PROCESS UNTIL A FINAL DECISION HAS BEEN RENDERED IN EACH OF THE FIVE MATTERS UNDER JUDICIAL REVIEW?

[64] Justice Dugré requests that the Inquiry Committee stay its process until the five applications for judicial review that he has filed with the Federal Court have been adjudicated on the merits.[47] Although he pleads this argument in the alternative, in our view, it would seem logical to dispose of it first, since the object of these applications for judicial review is the same as for the applications for disqualification and for a stay of the inquiry that are before us.

[65] First, we should bear in mind the context in which this application for a stay was brought. On April 8, 2020, following a management conference at which the possibility of a stay of the Committee's process was raised, the Inquiry Committee informed counsel for Justice Dugré that they would have until April 15, 2020 to submit a written application to that effect. On April 15, 2020, counsel for Justice Dugré responded by letter to the request, explaining that they had never intended to formally request that the Committee suspend its process, but, rather, that they were requesting that the Committee confirm whether or not it intended to continue its process despite the applications for judicial review pending before the Federal Court and the Federal Court of Appeal.[48] On April 17, 2020, the Committee informed counsel for Justice Dugré and M[e] Battista that it would continue its process unless a stay was ordered by the Federal Court.[49]

[66] As a result, on April 20, 2020, Justice Dugré filed a motion in Federal Court with respect to File No. T-1818-19, File No. T-2020-19 and File No. T-450-20, for a stay of the process of the Inquiry Committee until the applications for judicial review regarding these matters as well as File No. A-484-19 and File No. A-485-19 had been adjudicated on the merits in the Federal Court of Appeal,[50] all on the basis of section 18.2 of the *Federal Courts Act*.[51]

[67] On May 8, 2020, the Federal Court (The Honourable Yvan Roy) dismissed Justice Dugré's application for a stay.[52] Justice Dugré's appeal against this judgment is still pending before the Federal Court of Appeal.[53]

[68] Faced with this refusal and in order to protect his rights, Justice Dugré is now requesting that this Committee order a stay of its inquiry, while at the same time reiterating the opinion

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[47] *Moyen préliminaire subsidiaire demandant le sursis des enquêtes*.
[48] Letter from M[e] Fournier to the Inquiry Committee, dated April 15, 2020.
[49] Letter from the Inquiry Committee to counsel, dated April 17, 2020.
[50] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 24.
[51] R.S.C. (1985), c. F-7.
[52] *Dugré v. Canada (Procureur général),* 2020 CF 602, [2020] A.C.F. No. 824 (QL) (appeal pending).
[53] File Nos. A-118-20, A-119-20 and A-120-20.

that only the Federal Court has jurisdiction to do so.[54] At the hearing, Justice Dugré justified this approach by explaining that Justice Roy invited him to file his application for a stay with the Inquiry Committee on the ground that an application before the Federal Court was premature.[55] With all due respect, we do not share his interpretation of Justice Roy's reasons.

[69] It is settled law that the Federal Court can only grant a stay if the applicant meets the three-part test set out by the Supreme Court of Canada in *RJR - MacDonald Inc. v. Canada (Attorney General)*[56] and demonstrates (i) that the underlying judicial review raises a serious issue, (ii) that he or she will suffer irreparable harm if the stay is not granted, and (iii) that the balance of convenience lies in his or her favour. In this case, Justice Roy found that Justice Dugré's application did not meet any of the criteria.[57]

[70] In our view, in his interpretation of the judgment, Justice Dugré errs with respect to the serious issue test. Justice Roy found that the underlying applications for judicial review themselves were premature and that it was preferable [TRANSLATION] "to let the Inquiry Committee complete its process as Parliament intended".[58] In so doing, Justice Roy applied the principle set out by the Federal Court of Appeal in *Canada (Border Services Agency) v. C.B. Powell Limited*[59] that "an administrative process of adjudications and appeals […] **must be followed to completion**." (Emphasis added.)[60]

[71] In this regard, Justice Roy's reasons for rejecting the stay are consistent with those of Justice Martineau, who struck out Justice Dugré's first two applications for judicial review in the matters of K.S. and S.S. on the grounds that they were premature and that there were no exceptional circumstances warranting the intervention of the Federal Court, at least until the Inquiry Committee had concluded its inquiry:

> [TRANSLATION]
>
> [...] it is not appropriate to intervene before the process that has been set in motion has at least passed the fourth stage, that of Inquiry Committees, where the applicant shall be able to raise all preliminary and substantive arguments warranting the dismissal of the complaints in question. […].[61]

[72] Moreover, on July 24, 2020, that is, after the hearing before this Committee, Justice Roy also struck out the applications for judicial review in File No. T-1818-19, File No. T-2020-19 and File No. T-450-20 as being premature.[62] Thus, as of the date hereof, all of Justice Dugré's

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[54] *Moyen préliminaire subsidiaire demandant le sursis des enquêtes,* at para. 35.
[55] Transcript of the hearing held on July 8, 2020, at pp. 104 (ll. 6-12), 106 (ll. 2-5), and 107-108 (l. 24, at p. 107, to l. 3, at p. 108).
[56] [1994] 1 S.C.R. 311, [1994] S.C.J. No. 17 (QL) [hereinafter *RJR - MacDonald*].
[57] *Dugré v. Canada (Procureur général),* 2020 CF 602, [2020] A.C.F. No. 824 (QL), at para. 9.
[58] *Dugré v. Canada (Procureur général),* 2020 CF 602, [2020] A.C.F. No. 824 (QL), at para. 34.
[59] 2010 FCA 61, [2010] F.C.J. No. 274 (QL).
[60] *Dugré v. Canada (Procureur général),* 2020 CF 602, [2020] A.C.F. No. 602 (QL), at para. 23.
[61] *Dugré v. Canada (Procureur général),* 2019 CF 1604, [2019] A.C.F. No. 1620 (QL), at para. 23.
[62] *Dugré v. Canada (Attorney General)*, 2020 FC 789, [2020] F.C.J. No. 807 (QL).

applications for judicial review before the Federal Court have been struck out.

[73] Under the circumstances, we do not read Justice Roy's reasons as an invitation to apply for a stay before this Committee. On the contrary, in this case, the Federal Court has reiterated the general principle that the inquiry process must be followed to completion. Viewed from this perspective, it would seem that the application for a stay is rather a collateral attack on the judgment rendered by Justice Roy.

[74] Notwithstanding the foregoing, we are of the view that the application for a stay must be dismissed essentially for the same reasons as those given by Justice Roy.

[75] In this regard, Justice Dugré argues that the application for a stay before this Committee must meet the same *RJR - MacDonald* three-part test as applies before the Federal Court.[63] We agree. Indeed, there is no provision in the *Judges Act* or in the *2015 By-Laws* which expressly empowers the CJC or an Inquiry Committee to suspend its inquiries or investigations pending the outcome of an application for judicial review before the courts. Rather, the normal course of action, which was in fact what Justice Dugré followed, is to apply directly to the Federal Court under section 18.2 of the *Federal Courts Act.* Even assuming that an Inquiry Committee, having full authority over its own procedure, could suspend its own process, it would seem logical to require that the application submitted to the Committee must, at the very least, satisfy the same criteria as those applied by the Federal Court.[64]

[76] With respect to the lack of a serious issue owing to the the fact that the applications for judicial review were premature, in addition to Justice Roy's reasons, with which we fully agree, it should be noted that the Federal Court (The Honourable Simon Noël) also refused to order a stay of the inquiry in *Girouard v. Canada* (*Attorney General)*, **after** the Inquiry Committee had rendered its decisions on the preliminary motions of the judge involved, ruling that "the inquiry proceeding must run its full course."[65] Justice Dugré has not demonstrated that there are exceptional circumstances that would warrant an exception to the rule.

[77] We also fully agree with Justice Roy's reasons regarding the absence of irreparable harm and the balance of convenience. Even though we sympathize with Justice Dugré's arguments regarding possible damage to his reputation, it is worth reiterating what the Federal Court of Appeal said in *Newbould v. Canada (Attorney General)*:

> [...] The threat of damage to reputation inherent in Inquiry Committee proceedings does not flow from the Committee's jurisdiction but from the evidence it hears. To the extent that the possibility of vindication at the end of the proceedings exists, any harm suffered in the course of proceedings

[63] *Moyen préliminaire subsidiaire demandant le sursis des enquêtes,* at para. 36.
[64] See *Canada (Director of Investigation and Research) v. D&B Companies of Canada Ltd.*, 1994 CanLII 3152 (C.T.), aff'd [1994] F.C.J. No. 1504 (QL).
[65] *Girouard v. Canada (Attorney General),* 2017 FC 449, [2017] F.C.J. No. 675 (QL), at para. 44.

could be remedied in whole or in part.[66]

[78] For all these reasons, the application for a stay is dismissed.

B. COULD CHIEF JUSTICE JOYAL CONSTITUTE A REVIEW PANEL IN THE MATTERS OF K.S. AND S.S AND COULD THIS REVIEW PANEL CONSTITUTE AN INQUIRY COMMITTEE?

[79] As part of his application for a stay of the inquiry,[67] Justice Dugré puts forth several arguments that the early screening in the matters of K.S. and S.S. should not have resulted in the constitution of an Inquiry Committee. We will address each of these arguments, starting with the matter of K.S.

1. In the Matter of K.S.

(a) Does the issue of delay in rendering judgment fall under the exclusive jurisdiction of the province?

[80] The matter of K.S. deals with the issue of delay in rendering judgment. However, Justice Dugré argues that [TRANSLATION] "delay in rendering judgment cannot be considered blameworthy behaviour within the meaning of section 99 of the Constitution, since it relates rather to a matter of administration of justice, which falls under exclusive jurisdiction of the provinces."[68] He is mistaken.

[81] Under sections 96 et seq. of the *Constitution Act, 1867,*[69] the Federal Government has exclusive jurisdiction over the appointment and removal of superior court judges, bearing in mind that once appointed, superior court judges may hold office during "good behaviour" until they reach the age of seventy-five.

[82] While it seems well established that a judge can only be removed from office for lack of good behaviour,[70] the *Constitution Act, 1867* does not specify what is meant by a judge's "behaviour". However, as pointed out by Mr. Luc Huppé, now a judge on the Court of Quebec, subsection 65(2) of the *Judges Act* [TRANSLATION] "indirectly defines judicial misconduct by identifying the grounds that render a judge incapacitated or disabled from the due execution of the office of judge and that serve as the basis for recommending removal by the Canadian Judicial Council":[71]

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[66] *Newbould v. Canada (Attorney General)*, 2017 FCA 106, [2017] F.C.J. No. 515 (QL), at para. 35.
[67] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations*.
[68] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 136.
[69] (UK), 30 & 31 Vict., c. 3.
[70] *Gratton v. Canadian Judicial Council* (T.D.), [1994] F.C. 769, [1994] F.C.J. No. 710 (QL).
[71] Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale,* Montréal, Wilson & Lafleur, 2018, at No. 127.

(a) age or infirmity,

(b) having been guilty of misconduct,

(c) having failed in the due execution of that office, or

(d) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office.

[83] Justice Dugré does not contend that this provision is unconstitutional.[72] As a result, these elements are all presumed to fall within the scope of subsection 99(1) of the *Constitution Act, 1867.*

[84] There is no denying the fact that rendering judgment is part of the duties of the office of judge. It can even be said to be a judge's primary function. As Luc Huppé puts it:

> [TRANSLATION] [...] until judgment is rendered, the litigants are uncertain as to the scope of their rights and obligations. Depending on the circumstances, they remain deprived of their rights under the law or exempt from satisfying their legal obligations. Meaningful access to justice depends, *inter alia*, on the time taken by judges to deliver their judgments.[73]

That is why it has generally always been understood that a judge's duties include not only the duty to render judgment, but the duty to do so with reasonable promptness. In our opinion, this duty is part of the duties of the office of judge within the meaning of paragraph 65(2)(*c*).[74]

[85] Moreover, diligence in the performance of adjudicative functions is one of the principles set out by the CJC in the *Ethical Principles for Judges*.[75] This duty of diligence encompasses several components, including the duty to render judgment with "reasonable promptness".[76] While it is true that the *Ethical Principles for Judges* are not "a code or a list of prohibited behaviours" and that they "do not set out standards defining judicial misconduct",[77] the fact remains that they deal with matters that, according to the members of the CJC, fall within the

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[72] The Inquiry Committee has jurisdiction to rule on any constitutional argument: *Girouard v. The Inquiry Committee Constituted under the Procedures for Dealing with Complaints made to the Canadian Judicial Council About Federally Appointed Judges and The Attorney General of Canada,* 2014 FC 1175, at paras. 27, 28 and 47. For an illustration, see *Gratton v. Canadian Judicial Council* (T.D.)*,* [1994] F.C. 769, [1994] F.C.J. No. 710 (QL). In that case, the Federal Court held that paragraph 65(2)(a), which is not at issue in this case, was constitutional.

[73] Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale,* Montréal, Wilson & Lafleur, 2018, at No. 191.

[74] Furthermore, although it appears to us that, conceptually, the issue falls clearly within the scope of paragraph (c), it cannot be ruled out that more serious cases may also amount to "having been guilty of misconduct" within the meaning of paragraph (b). See, by analogy, *Proulx et Gagnon*, 2019 CanLII 52897 (QC CJA), at para. 121: [TRANSLATION] "Can an administrative judge who, more often than not, has not drafted her reasons before the next review, that is, in the year following the decision, be deemed to *perform[…] her office with honour, dignity and integrity and avoids any conduct likely to bring it discredit*? [footnote omitted]".

[75] Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: Canadian Judicial Council, 1998).

[76] *Ibid.,* at p. 17

[77] *Ibid.,* at p. 3.

realm of judicial ethics. In that sense, as the Quebec Court of Appeal wrote in *Ruffo (Re)*, the document "may be useful when examining the contours of the behavioural standards applicable to judges."[78]

[86] This approach to a judge's ethical obligations is not at all unusual. For example, the Conseil de la magistrature du Québec has itself adopted a *Judicial Code of Ethics* under the *Courts of Justice Act*[79], which determines "the rules of conduct and the duties of [provincially appointed] judges towards the public"[80] and expressly provides, in section 6, that a judge must perform the duties of his or her office "diligently"[81], so that delay in rendering judgment may undoubtedly constitute judicial misconduct and be subject to inquiry or investigation by the Conseil de la magistrature du Québec.[82] In fact, it would appear that the Conseil de la magistrature du Québec generally considers that the mere fact of failing to comply with the time limit set out in the *Code of Civil Procedure* amounts to misconduct.[83]

[87] Moreover, as Luc Huppé rightly points out, an ethics inquiry or investigation in this regard [TRANSLATION] "does not interfere with judicial independence, since the complaint relates not to the reasons for judgment but to the failure to render judgment" in a timely manner.[84]

[88] Justice Dugré argues that by enacting section 324 of the *Code of Civil Procedure*,[85] which sets out both the time limits for rendering judgment and the potential consequences for failing to meet them, the Quebec legislature [TRANSLATION] "occupies the field" of jurisdiction with respect to time limits.[86] Essentially, this section provides that the chief justice or chief judge may either extend the advisement period or remove the judge from the case. According to Justice Dugré, the Federal Government cannot interfere in these matters, [TRANSLATION] "since it would thereby be substituting itself for the remedies provided for in the *Code of Civil Procedure,* which fall under provincial jurisdiction."[87]

[89] With all due respect, there is a conflation of issues here. Section 324 of the *Code of Civil Procedure* is an exercise by the provincial legislature of its exclusive jurisdiction over the

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[78] *Ruffo (Re)*, 2005 QCCA 1197, [2005] Q.J. No. 17953 (QL), at para. 51. As for the duty of diligence specifically, the Court of Appeal notes that it implies, in particular, that "judges should take measures to perform their duties with reasonable promptness": *ibid.,* at para. 52.
[79] CQLR, c. T-16.
[80] *Ibid.,* s. 262.
[81] *Judicial Code of Ethics*, CQLR, c. T-16, r. 1, s. 6.
[82] See, for example, *Côté v. Marchildon,* 2019 CanLII 60902 (QC CM) and *G.R. v. Lafond*, 1999 CanLII 7234 (QC CM).
[83] See *A. v. C.,* 2016 CanLII 84828 (QC CM), at para. 11: [TRANSLATION] "The Council generally considers that mere delay in rendering judgment demonstrates a lack of diligence and breaches section 6 of the Code of Ethics ...". See also *A. v. X.,* 2009 CanLII 92147 (QC CM), at para. 16 and Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale,* Montréal, Wilson & Lafleur, 2018, at No. 191.
[84] Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale,* Montréal, Wilson & Lafleur, 2018, at No. 191, referring to *G. R. v. Lafond,* 1997 CanLII 4662 (QC CM).
[85] CQLR, c. C-25.01.
[86] Transcript of the hearing held on July 8, 2020, at p. 11 (ll. 10-20).
[87] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 196.

administration of justice in the province, including procedure in civil matters.[88] Its enactment has no impact on the exclusive jurisdiction of Parliament over the behaviour of superior court judges. As the Honourable Justice La Forest wrote in *Mackeigan v. Hickman*, "[t]he status and independence, and judicial functions of these judges thereby fall outside provincial competence, though a province may, of course, legislate in respect of their purely administrative functions".[89]

[90] Moreover, Justice Dugré's argument that the remedies provided under the *Code of Civil Procedure* are exhaustive and would result in the issue falling outside the realm of ethics is contradicted by the fact that, as we have seen, failure by a judge of the Court of Quebec to comply with time limits may also constitute a breach of the *Judicial Code of Ethics*. If one were to adopt Justice Dugré's argument, one would have to conclude that diligence is part of the ethical duties of provincially appointed judges, but not part of the duties of superior court judges. With all due respect, we do not agree. Every judge has a duty to render judgment expeditiously and, depending on the circumstances, a breach of this duty may certainly constitute judicial misconduct.

[91] For all of these reasons, we conclude that the CJC has jurisdiction to investigate or inquire into complaints or allegations of delay in the delivery of judgments by superior court judges.

(b) Could Chief Justice Joyal and the Review Panel consider Chief Justice Fournier's allegation that Justice Dugré had a chronic problem in rendering judgments in a timely manner as well as prior complaints to the CJC?

[92] Justice Dugré also criticizes Chief Justice Joyal for having taken into account material that was irrelevant to K.S.'s complaint, i.e. [TRANSLATION] "the allegation of a so-called chronic problem" made by Chief Justice Fournier[90] and the existence of two prior complaints made by former Chief Justice Rolland, which have not been proven.[91] He makes the same criticism against the Review Panel.[92]

[93] As mentioned above, it was Chief Justice Fournier who, in response to the CJC's request for comments pursuant to paragraph 6(b) of the *2015 Review Procedures,* noted that Justice Dugré's delay in rendering judgment was a chronic problem despite past interventions by the CJC. Justice Dugré objects to consideration of this allegation, particularly on the ground that the CJC's review was restricted to the facts alleged by K.S.[93] In other words, in the absence of

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[88] *Constitution Act, 1867,* (UK), 30 & 31 Vict., c. 3, ss. 92(14).
[89] [1989] 2 S.C.R. 796, [1989] S.C.J. No. 99, at p. 812. See also *Girouard v. Canada (Attorney General),* 2020 FCA 129, [2017] F.C.J. No. 515 (QL), at para. 108 (application for leave to appeal to the S.C.C. pending).
[90] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 149.
[91] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 151.
[92] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations*, at paras. 159 and 200.
[93] Transcript of the hearing held on July 7, 2020, at pp. 203 (l. 19) to 206 (l. 23); Transcript of the hearing held on July 8, 2020, at pp. 14 (l. 23) to 15 (l. 12).

a formal complaint from Chief Justice Fournier, the allegation pertaining to a chronic problem could not be considered by the CJC.

[94] With all due respect, Justice Dugré takes an unduly restrictive view of the applicable provisions that ignores the inquisitorial nature of the process. In conducting an inquiry or investigation under section 63 of the *Judges Act*, the CJC is not called upon to rule on private interests between litigants; rather, it defends the general public interest, which is served by the complementary principles of judicial independence and accountability, by ensuring compliance with judicial ethics through an inquisitorial process marked by an active search for the truth. Despite certain procedural distinctions, Justice Gonthier's description of the inquiry conducted by the Conseil de la magistrature du Québec in *Ruffo v. Conseil de la magistrature* is relevant:

> [72] As I noted earlier, **the Comité's mandate is to ensure compliance with judicial ethics; its role in this respect is clearly one of public order**. For this purpose, it must inquire into the facts to decide whether the *Code of Ethics* has been breached and recommend the measures that are best able to remedy the situation. Accordingly, as the statutory provisions quoted above illustrate, the debate that occurs before it does not resemble litigation in an adversarial proceeding; rather, it is intended to be **the expression of purely investigative functions marked by an active search for the truth**.
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> [73] **In light of this, the actual conduct of the case is the responsibility not of the parties but of the Comité itself**, on which the CJA confers a pre-eminent role in establishing rules of procedure, **researching the facts** and calling witnesses. Any idea of prosecution is thus structurally excluded. **The complaint is merely what sets the process in motion**. Its effect is not to initiate litigation between two parties. This means that where the Conseil decides to conduct an inquiry after examining a complaint lodged by one of its members, the Comité does not thereby become both judge and party: as I noted earlier, **the Comité's primary role is to search for the truth**; this involves not a *lis inter partes* but a true inquiry in which the Comité, through its own research and that of the complainant and of the judge who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation based on the circumstances of the case before it.[94]
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> (Emphasis added.)

[95] It is in this spirit that the Federal Court of Appeal recently confirmed in *Girouard v. Canada (Attorney General)* that the review that precedes the constitution of an Inquiry Committee is "not limited by the allegations that gave rise to the complaint" and that it may

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[94] *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, [1995] S.C.J. No. 100 (QL), at paras. 72-73. See also *Girouard v. Canada (Attorney General),* 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 36 (application for leave to appeal to the S.C.C. pending).

also relate to "any other information that could affect a judge's ability to sit as a judge".[95]

[96] In accordance with these principles, Chief Justice Joyal and the Review Panel could therefore legitimately consider Chief Justice Fournier's allegation in the early screening process triggered by K.S.'s complaint.

[97] Moreover, at the hearing, Justice Dugré argued that, in any event, a chronic problem of delay could not, under any circumstances, be investigated by the CJC, since each delay must be viewed within its context and the CJC would only have jurisdiction if each of the alleged delays could by itself lead to the removal of the judge from office.[96] We reject that argument. In our view, a chronic problem in rendering judgments in a timely manner can be investigated and may lead to a recommendation that the judge be removed from office if the problem is of such magnitude as to render the judge incapacitated or disabled from the due execution of his or her office.[97]

[98] Furthermore, Justice Dugré argues that it was inappropriate to consider Chief Justice Rolland's prior complaints since they had not been proven.[98] He adds that the doctrine of *estoppel (cause of action estoppel*) prohibits consideration of those complaints in the course of the inquiry or investigation.[99]

[99] First, as the Federal Court of Appeal noted in *Girouard v. Canada (Attorney General)*, it is settled law that the doctrine of estoppel does not apply to CJC decisions.[100] Second, in *Ruffo*, the Quebec Court of Appeal held that a judge's prior record in conduct-related matters may be relevant to the determination of the sanction:

> [244] In *Therrien*, the Supreme Court affirmed that the Court of Appeal enjoys broad powers. After conducting an inquiry, its mandate consists of submitting a report that provides "a complete picture of the situation for the Minister of Justice" (para. 40) and of making a recommendation (para. 41). The inquiry, for its part, has as its "primary purpose … to provide a basis for the report and the findings to which it leads" (para. 41). In this context, this Court must carefully examine the complaint giving rise to the Minister's request so that it may establish first whether it is justified and then whether it warrants a reprimand or a recommendation of removal (section 279 C.J.A.). **Determining the level of sanction, therefore, requires a review of the judge's prior record in conduct-related matters**. How would it be

[95] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 59 (application for leave to appeal to the S.C.C. pending).
[96] Transcript of the hearing held on July 8, 2020, at pp. 25 (l. 9 to l. 16), 41 (l. 15 to l. 21) and 42 (l. 11 to l. 20).
[97] See, for example, *Proulx et Gagnon*, 2019 CanLII 52897 (QC CJA) and 2020 CanLII 35821 (QC CJA).
[98] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 151.
[99] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 281-288.
[100] 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 71 (application for leave to appeal to the S.C.C. pending).

> possible to create a "complete picture of the situation" for the Minister if it were not possible to draw attention to prior sanctions? The Court must determine, *inter alia*, "whether [the judge's conduct is such 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" (para. 147). **This assessment is by necessity general in scope: its subject is the judge's conduct as a whole. In a case where there have been repeated offences or earlier reprimands, therefore, a proper assessment could not take place if the Court limited its consideration to individual complaints and ignored the past**. Such an approach would also seriously undermine public confidence in the administration of justice. When assessing the judge's conduct as a whole, **the Court must assign a value to this whole; thus, a single, venial fault committed once over the course of an otherwise spotless career is not equal in seriousness to the same fault committed as one of a series of successive breaches**. In sum, if a sanction is appropriate, its harshness must be assessed globally so that it is in keeping with the objective defined by the Supreme Court.[101]
>
> (Emphasis added.)

[100] These principles also apply to CJC inquiries and investigations. It is true that the all the prior incidents referred to in *Ruffo* were investigated, whereas Chief Justice Rolland's complaints were resolved at the early screening stage, such that some distinctions could be made. However, as noted by the Review Panel, there are also precedents in disciplinary matters in which the existence of prior complaints has been found to be relevant despite the fact that they were closed at the administrative stage.[102] The probative value and relevance of the prior complaints concerning Justice Dugré may be debated at the inquiry or investigation; however, it is too early to exclude them from debate at this preliminary stage.

[101] For these same reasons, we dismiss Justice Dugré's alternative motion for a partial striking out of allegations.[103]

(c) Does Chief Justice Joyal's decision breach procedural fairness?

[102] Justice Dugré further contends that Chief Justice Joyal's decision breaches procedural fairness because it was based in part on the comments of Chief Justice Fournier, which were received after those of Justice Dugré and without the latter having had the opportunity to respond to them.[104] The unfairness is allegedly due to the fact that it was Chief Justice Fournier who, in his comments, raised the existence of prior complaints against Justice Dugré and the

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[101] *Re Ruffo*, 2005 QCCA 1197, [2005] Q.J. No. 17953 (QL), at para. 244.
[102] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 10, at p. 144.
[103] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 281-291.
[104] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 139-142.

alleged chronicity of the problem.

[103] First, it should be noted that the *2015 Review Procedures* do not stipulate the order in which comments from the judge and his or her Chief Justice are to be received and do not expressly require that the Chief Justice's comments be forwarded to the judge. In fact, the Chairperson of the Judicial Conduct Committee is not required to obtain comments from either of them; it all falls to his or her discretion having regard to the circumstances of each case.

[104] Second, it is important to recall that where a process involves several successive stages, procedural fairness requirements will be less stringent in the early stages.[105] In this case, Justice Dugré had the opportunity to respond to Chief Justice Fournier's comments at the following stage before the Review Panel. Moreover, he will have the opportunity to fully respond to them in the course of our inquiry, during which he will have the opportunity to present his relevant evidence, have his witnesses heard and cross-examine witnesses called by M[e] Battista. Finally, he will have the opportunity to make submissions to the CJC before the CJC issues its report. Under the circumstances, we consider that there is no breach of procedural fairness.

[105] Justice Dugré further argues that Chief Justice Joyal's decision was based on a letter received by Associate Chief Justice Petras from the complainant's counsel, a copy of which he allegedly never received.[106]

[106] Indeed, Chief Justice Joyal noted in his reasons that the complainant's lawyer allegedly sent a letter to Associate Chief Justice Petras on November 14, 2018, informing her that the parties were still awaiting the judgment.[107] However, the Review Panel's report makes no reference to this[108] and the letter was not in the file that was initially provided to the Inquiry Committee.

[107] As will be discussed later in the reasons concerning the application for disclosure of evidence, since the hearing and at the request of Justice Dugré, the Committee has obtained the letter that will be provided to Justice Dugré and his counsel and to M[e] Battista. No explanation has been given as to what happened to the copy that Chief Justice Joyal had in his possession at the time he wrote his reasons, nor why it was not included in the documents that were provided to Justice Dugré at the early screening stage or to this Committee.

[108] That being the case, although relevant to the chain of events, the letter itself does not play a decisive role. In fact, it is not disputed that Justice Dugré and Associate Chief Justice Petras had a conversation about the matter on or about November 15, 2018, following which the latter

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[105] Inquiry Committee of the Canadian Judicial Council Regarding the Conduct of the Honourable Michel Girouard, S.C.J., *Reasons for Decisions on Preliminary Motions Rendered from the Bench on February 22, 2017,* at para. 150.
[106] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 143.
[107] *Cahier de pièces du requérant au soutien de ses moyens préliminaires*, Tab 6, at pp. 107 and 111.
[108] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 10.

confirmed to the parties' counsel that judgment would be rendered on November 27.[109] Thus, Associate Chief Justice Petras's intervention in the matter came as no surprise to Justice Dugré or to anyone else. We do not think it makes any difference whether or not her intervention resulted from the November 14 letter. Moreover, as already mentioned, the Review Panel itself does not appear to have received a copy of the letter, or, at least, it did not take it into account in its analysis.

[109] Thus, even assuming for argument's sake that the letter should have been among the documents provided to Justice Dugré, the error is not a decisive factor since the outcome of the early screening process would have been the same.[110]

[110] Finally, Justice Dugré complains of [TRANSLATION] "the unexplained period of three months and eleven days" it took the CJC to send him a copy of the complaint.[111] Besides the fact that he does not explain how this delay allegedly breached procedural fairness, there was nothing [TRANSLATION] "unexplained" about it, as section 11.1 of the *2015 Review Procedures* expressly provides that the CJC may defer any communication with the judge while he or she remains seized with the matter that gave rise to the complaint, which was the case here.

(d) Did Chief Justice Joyal exceed his authority by rendering a decision on the merits of the matter?

[111] Justice Dugré argues that Chief Justice Joyal exceeded his authority:

> [TRANSLATION]
>
> […] by not limiting his decision to a "prima facie" analysis, but instead by rendering a firm decision that [TRANSLATION] "the allegation in this complaint has been established", that evidence of the complaint was established, and that the complaint was serious enough to warrant the removal of the Applicant, thereby deciding, for all legal purposes, that the Applicant should be removed from office.[112]

[112] He further argues that this excess of jurisdiction is [TRANSLATION] "the 'drop of poison' that contaminated the review process to which the Applicant was entitled, as a result of which the process was void *ab initio*".[113]

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[109] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 10, at p. 140.
[110] See *Girouard v. Canada (Attorney General),* 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 95 (application for leave to appeal to the S.C.C. pending).
[111] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 150.
[112] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 132.
[113] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 157.

[113] With all due respect, we cannot accept these arguments.

[114] It is possible that, when read out of context, the phrase [TRANSLATION] "the allegation in this complaint has been established" may seem ill-chosen. Nevertheless, a full and objective reading of Chief Justice Joyal's reasons confirms that he understood his role perfectly. In fact, he accurately summarized the true scope of his decision on the first page of his reasons:

> [TRANSLATION]
>
> After a careful review of the complaint, the comments of Justice Dugré and those of Chief Justice Fournier, and prior complaints concerning Justice Dugré on questions of excessive delays, I have concluded that the conduct of Justice Dugré that was the subject-matter of the complaint **might be** serious enough to warrant his removal from office and requires a review by a Review Panel.[114]
>
> (Emphasis added.)

[115] This conclusion is consistent with the role of the Chairperson of the Judicial Conduct Committee as set out in subsection 2(1) of the *2015 By-Laws* and in section 8.2 of the *2015 Review Procedures*.

> (e) Are the decisions of Chief Justice Joyal and the Review Panel unreasonable?

[116] Finally, Justice Dugré argues that the decisions of Chief Justice Joyal and the Review Panel are unreasonable since:

> [TRANSLATION]
>
> [...] an objective and impartial review of the matter would lead any reasonable person to conclude that, under the circumstances, taking nine months and 11 days to render judgment in this complex case that was fiercely contested by both parties is undoubtedly consistent with [TRANSLATION] "reasonable promptness".[115]

[117] For the same reasons, he requests that the Inquiry Committee conclude that it does not have jurisdiction to inquire into the matter.[116]

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[114] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 6, at p. 106.
[115] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 152.
[116] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 198.

[118] At this preliminary stage, the Inquiry Committee must not address the merits of the complaints against Justice Dugré.

[119] However, the fact remains that in the inquiry into the conduct of the Honourable Jean-Guy Boilard, the CJC expressed the view that an Inquiry Committee could, at least in an inquiry requested by the Minister or the Attorney General of a province under subsection 63(1) of the *Judges Act*, terminate the inquiry after review if it is of the view that the facts, even if assumed to be true, could not lead to a finding of misconduct.[117] As stated by the Federal Court of Appeal in *Cosgrove v. Canadian Judicial Council*, this principle, referred to as the "*Boilard* rule", is as follows:

> [...] a valid expression of the general principle that a tribunal, as master of its own procedure, may decline to proceed in any case that is outside its mandate or is an abuse of its process.[118]

[120] Even assuming that the *Boilard* rule can be applied in the context of a subsection 63(2) inquiry or investigation, something that the Federal Court seems to suggest in *Girouard v. Canadian Judicial Council,*[119] we cannot, at this stage, conclude that the inquiry into the allegations arising from the matter of K.S. should be terminated.

[121] Indeed, even if we disregard the allegation of chronicity stemming from Chief Justice Fournier's comments and focus on the matter of K.S., Justice Dugré's application for a stay of the inquiry fails to mention certain matters noted in the Review Panel's report, such as the fact that his comments at the end of the hearing may have given the parties the impression that he was aware of the urgency of the matter and intended to render judgment very quickly, or the fact that he did not follow up on correspondence from the plaintiff's counsel reminding him of the urgency of rendering judgment,[120] which, if they were to be proven in the inquiry, could have an impact on the assessment of his conduct. Only an inquiry or investigation will enable light to be shed on all relevant circumstances.

[122] In this case, we are of the view that the allegations, if proven, might be serious enough to warrant recommending the removal of Justice Dugré from office. Accordingly, we consider that an inquiry is necessary to shed light on all relevant circumstances so that the necessary findings can be set out in our report and, if necessary, so that we may decide whether to recommend the removal of Justice Dugré from office.[121]

2. In the Matter of S.S.

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[117] Canadian Judicial Council, *Report of the Canadian Judicial Council to the Minister of Justice of Canada under ss. 65(1) of the Judges Act concerning Mr. Justice Jean-Guy Boilard of the Superior Court of Quebec,* December 19, 2003.
[118] *Cosgrove v. Canadian Judicial Council*, 2007 FCA 103, [2007] F.C.J. No. 352 (QL), at para. 52.
[119] *Girouard v. Canadian Judicial Council,* 2015 FC 307, [2015] F.C.J. No. 1100 (QL), at para. 60.
[120] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 10, at pp. 146 and 151.
[121] *2015 By-Laws,* ss. 8(1).

(a) Did Chief Justice Joyal and the Review Panel exceed their authority by rendering a decision on the merits of the matter?

[123] As in the matter of K.S., Justice Dugré claims that Chief Justice Joyal exceeded his authority by rendering a decision on the merits of the matter.[122] Once again, certain turns of phrase could undoubtedly have been better expressed. However, these comments have been made and must be read in the context of a [TRANSLATION] "prima facie" assessment of the facts, as it is expressly stated in the last paragraph of Chief Justice Joyal's reasons.[123] Justice Dugré argues that this last paragraph [TRANSLATION] "cannot set aside the firm statements that precede it."[124] The point is not to [TRANSLATION] "set [them] aside" but to put them in their proper context and not distort their meaning.

[124] Moreover, even if Justice Dugré is right on this point and Chief Justice Joyal had indeed formed a firm opinion about his conduct, it would be of no consequence since he will not participate in the inquiry or investigation nor in the deliberations of the CJC. The operative part of his decision, if it can be so described, is limited to referring the matter to a Review Panel, which was otherwise in no way bound by his views.[125]

[125] In this regard, Justice Dugré also argues that the Review Panel exceeded its authority by making findings of fact.[126] Once again, the allegation is without merit. The Review Panel clearly stated that it is for the Inquiry Committee to [TRANSLATION] "rule on the merits of the complaint" and that its own role is limited to reviewing the information at its disposal and deciding whether an inquiry should be conducted.[127] It was not required to repeat the same caveats in every subsequent sentence in which it expressed an opinion on the information under review.

[126] Moreover, regardless of the language used by Chief Justice Joyal or the Review Panel in both the matter of S.S. and the matter of K.S., we are mindful of the fact that we alone are responsible for determining the merits of the allegations after hearing all the relevant evidence and that we are in no way bound by the reasons for the decisions rendered during the early screening process.[128] In fact, this is clearly stated in the Notice of Allegations.[129]

(b) Do the decisions of Chief Justice Joyal and the Review Panel breach

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[122] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 107-110.
[123] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 7, at p. 120.
[124] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 110.
[125] Inquiry Committee concerning the Hon. Michel Girouard, *Ruling of the Inquiry Committee on certain preliminary matters,* April 8, 2015, at para. 120: [TRANSLATION] "Its decision is in the nature of an administrative screening and is not determinative".
[126] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 121.
[127] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 11, at p. 164.
[128] See Inquiry Committee concerning the Hon. Michel Girouard, *Ruling of the Inquiry Committee on certain preliminary matters,* April 8, 2015, at paras. 135-137.
[129] Detailed Notice of Allegations, at paras. 4-6.

procedural fairness?

[127] Justice Dugré also argues that Chief Justice Joyal breached procedural fairness:

- by taking into account the tone used by Justice Dugré at the hearing and two comments he allegedly made, even though the comments were not specifically mentioned in S.S.'s complaint e-mail;[130]
- by taking into account Chief Justice Fournier's comment, even though he had not listened to the recording of the hearing;[131]
- by failing to consider relevant factors;[132]
- by failing to take Justice Dugré's comments into consideration.[133]

[128] The first criticism must be rejected. As already indicated, the CJC is "not limited by the allegations that gave rise to the complaint."[134]

[129] The complainant, S.S., e-mailed the CJC to complain about Justice Dugré's conduct and comments made during a hearing held on September 7, 2018. In reviewing the matter, Chief Justice Joyal listened to the recording of the hearing and identified elements that he considered serious enough to appoint a Review Panel. Justice Dugré's conduct as a whole during the hearing, including all of his comments and the tone of his remarks, is properly part of the subject-matter of S.S.'s complaint.

[130] In fact, it was Justice Dugré himself who, in his comments to Chief Justice Fournier, raised the issue of the tone he had used in addressing the parties and his comment concerning the boarding school.[135] Under these circumstances, Justice Dugré's allegation that [TRANSLATION] "basic procedural fairness would have required" that he be notified [TRANSLATION] "in order to obtain his comments beforehand" on these matters must be rejected.[136]

[131] As for the second criticism, suffice it to say that Chief Justice Joyal himself listened to the recording and drew his own conclusions on the matter. While he stated that he agreed with Chief Justice Fournier,[137] the latter's comments are not among the factors listed by Chief Justice

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[130] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 112 and 113.
[131] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 114.
[132] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 116.
[133] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 117.
[134] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 59 (application for leave to appeal to the S.C.C.).
[135] Letter from Justice Dugré to the Executive Director of the CJC, dated January 10, 2019.
[136] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 115.
[137] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 7, at p. 120.

Joyal in support of his decision.[138]

[132] The last two criticisms are inseparable, since the [TRANSLATION] "relevant factors" that Chief Justice Joyal allegedly failed to consider are those mentioned by Justice Dugré in his comments to Chief Justice Joyal. In fact, Chief Justice Joyal addressed them specifically when he summarized the factors considered in his decision, although he considered that the judge's explanations [TRANSLATION] "are not consistent with reality".[139] As stated by the Federal Court of Appeal in *Girouard v. Canada* (*Attorney General)*, "not accepting a party's submissions is not tantamount to not considering them."[140] While Justice Dugré may certainly not agree with this assessment by Chief Justice Joyal, he cannot claim that he was not heard.

[133] Justice Dugré essentially reiterates the same criticisms against the Review Panel.[141] For the foregoing reasons, we reject them.

(c) Does the Inquiry Committee have jurisdiction to conduct an inquiry or investigation?

[134] Furthermore, Justice Dugré requests that the Inquiry Committee decline jurisdiction because the impugned conduct could not be serious enough to warrant his removal from office. In particular, Justice Dugré notes that his conduct at the hearing in the matter of S.S. was consistent with the principle of "good behaviour" in section 99 of the *Constitution Act, 1867,* as he did not breach the *Judges Act* and the CJC's *Ethical Principles*.[142]

[135] In support of this argument, he points out, *inter alia*, that his comments were made in a context of mandatory judicial conciliation, that he cannot be faulted for having succeeded in reconciling the parties, nor for having demonstrated bias. He adds that S.S. could have ended the conciliation process at any time and that her lawyer thanked him at the end of the hearing, which indicates that she fully endorsed the process.[143]

[136] Similarly, Justice Dugré also requests that the Inquiry Committee decline jurisdiction with respect to the A, S.C., LSA and Gouin complaints. In support of this argument, he insists on the fact that he did not exhibit bias and that there were lengthy waits between the events and the complaints.[144]

[137] It is not argued that a judge's words and his behaviour towards the parties in the

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[138] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 7, at pp. 117-119.
[139] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 7, at p. 120.
[140] 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 46 (application for leave to appeal to the S.C.C. pending).
[141] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 123 and 128.
[142] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 161-174.
[143] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 180-184.
[144] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 175-179 and 185-194.

courtroom can properly be inquired into or investigated by the CJC. In this case, as in the matter of K.S., we are of the view that the allegations, if proven, might be serious enough to warrant recommending the removal of Justice Dugré from office. Accordingly, we consider that an inquiry is necessary to shed light on all relevant circumstances so that the necessary findings can be set out in our report and, if necessary, so that we may decide whether to recommend the removal of Justice Dugré from office.[145]

3. Was it unfair to appoint a Review Panel composed of the same members to review both matters?

[138] Justice Dugré contends that it was unfair to constitute a Review Panel composed of the same members to review the complaints of K.S. and S.S.[146]

[139] It is not uncommon for decision-makers to hear more than one case involving the same party. The situation is not unusual, even in matters of judicial ethics.[147] Justice Dugré does not plead any specific facts to show how this situation would have breached procedural fairness in this case. The argument is rejected.

C. Once the Inquiry Committee has been constituted, does the system breach procedural fairness prima facie by reason of the absence of an independent counsel?

[140] The rules of the CJC formerly provided for the appointment of an independent counsel tasked with presenting all relevant evidence to the Inquiry Committee. However, the procedural reform reflected in the *2015 By-Laws* removed this role from the investigative process.

[141] Justice Dugré argues that this reform has rendered the application of the procedural fairness guarantees relating to the inquiry process arbitrary, uncertain and unpredictable. In his view, abolishing the role of independent counsel has tainted the process on an institutional level because the process can no longer comply with the rules of procedural fairness.

[142] With all due respect, we cannot accept Justice Dugré's arguments, as his claims have already been considered and rejected by the Federal Court and the Federal Court of Appeal. Justice Rouleau dealt with the same issue as the one before us in *Girouard v. Canada (Attorney General)*.[148] Justice Girouard argued that, on an institutional level, the Council's by-laws infringe on the security of tenure of judges, as they provide no guarantee of impartiality and constitute a breach of procedural fairness. In rejecting this claim, Justice Rouleau stated the following:

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[145] *2015 By-Laws,* ss. 8(1).
[146] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 127.
[147] See, for example, *Bielous v. De Michele,* 2016 CanLII 18164 (QC CM).
[148] *Girouard v. Canada (Attorney General)*, 2019 FC 1282, [2019] F.C.J. No. 1154 (QL).

[125] In my view, the absence of an independent counsel is not problematic in the least. The *Cosgrov*e decision dealt with the constitutionality of subsection 63(1) of the *Act* with regard to provincial attorneys generals. In *Cosgrove*, the appellant argued that judicial independence did not permit a provincial attorney general from filing a request for an inquiry with the Council with regard to a federally-appointed judge. In its finding that there was no breach of procedural fairness, the Federal Court of Appeal identified five aspects of the inquiry process that, taken as a whole, show that an inquiry, once initialed, is fair. These factors, which include independent counsel, are summarized above at paragraph [74].

[126] There is nothing in *Cosgrove* to suggest that the presence of an independent counsel was deemed necessary to upholding procedural fairness. The Federal Court of Appeal simply took the view that the presence of such counsel was one factor among others that ensured the procedural fairness of the inquiry.

[127] The issue raised by Justice Girouard was considered and rejected by the second Inquiry Committee. At paragraphs 143 and 144 of its reasons for decision on the preliminary motions, the second Inquiry Committee stated that:

> [TRANSLATION]
> [T]he process currently in place bears a certain resemblance to the one established in Quebec pursuant to the *Courts of Justice Act*, which provides at section 281 that the Conseil de la magistrature du Québec may retain the services of counsel to assist the inquiry committee.

And that:

> [T]he Supreme Court of Canada confirmed in *Therrien* that this model, under which presenting counsel acts under the direction of the inquiry committee, raises no reasonable apprehension of bias.

[128] However, Justice Girouard fails to identify any error in the Committee's detailed analysis on this point. In my view, the removal of the independent counsel function from the process implemented in 2015 does not infringe upon the principles of judicial independence, fundamental justice or procedural fairness.

[129] In this case, as in *Therrien*, in the absence of an independent counsel, the second Inquiry Committee availed itself of the option to retain the services of counsel. The counsel retained acted under the direction of the committee, while remaining bound by their obligation to preserve their professional independence (*Code of Ethics of Advocates*, c B-1, r 3.1, s 13). The first guiding principle of the mandate of the counsel retained required that [translation] "the hearing on the merits be part of an inquiry process

> dedicated to truth-seeking and carried out in accordance with procedural fairness" (Inquiry Committee of the Canadian Judicial Council with respect to the conduct of the Honourable Michel Girouard, J.S.C., *Directions to Counsel* (March 17, 2017) at para 10). This principle is consistent with the inquisitorial, rather than adversarial, role played by the Inquiry Committee and the Council. Thus, when counsel for the second Inquiry Committee were examining and cross-examining witnesses, they were not acting as prosecutors, but were rather "providing the committee with help and assistance in carrying out the mandate assigned to it by the statute" (*Therrien* at para 103).
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> [130] Furthermore, there is nothing in this case to suggest that, had independent counsel been appointed, the interests of Justice Girouard would have been better represented. In this regard, it is worth noting that Justice Girouard had access to his own counsel to represent him in this matter.
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> [131] For all these reasons, I am not of the view that the removal of the independent counsel function infringed on Justice Girouard's procedural fairness rights.

[143] Justice Rouleau's decision was upheld on appeal.[149] With respect to the issue of the absence of independent counsel, Justice de Montigny, writing for the Court, said he essentially agreed with the view expressed in the decisions of Justice Rouleau and the Inquiry Committee. He added the following:

> [75] With regard first to the elimination of independent counsel following the coming into force of the 2015 By-laws, Justice Girouard alleges that this is a violation of the rules of procedural fairness, relying on *Cosgrove*. It is true that in that case this Court identified the presence of independent counsel as one of the five factors for establishing the fairness of inquiries conducted by the Council (at para. 65). Clearly, that does not mean that the absence of one of those factors is fatal to the fairness of the entire process.
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> [76] As the second Inquiry Committee and the Federal Court noted, the Supreme Court gave its approval to a very similar procedure put in place by the *Courts of Justice Act* in *Therrien* and *Ruffo*. Like section 4 of the 2015 By-laws and sections 3.2 and 3.3 of the Handbook of Practice, section 281 of the *Courts of Justice Act* provides that Quebec's Conseil de la magistrature may retain the services of an advocate to assist the committee of inquiry, and section 22 of the [TRANSLATION] Rules of practice for the conduct of an inquiry committee stipulates that counsel retained by the inquiry committee is the advisor to the committee and intervenes under the

[149] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL) (application for leave to appeal to the S.C.C. pending).

authority of its chairperson. After citing the passage of *Ruffo* reproduced at paragraph 36 of these reasons, the Supreme Court wrote the following in *Therrien*:

> [104] I would also add that the committee's recommendation is not final with respect to the outcome of the disciplinary process, which then falls within the jurisdiction of the Court of Appeal and thereafter, if applicable, the Minister of Justice: *Ruffo*, *supra*, at para. 89. Accordingly, the role played by the independent counsel neither violates procedural fairness nor raises a reasonable apprehension of bias in a large number of cases in the mind of an informed person viewing the matter realistically and practically, and having thought the matter through.

[77] I find that these two Supreme Court decisions are an unequivocal response to the appellant's arguments concerning the role of the lawyer in the second Inquiry Committee.

[144] Similarly, we find that the Ruling of the Inquiry Committee on Certain Preliminary Matters in *Girouard*, the decision of Justice Rouleau on judicial review and the decision of the Federal Court of Appeal are an unequivocal response to Justice Dugré's arguments concerning the effect of the lack of independent counsel. This is an inquiry conducted by this Inquiry Committee with the assistance of counsel tasked with presenting the case under the direction of the Committee in a process that allows Justice Dugré to be informed of the allegations made against him as well as the evidence that would support those allegations, and that provides him with the full right to be heard before the Committee makes a determination on the matter.

[145] In summary, we apply the law as stated by the Federal Court and the Federal Court of Appeal and reject this preliminary argument on the ground that the lack of independent counsel does not infringe on Justice Dugré's right to procedural fairness.[150]

D. Does the system violate procedural fairness prima facie by reason of the fact that the Inquiry Committee drafts the Notice of Allegations?

[146] Justice Dugré argues that the rules of procedural fairness were breached because the Notice of Allegations was drafted by the Inquiry Committee itself. He argues that this is the commencement of an *ex parte* investigation and a breach of the principle of compartmentalization. With all due respect, all of Justice Dugré's arguments are based on the mistaken notion that the inquiry process itself is akin to a trial rather than to an inquiry or investigation. However, the statutory scheme and the relevant jurisprudence establish that the process followed before Inquiry Committees is inquisitorial and not adversarial in nature.

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[150] In this regard, we would add that the Directions to Counsel issued by this Inquiry Committee are similar to those issued by the Committee in the *Girouard* case. Furthermore, this Committee issued those Directions after the Notice of Allegations was sent, whereas in *Girouard,* they were issued following the judgment on the preliminary motions.

[147] In *Knight v. Indian Head School Division No. 19*, Justice L'Heureux-Dubé noted that "[t]he concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case."[151] She reiterated this observation in *Baker v. Canada* (*Minister of Citizenship and Immigration),* while specifying that "[a]ll of the circumstances must be considered in order to determine the content of the duty of procedural fairness."[152] In *Baker*, she added the following:

> [22] Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.
>
> [23] Several factors have been recognized in the jurisprudence as relevant to determining what is required by the common law duty of procedural fairness in a given set of circumstances. One important consideration is the nature of the decision being made and the process followed in making it. In *Knight*, *supra*, at p. 683, it was held that "the closeness of the administrative process to the judicial process should indicate how much of those governing principles should be imported into the realm of administrative decision making". The more the process provided for, the function of the tribunal, the nature of the decision-making body, and the determinations that must be made to reach a decision resemble judicial decision making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness. See also *Old St. Boniface*, *supra*, at p. 1191; *Russell v. Duke of Norfolk*, [1949] 1 All E.R. 109 (C.A.), at p. 118; *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Canadian Human Rights Commission*), 1989 CanLII 44 (SCC), [1989] 2 S.C.R. 879, at p. 896, *per* Sopinka J.

[148] The statutory scheme under which this inquiry is being conducted is not at all akin to the judicial process. We can do no better than to quote the following comments made by the Federal Court of Appeal in *Girouard*[153]:

> [...] it is worth noting that the role of the Council and its committees is not

[151] *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682.
[152] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 21.
[153] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 36 (application for leave to appeal to the S.C.C. pending).

to resolve a dispute between parties, much less to rule on the criminal culpability of a judge. Paragraph (60)(2)(*c*) of the Act provides that an object of the Council is to make the inquiries and the investigation of complaints or allegations and to make recommendations, like any commission of inquiry: see *Douglas v. Canada (Attorney General)*, 2014 FC 299, [2015] 2 F.C.R. 911; *Taylor v. Canada (Attorney General)*, 2001 FCT 1247, [2002] 3 F.C. 91, aff'd 2003 FCA 55, [2003] 3 F.C. 3, leave to appeal to S.C.C. refused, 2978 (September 25, 2003). The Supreme Court was very clear in this regard in *Ruffo*. While the comments made in that matter were in the context of the disciplinary process established by the *Courts of Justice Act*, CQLR, c. T-16 (*Courts of Justice Act*), the relevant provisions of that regime are substantially to the same effect as the corresponding sections of the Act. It is relevant to reproduce the comments of the Court, which were also restated in *Therrien* (at para.103):

> [...] Accordingly, as the statutory provisions quoted above illustrate, the debate that occurs before it does not resemble litigation in an adversarial proceeding; rather, it is intended to be the expression of purely investigative functions marked by an active search for the truth.
>
> In light of this, the actual conduct of the case is the responsibility not of the parties but of the Comité itself, on which the [*Courts of Justice Act*] confers a pre-eminent role in establishing rules of procedure, researching the facts and calling witnesses. Any idea of prosecution is thus structurally excluded. The complaint is merely what sets the process in motion. Its effect is not to initiate litigation between two parties. This means that where the Conseil decides to conduct an inquiry after examining a complaint lodged by one of its members, the Comité does not thereby become both judge and party: as I noted earlier, the Comité's primary role is to search for the truth; this involves not a *lis inter partes* but a true inquiry in which the Comité, through its own research and that of the complainant and of the judge who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation based on the circumstances of the case before it. (Emphasis added.)
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> *Ruffo*, at paragraphs 72-73.

[149] In this case, the *2015 By-Laws* authorize the Inquiry Committee to consider any complaint or allegation that is brought to its attention[154] and require the Committee to inform the judge of all complaints or allegations pertaining to him or her.[155] It does not set out any mandatory process for conducting an inquiry or investigation, but specifies that the Committee

[154] *2015 By-Laws*, ss. 5(1).
[155] *2015 By-Laws*, ss. 5(2).

must give the judge sufficient time to respond fully to the complaints or allegations. The *Judges Act* and the *2015 By-Laws* provide that a hearing is to be held in order to afford the judge "an opportunity […] of being heard at the hearing, of cross-examining witnesses and of adducing evidence on his or her own behalf."[156] The inquiry or investigation must be conducted in accordance with the principle of fairness.[157]

[150] For the sake of clarity and consistency of hearings and procedure before Inquiry Committees, the CJC has adopted a *Handbook of Practice and Procedure*[158] in order to facilitate the efficient conduct of inquiries or investigations. The *2015 Handbook of Practice* gives the Inquiry Committee the flexibility needed to be master of its own procedure by allowing it to issue directions that are contrary to the established procedure. Like the *2015 By-Laws*, the *2015 Handbook of Practice* provides that an Inquiry Committee may engage legal counsel and other persons to provide advice and to assist the Committee in the conduct of the inquiry.[159] The *Handbook* specifies that "[l]egal counsel and other persons engaged by the Committee have no authority independent of the Committee and are bound at all times by the authority and rulings of the Committee."[160]

[151] In order to meet the requirements set out in section 64 of the *Judges Act,* which requires that the judge be given reasonable notice of the subject-matter of the inquiry or investigation, the *2015 Handbook of Practice* requires that the Inquiry Committee prepare "a detailed notice of allegations" and provide it to the judge before the hearing.[161] The Inquiry Committee must also "provide to the judge the names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing"[162] as well as "all non-privileged documents in its possession relevant to the allegations."[163]

[152] In short, according to the procedures established by the CJC, the Inquiry Committee is tasked with conducting an inquiry or investigation, not a trial. The Inquiry Committee clearly has the power, as well as the duty, to prepare a Notice of Allegations and provide it to the judge before the hearing so that the judge may be well informed of the subject-matter of the inquiry or investigation and have the opportunity to be heard. In order to perform this task, the Committee must necessarily be informed on a preliminary basis of certain alleged facts or matters that could be put in evidence at the hearing of the inquiry. The purpose of this exercise is to ensure that the inquiry is conducted in accordance with the principle of fairness so that the judge may be fully informed of the allegations that he or she may be called upon to answer and of the possible evidence in support thereof.

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[156] *Judges Act,* s. 64.
[157] *2015 By-Laws*, s. 7.
[158] *2015 Handbook of Practice.*
[159] *2015 By-Laws*, s. 4; *2015 Handbook of Practice,* s. 3.1 and 3.2.
[160] *2015 Handbook of Practice,* s. 3.3.
[161] *2015 Handbook of Practice,* s. 3.6.
[162] *2015 Handbook of Practice,* s. 3.7.
[163] *2015 Handbook of Practice,* s. 3.8.

[153] Nothing in the *Judges Act*, the *2015 By-Laws*, the *2015 Handbook of Practice,* or indeed in the relevant jurisprudence prevents an Inquiry Committee from reviewing the possible evidence on a preliminary basis, without however making findings of fact, in order to discharge its duty to prepare a detailed Notice of Allegations in the context of an inquiry dedicated to truth-seeking. It does not matter whether these steps are undertaken by legal counsel engaged to assist the Inquiry Committee or by the Committee itself, since the *2015 By-Laws* unequivocally provide that counsel have no authority independent of the Committee. In this case, had the Inquiry Committee acted otherwise, it would have breached procedural fairness since it would not have fulfilled its duty to give Justice Dugré sufficient notice of the allegations brought against him.

[154] For these reasons, we are of the view that, in the context of an inquiry or investigation under the *Judges Act,* the fact that the Committee drafted the Notice of Allegations does not in any way breach procedural fairness.

E. COULD THE INQUIRY COMMITTEE CONSIDER THE MATTERS THAT WERE REFERRED DIRECTLY BY CHIEF JUSTICE JOYAL (IN THE MATTER OF A) AND BY THE EXECUTIVE DIRECTOR OF THE CJC (IN THE MATTERS OF LSA AVOCATS, GOUIN, S.C. AND MORIN)?

[155] Justice Dugré argues that the Inquiry Committee could not consider the matters that were referred to it directly by Chief Justice Joyal (In the Matter of A) and by the Executive Director of the CJC (In the Matters of LSA Avocats, Gouin, S.C. and Morin).

[156] In this regard, Justice Dugré puts forth two related arguments. First, he argues that the *2015 By-Laws,* the *2015 Handbook of Practice* and especially the *2015 Review Procedures* establish a process by which all complaints must necessarily go through certain preliminary stages, a process that was not followed in the five matters listed above. He then argues that procedural fairness was breached because this process was not followed with respect to these five matters.

1. Powers of a previously constituted Inquiry Committee

[157] Justice Dugré rightly submits that the typical process for reviewing a complaint involves three steps prior to the constitution of an Inquiry Committee.

[158] Justice Dugré is also correct when he argues that some provisions use mandatory language, notably section 4.3 of the *2015 Review Procedures* which provides that "[i]f the Executive Director determines that a matter warrants consideration, the Executive Director **must** refer it to the Chairperson, other than one who is a member of the same court as the judge who is the subject of the complaint." (Emphasis added.)[164]

[159] However, the analysis cannot stop there, and these provisions must be considered in their

[164] *2015 Review Procedures,* s. 4.3.

overall context. This case raises the issue of the scope of the powers of an Inquiry Committee once it has been constituted: once an Inquiry Committee has been constituted, does each complaint, regardless of its nature, necessarily have to go through all the preliminary stages as Justice Dugré contends?

[160] In order to answer this question, it is necessary to go back to the very nature of the Inquiry Committee and its duty to conduct a "full" investigation of the matter into which it is inquiring.[165] As stated above, the primary function of this investigation, which is inquisitorial in nature, is to search for the truth and "the Comité, **through its own research and that of the complainant and of the judge** who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation **based on the circumstances of the case before it**."[166] (Emphasis added.)

[161] Indeed, while a complaint is "what sets the process in motion",[167] the Inquiry Committee is indeed seized with a "matter"[168] which is not limited by the mere scope of the complaint.

[162] In this regard, the *2015 By-Laws* expressly provide that, once constituted, the Inquiry Committee may consider "any complaint or allegation pertaining to the judge that is brought to its attention":

5 (1) Le comité d'enquête peut examiner **toute plainte ou accusation formulée contre le juge qui est portée à son attention**. **Il tient alors compte des motifs écrits et de l'énoncé des questions du comité d'examen de la conduite judiciaire.**	**5** (1) The Inquiry Committee may consider **any complaint or allegation pertaining to the judge that is brought to its attention**. **In so doing, it must take into account the Judicial Conduct Review Panel's written reasons and statement of issues.**
(2) Le comité d'enquête informe le juge des plaintes ou accusations formulées contre lui et lui accorde un délai suffisant pour lui permettre de formuler une réponse complète.	(2) The Inquiry Committee must inform the judge of all complaints or allegations pertaining to the judge and must give them sufficient time to respond fully to them.
(3) Le comité d'enquête peut fixer un délai raisonnable, selon les circonstances, pour la réception des observations du juge. Il en informe le juge et examine toute observation reçue dans ce délai.	(3) The Inquiry Committee may set a time limit to receive comments from the judge that is reasonable in the circumstances, it must notify the judge of that time limit, and, if any comments are received within that time limit, it must consider them.
(Nos caractères gras)	(Emphasis added.)

[163] Justice Dugré argues that the second sentence of subsection 5(1) limits the scope of the first sentence such that the Inquiry Committee can only consider complaints or allegations set out in the Review Panel's written reasons and statement of issues.

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[165] *Judges Act,* ss. 63(4).
[166] *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, [1995] S.C.J. No. 100 (QL), at para. 73, cited in *Girouard v. Canada (Attorney General),* 2020 FCA 129, [2020] F.C.J. No. 860 (QL), at para. 36 (application for leave to appeal to the S.C.C. pending).
[167] *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, [1995] S.C.J. No. 100 (QL), at para. 73.
[168] *2015 By-Laws,* ss. 2(4).

[164] With all due respect, this interpretation clashes with both the ordinary and grammatical meaning of the plain language used in subsection 5(1) and the scheme of the Act, as well as with the object of the Act and the intention of Parliament.[169]

[165] The first sentence of subsection 5(1) is clear: "[t]he Inquiry Committee may consider **any complaint or allegation pertaining to the judge that is brought to its attention**. (Emphasis added.) If Parliament had intended to restrict the Inquiry Committee to the complaints and allegations set out in the Review Panel's written reasons and statement of issues, it could easily have added "by the Review Panel" at the end of the sentence, which it did not do.

[166] Similarly, the *2015 Handbook of Practice* provides that the Inquiry Committee may deal with "issues" not dealt with by the Review Panel, provided that proper notice is given to the judge:

3.5. Le Comité se limite normalement à l'examen de « L'exposé des questions » identifiées par le Comité d'examen de la conduite judiciaire (ou aux éléments de la demande du Ministre ou du Procureur général conformément au paragraphe 63(1) de la Loi). **Cependant, le Comité peut décider que certaines de ces questions ne justifient pas davantage de considération ou que des questions additionnelles requièrent un examen et une enquête par le Comité, à la condition qu'un avis approprié soit donné au juge**. (Nos caractères gras)	**3.5.** The Committee normally limits itself to the "Statement of Issues" identified by the Judicial Conduct Review Panel (or to the contents of the request of the Minister or an Attorney General pursuant to s. 63(1) of the Act). **However, the Committee may determine that some allegations do not warrant further consideration or that additional issues require consideration and examination by the Committee, provided that proper notice is given to the judge at all times**. (Emphasis added.)

[167] It should be noted that, faced with a similar argument regarding a letter sent directly to it by the Executive Director of the CJC, the Inquiry Committee in *Girouard* concluded along the same lines:

> [92] The Committee therefore has the discretionary authority to conduct its inquiry as it deems appropriate and may consider additional issues, provided that proper notice is given to the judge whose conduct is the subject of the inquiry. Such a notice was given to Justice Girouard.[170]

[168] On the other hand, the fact that flexibility is required does not mean that anything goes. As Justice Dugré points out, the second sentence of subsection 5(1) was added in 2015, and the notion of relevance that appeared in the *2010 By-Laws* was removed. The former wording of the subsection read as follows:

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[169] *Bell Canada v. Canada (Attorney General),* 2019 SCC 66, [2019] S.C.J. No. 66 (QL), at para. 41.

[170] [Second] Inquiry Committee of the Canadian Judicial Council Regarding the Conduct of the Honourable Michel Girouard, S.C.J., *Reasons for Decisions on Preliminary Motions Rendered from the Bench on February 22, 2017.*

5 (1) Le comité d'enquête peut examiner **toute plainte ou accusation pertinente formulée contre le juge qui est portée à son attention**. (Notre soulignement et nos caractères gras)	**5** (1) The Inquiry Committee may consider **any relevant complaint or allegation pertaining to the judge that is brought to its attention**. (Emphasis added.)

[169] Justice Dugré submits that the notion of relevance was removed from subsection 5(1) and the second sentence was added in order to limit the power of the Inquiry Committee to establish its own terms of reference.[171] We agree that the second sentence limits the powers of the Inquiry Committee, but not to the extent that Justice Dugré seems to indicate.

[170] By specifying that "[i]n so doing, [the Inquiry Committee] must take into account the Judicial Conduct Review Panel's written reasons and statement of issues", it would seem that the intent was to ensure that complaints and allegations considered by the Inquiry Committee are of the same nature as those that led to the constitution of the Inquiry Committee and that they are within the scope of the matter before the Committee as reflected in the Review Panel's written reasons and statement of issues. However, subsection 5(1) does not limit the possible sources of such complaints or allegations.

[171] Likewise, Justice Dugré's argument that A's complaint could not be considered because it was not a formal written complaint must also be rejected. Subsection 5(1) allows for the consideration of any "complaint" or "allegation" pertaining to the judge.

[172] In a public inquiry, it is to be expected that complaints or allegations may come from a variety of sources and take various forms.[172] What is important is that the judge be informed of the complaints or allegations and be given the opportunity to respond appropriately, which is what is expressly provided for in subsection 5(2).

[173] Justice Dugré rightly submits that an Inquiry Committee must not become a commission of inquiry into the work or life of a judge. However, the appropriate safeguard against such excess is found in subsection 5(1) itself. By specifying that "in so doing [the Inquiry Committee] must take into account the Judicial Conduct Review Panel's written reasons and statement of issues", subsection 5(1) substantially circumscribes the Inquiry Committee's power by ensuring that there is a connection with the reasons that led to the constitution of the Inquiry Committee, while preserving the latitude needed for the conduct of a "full" investigation of the matter that led to its constitution.

[174] That being the case, with respect to requests for an inquiry that are not initiated by a

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[171] Justice Dugré refers in particular to a document of the Canadian Judicial Council entitled *Review of the Judicial Conduct Process of the Canadian Judicial Council - Background Paper 2014*, March 25, 2014.

[172] [Second] Inquiry Committee of the Canadian Judicial Council Regarding the Conduct of the Honourable Michel Girouard, S.C.J., *Reasons for Decisions on Preliminary Motions Rendered from the Bench on February 22, 2017,* at para. 94, citing the previous version of the *Policy on Inquiry Committees*.

Minister, it follows from the foregoing that an Inquiry Committee can only be constituted if there has at least been a Review Panel, and that the Review Panel has concluded that an Inquiry Committee should be constituted. However, where an Inquiry Committee has been constituted, it would be contrary to the very nature of that Committee, to say nothing of the efficient use of resources, for that Committee not to be able to deal directly with complaints of the same nature, provided, of course, that the judge is informed and afforded the opportunity to respond to them.

[175] Finally, Justice Dugré submits that the fact that the Inquiry Committee considered the complaints on a preliminary basis in order to determine whether they should be included in the inquiry or investigation breaches the principle of compartmentalization.

[176] It stands to reason that when a complaint is referred directly to the Inquiry Committee, the Committee is required to review the complaint and consider it on a preliminary basis. The Inquiry Committee must then determine whether the complaint should be included in the Notice of Allegations because, either in itself or in combination with complaints of a similar nature already referred to the Committee, it might be serious enough to warrant the removal of a judge from office.

[177] This preliminary review does not breach the principle of compartmentalization.[173] Indeed, Justice Dugré himself maintains that an Inquiry Committee must always ensure that any complaint, even those that have been dealt with by a Review Panel, might be serious enough to warrant the removal of a judge from office. He is asking that we decline jurisdiction with respect to all of the complaints involved because this threshold had allegedly not been met. An Inquiry Committee is capable of conducting a preliminary review of a complaint for a specific purpose without prejudging other preliminary, or possibly more detailed, issues that it may be called upon to determine.

2. Procedural fairness

[178] Even if the Inquiry Committee could consider the matters referred to it, it remains to be determined whether procedural fairness had nevertheless been breached because Justice Dugré did not have the opportunity to make all preliminary representations before the allegations became public, contrary to his legitimate expectations.

[179] Justice Dugré submits that the preliminary process plays an important screening role: a large number of complaints never reach the Inquiry Committee because they are dismissed at a preliminary stage.

[180] We reiterate that procedural fairness is not a magic formula and does not guarantee the

[173] Paragraph 3(4)(c) of the *2015 By-Laws* provides as follows "(4) The following persons are not eligible to be members of the Inquiry Committee [...] (c) **a member of the Judicial Conduct Review Panel who participated in the deliberations to decide whether an Inquiry Committee must be constituted**." (Emphasis added.) The By-Laws do not prevent an Inquiry Committee that has already been constituted to conduct a full investigation from considering a complaint or an allegation that has not been dealt with by a Review Panel.

most favourable procedural process. Many times, the applicable provisions set out the most fundamental aspect of procedural fairness: that the judge be informed of the complaints or allegations pertaining to him or her and that he or she be given sufficient time to respond fully to them.

[181] With respect to the five matters in question, the Notice of Allegations contains the details of what is alleged against Justice Dugré. In addition, the Inquiry Committee held the hearing on the preliminary motions in camera in order to protect the rights of Justice Dugré in the event that he succeeded on the preliminary motions,[174] even though the five matters mentioned in this preliminary argument all relate to comments made publicly in the courtroom.

[182] It stands to reason that Justice Dugré will also have every opportunity to present appropriate evidence and to cross-examine all the witnesses who will appear before the Inquiry Committee. We can see no breach of procedural fairness in that regard.

[183] For all of these reasons, we reject this preliminary motion, as well as the alternative application for the partial striking out of allegations.[175]

F. Can the Inquiry Committee consider the cumulative effect of the allegations pertaining to Justice Dugré?

[184] Justice Dugré also requests that the words "or cumulatively" be struck from paragraph 60 of the Notice of Allegations.[176] In his view, [TRANSLATION] "the Constitution and procedural fairness do not allow Inquiry Committees to base a recommendation on the cumulative effect of complaints made against a judge [...]".[177]

[185] At the outset, it is worth reiterating that it is only at the end of the inquiry or investigation that we will know if allegations have been retained against Justice Dugré and, if so, which ones. Only then will the Inquiry Committee be able to determine whether, under the circumstances of the case, the cumulative effect of the allegations retained may be taken into consideration.

[186] At this point, the question is purely theoretical: may a CJC Inquiry Committee consider the cumulative effect of separate acts of misconduct committed by the same judge? The answer is "yes".

[187] As the Quebec Court of Appeal wrote in *Ruffo*, "a single, venial fault committed once over the course of an otherwise spotless career is not equal in seriousness to the same fault

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[174] *Reasons for the Ruling on the Application for the Hearing on Preliminary Arguments Scheduled for July 7 and 8, 2020 to be Held in Camera,* June 29, 2020.
[175] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 268-280.
[176] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at paras. 293-299.
[177] *Moyens préliminaires en arrêt de l'enquête concernant l'honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations,* at para. 295.

committed as one of a series of successive breaches."[178] Indeed, as Luc Huppé puts it, [TRANSLATION] "an accumulation of minor acts of misconduct may also be evidence of a lack of willingness on the part of the judge to comply with his duties, or a fatal character flaw with regard to the qualities required to perform the duties of the office of judge."[179]

[188] In other words, once a specific allegation of misconduct has been established, the judge's ability to properly perform his or her duties must be assessed contextually by weighing several factors, including whether or not it is an isolated incident. Thus, by way of illustration, it was on the basis of such a contextual analysis that the Quebec Court of Appeal finally found that the conduct for which Justice Ruffo had been criticized "for nearly 20 years now" warranted her removal from office, the ultimate complaint against her being the culminating incident.[180]

G. SHOULD THE INQUIRY COMMITTEE SPLIT THE INQUIRY?

[189] Justice Dugré also applies to have the inquiry split, requesting that each of the matters be heard by an Inquiry Committee composed of different members.[181]

[190] It is his position that [TRANSLATION] "it is [...] established that where multiple complaints are brought by multiple complainants, each matter must be dealt with by a separate Review Panel, which subsequently constitutes a separate Inquiry Committee."[182] The judge cites *Robins v. Conseil de la justice administrative*[183] as sole authority in support of this submission.

[191] However, that decision does not illustrate the principle mentioned by Justice Dugré. The issue before the court in that application for judicial review was whether the Inquiry Committee of the Conseil de la justice administrative had made an unreasonable decision by extending the scope of its inquiry to all the matters dealt with by the decision-maker in question rather than limiting itself to the facts of the two complaints for which it had been constituted. On the other hand, with respect to the issue of splitting the inquiry, a review of *Robins* instead shows that both complaints proceeded before the same Inquiry Committee.[184] Not only was this aspect of the matter not criticized by the Superior Court, but, after the Court of Appeal referred the matters back to the Conseil de la justice administrative for new inquiries, they were once again assigned to the same Inquiry Committee.[185] Thus, *Robins* shows rather that it is not totally unusual for the same Inquiry Committee to inquire into several separate complaints at the same time.

[192] Moreover, a non-exhaustive review of inquiries conducted by the Conseil de la justice

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[178] *Re Ruffo*, 2005 QCCA 1197, [2005] Q.J. No. 17953, at para. 244.
[179] Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale,* Montréal, Wilson & Lafleur, 2018, at No. 139.
[180] *Re Ruffo*, 2005 QCCA 1197, [2005] Q.J. No. 17953, at para. 424.
[181] *Moyen préliminaire demandant la scission des enquêtes,* at para. 26.
[182] *Moyen préliminaire demandant la scission des enquêtes,* at para. 29.
[183] 2016 QCCS 1566, [2016] J.Q. No. 3004 (QL), appeal allowed by 2017 QCCA 952, [2017] J.Q. No. 7939 (QL).
[184] *Bussière et Robins*, 2015 CanLII 14104 (QC CJA); *Farmer et Robins*, 2015 CanLII 14105 (QC CJA).
[185] *Bussière et Robins*, 2018 CanLII 143574 (QC CJA); *Farmer et Robins*, 2018 CanLII 143572 (QC CJA).

administrative identified two other cases in which separate complaints pertaining to the same decision-maker were assigned to the same Inquiry Committee.[186] Similarly, a review of inquiries conducted by the Conseil de la magistrature du Québec disclosed at least two similar cases.[187] Interestingly, all these examples involved either delays in rendering judgment or allegations regarding the judge's behaviour in the courtroom. In some cases, the Inquiry Committee chose to issue a separate report for each complaint, in others, the conclusions pertaining to the various complaints were included in a single report.

[193] These few examples are more than sufficient to refute the claim that it is established that each complaint must be dealt with by a separate Inquiry Committee composed of different members.

[194] That said, it must nevertheless be determined whether it is appropriate to proceed before a single committee in this case. For the reasons that follow, we answer in the affirmative.

[195] First, the application to split the inquiry is closely tied to the argument that the Inquiry Committee may not in any way consider the cumulative effect of the various allegations pertaining to Justice Dugré. For the reasons already given, at this stage of the inquiry, we are not prepared to exclude the possibility that the cumulative effect of the allegations would be taken into consideration. We therefore consider that it would be beneficial to have the matters proceed before the same Committee.

[196] Second, Justice Dugré emphasizes the scope of the inquiry and the evidence and argues that splitting the inquiry would assist [TRANSLATION] "in the efficient use of resources and in expediting the process"[188] and would contribute to [TRANSLATION] "the reduction of the duration of the inquiry and its associated costs."[189] We believe the opposite is more likely. Splitting the inquiry will not result in any simplification of the evidence, since each allegation will still need to be fully established. Accordingly, no savings will be made in this regard.[190]

[197] Third, it is settled law that evidence of facts underlying one particular matter is not admissible in another matter, as each allegation must be proven and assessed separately. We are capable of drawing the line between matters, of not conflating the evidence concerning the various matters, and of not letting our findings of fact in one matter influence our analysis of the other matters. In fact, judges are regularly called upon to make this kind of distinction, especially in criminal matters where they may be required to adjudicate different counts concerning different events.

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[186] See *Belhumeur et Moffatt (Tremblay et Moffatt; Dupuis et Moffatt)*, 2018 CanLII 142634 (QC CJA); *Francescangeli Santini et Robins (Théoret et Robins; De Giure et Robins)*, 2019 CanLII 47953 (QC CJA).
[187] *Bielous v. De Michele*, 2016 CanLII 18164 (QC CM); *Martineau et Crête,* 2017-CMQC-120 and *St-Arneault et Crête*, 2017-CMCQ-137.
[188] *Moyen préliminaire demandant la scission des enquêtes,* at para. 67.
[189] *Moyen préliminaire demandant la scission des enquêtes,* at para. 69.
[190] Far from expediting the process, conducting six separate inquiries would necessarily result in the inquiries being stretched out over time and would create logistical difficulties, particularly with respect to quorum.It is in the interest of Justice Dugré and in the public interest that the process be conducted with all due dispatch.

[198] For these reasons, the application to split the inquiry is dismissed.

H. ARGUMENTS PERTAINING TO THE EVIDENCE

[199] Finally, Justice Dugré raises various arguments pertaining to the evidence.[191]

1. Anticipated objections to evidence

[200] On March 6, 2020, M[e] Battista allegedly gave Justice Dugré's counsel three USB keys containing the [TRANSLATION] "documents pertaining to the allegations" set out in the Notice of Allegations dated March 4, 2020.[192] Justice Dugré objects in advance to the admissibility of some of the documents so disclosed, namely the documents pertaining to Chief Justice Rolland's prior complaints, to the allegation of a chronic problem raised by Chief Justice Fournier, and to the allegations pertaining to the complaints of A, LSA Avocats, Gouin, S.C. and Morin.[193]

[201] In any event, these objections are based on the same contentions as the preliminary arguments that we have already disposed of and cannot be separated from them. They must therefore meet the same fate.

[202] That said, despite the dismissal of these anticipated objections, it should be noted that no documents have yet been received in evidence. The evidence will be adduced at the hearing on the merits of the inquiry and it is at that time that the Committee will make a final decision on the admissibility of the disputed documents, if need be.

2. Additional disclosure of evidence

[203] Justice Dugré also seeks to obtain [TRANSLATION] "additional disclosure of evidence", requesting in this regard the disclosure of the following information:

> [TRANSLATION]
>
> **(a) Information pertaining to witnesses, affiants and other individuals**
>
> (1) Any statement obtained by any employee, agent, member or representative of the CJC or Inquiry Committees, from persons who have provided information pertaining to matters mentioned in the detailed Notice of Allegations ("**affiants**");
>
> (2) In the absence of statements, any evidence such as notes in the

[191] *Moyens préliminaires subsidiaires relativement à la preuve*.
[192] *Moyens préliminaires subsidiaires relativement à la preuve,* at para. 9.
[193] *Moyens préliminaires subsidiaires relativement à la preuve,* at paras. 76-95.

possession or under the control of any employee, agent, member or representative of the CJC or Inquiry Committees, relating to persons who have provided information pertaining to matters mentioned in the detailed Notice of Allegations ("**other individuals**");

(3) All communications between witnesses, affiants and other individuals and any employee, agent, member, representative of the CJC or Inquiry Committees;

(4) All notes of telephone or in-person conversations or of conversations by any technological means between witnesses, affiants or other individuals and any employee, agent, member, representative of the CJC or Inquiry Committees;

(5) Any statement made by witnesses to any person, including any employee, agent, member, representative of the CJC or Inquiry Committees;

(6) Notes of interviews, discussions, meetings between employees, representatives, agents and members of the CJC or Inquiry Committees concerning witnesses, affiants or other individuals;

(7) The list of witnesses who are likely to be called to testify in the inquiry and their will-say statements;

(b) CJC internal communications

(1) All e-mails exchanged, received, transmitted between members, employees, representatives, agents or counsel of the CJC or Inquiry Committees;

(c) Information pertaining to the evidence and the Notice of Allegations

(1) Details of any evidence that was considered by members of the CJC Inquiry Committees in drafting the detailed Notice of Allegations and details of any communications between members of the Inquiry Committees acting as investigators and accusers with respect to such evidence;

(2) All notes pertaining to the preparation of the detailed Notice of Allegations and all drafts of the detailed Notice of Allegations in the possession or under the control of any member, employee, representative, agent or counsel of the CJC and/or Inquiry Committees;

(3) The letter received by the Honourable Associate Chief Justice Petras from the [TRANSLATION] "parties" dated November 14, 2018, as stated in item 6 on page 7 of the document entitled *Motifs au soutien de la décision de déférer un dossier de plainte à un comité d'examen de la conduite judiciaire dans l'affaire du juge Gérard Dugré de la Cour supérieure du Québec,* drafted by Chief Justice Joyal;

(d) Any other undisclosed evidence

(1) Any inculpatory or exculpatory information in the possession of

members, employees, representatives, agents or counsel of the CJC and/or Inquiry Committees that has not yet been disclosed to the Applicant;

(2) Any information relevant to the preparation of the Applicant's full answer and defence.[194]

[204] The *2015 Handbook of Practice,* in sections 3.7 and 3.8, imposes specific obligations on Inquiry Committees regarding the disclosure of evidence:

3.7 Le Comité devrait, avant l'audition, remettre au juge **les noms et adresses de tous les témoins connus** qui ont une connaissance des faits pertinents ainsi que **toutes déclarations obtenues des témoins et les résumés de toutes entrevues avec le témoin.**	**3.7** The Committee should provide to the judge **the names and addresses of all witnesses known** to have knowledge of the relevant facts and **any statements taken from the witness and summaries of any interviews with the witness before the hearing**.
3.8 Le Comité devrait aussi remettre au juge, avant l'audition, **tous les documents non privilégiés** en sa possession et **pertinents aux accusations**.[195] (Nos caractères gras)	**3.8** The Committee should also provide, prior to the hearing, **all non-privileged documents** in its possession **relevant to the allegations.** (Emphasis added.)

[205] In this case, the Inquiry Committee has assigned one of its counsel, M[e] Battista, to act as "presenting counsel" in the inquiry.[196] At the hearing on the merits, he will be responsible for presenting relevant evidence, examining and cross-examining witnesses and making submissions on substantive and procedural issues. In anticipation of the hearing, he and his associates are responsible for gathering evidence and meeting with witnesses. Further, since the Directions to Counsel were issued on April 16, 2020, there has been no *ex parte* communication between M[e] Battista and the Inquiry Committee or its legal counsel, M[e] Rolland; therefore, the Inquiry Committee has no knowledge of any witnesses that may have been interviewed or any evidence that may have been gathered since the initial disclosure on March 6, 2020.

[206] In his submissions to the Committee on this issue, M[e] Battista acknowledged that Justice Dugré [TRANSLATION] "is entitled to timely disclosure of the results of the investigation", that he is entitled to [TRANSLATION] "both the evidence that would establish the allegations and the evidence that would enable him to refute the allegations and make such submissions as are appropriate in the circumstances."[197]

[207] This aspect is therefore not in dispute. Justice Dugré will be entitled to the information mentioned in sections 3.7 and 3.8 of the *2015 Handbook of Practice,* namely:

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[194] *Moyens préliminaires subsidiaires relativement à la preuve,* at para. 48.
[195] *Cahier de pièces du requérant au soutien de ses moyens préliminaires*, Tab 4.
[196] *Cahier de pièces du requérant au soutien de ses moyens préliminaires,* Tab 23 (Directions to Counsel).
[197] *Observations de l'avocat du comité sur les moyens préliminaires soulevés par le demandeur,* at para. 139.

- the names and addresses of all known witnesses;
- any statements taken from these witnesses;
- summaries of any interviews with these witnesses;
- any other non-privileged document relevant to the allegations set out in the notice of allegations.

[208] With respect to the latter item, we mean all other documents or material that have been or will be gathered by M[e] Battista in preparing for the inquiry and that are relevant to the facts underlying the allegations, regardless of whether or not they support Justice Dugré's case and regardless of whether or not M[e] Battista intends to introduce them into evidence at the hearing on the merits.

[209] The disclosure of all this material will enable Justice Dugré to prepare his case and will protect his right to be fully heard.

[210] That said, we turn now to Justice Dugré's requests by subject.

(a) Information pertaining to witnesses, affiants and other individuals

[211] As noted earlier, Justice Dugré is entitled to the disclosure of the names and addresses of the persons who will be called to testify before the Inquiry Committee, to any statements taken from these witnesses, and to summaries of interviews with these witnesses conducted by M[e] Battista.

[212] Moreover, if, in preparing the file, M[e] Battista or members of his firm meet with other individuals who will not be called to testify, the same information pertaining to them must also be disclosed.

[213] However, to the extent that Justice Dugré's request for disclosure seeks to obtain M[e] Battista's notes (or those of members of his firm), other than summaries of interviews, it goes well beyond what is contemplated by the *2015 Handbook of Practice.* Accordingly, disclosure will be limited to the items listed in paragraphs [207] and [208].

(b) CJC internal communications

[214] Justice Dugré requests the disclosure of all [TRANSLATION] "e-mails exchanged, received, transmitted between members, employees, representatives, agents or counsel of the CJC or Inquiry Committees." Again, this request goes well beyond what is contemplated by section 3.8 of the *2015 Handbook of Practice*. Justice Dugré has not in any way established the relevance of these documents, his request being rather more akin to a fishing expedition.[198]

[198] See Inquiry Committee of the Canadian Judicial Council Regarding the Conduct of the Honourable Michel Girouard, S.C.J., *Version finale de la Décision sur la demande de divulgation (production) de documents et des*

Moreover, depending on their nature, a large portion of these internal communications would likely be protected by privilege, whether it be deliberative secrecy (communications between members of the Review Panel),[199] solicitor-client privilege (communications with counsel) or public interest privilege.[200]

(c) Information pertaining to the evidence and the Notice of Allegations

[215] Justice Dugré makes three requests regarding the drafting phase of the Notice of Allegations by the Inquiry Committee. First, he requests [TRANSLATION] "details of any evidence that was considered by the members of the CJC Inquiry Committees in drafting the detailed Notice of Allegations."

[216] On March 6, 2020, Justice Dugré's counsel received a book of 330 documents or materials that the Inquiry Committee or M[e] Battista had in their possession while the Notice of Allegations was being drafted by the Committee.

[217] However, this book of documents did not contain material relevant to François Morin's complaint (CJC-19-0374) that the Inquiry Committee considered in preparing the Notice of Allegations. While Mr. Morin's complaint is not the subject of a separate allegation in the Notice of Allegations, we are of the view that this substantive material is covered by section 3.8 of the *2015 Handbook of Practice* and that Justice Dugré is entitled to its disclosure. As the members of the Committee no longer have access to this material, this judgment orders M[e] Battista to disclose the following items to counsel for Justice Dugré:

- François Morin's complaint dated September 26, 2019;
- Minutes of the hearing held on June 11, 2013;
- Sound recording of the hearing held on June 11, 2013, starting at 9:20:03;
- Sound recording of the hearing held on June 11, 2013, starting at 10:47:18;
- Transcript of the hearing held on June 11, 2013;
- Judgment in the Morin case (2014 QCCS 168);
- Court ledger in the Morin case (705-17-004530-125);
- Letter from the Executive Director of the CJC to Justice Dugré dated November 13, 2019.

[218] Once these materials have been disclosed, Justice Dugré will have received all the substantive material that the Inquiry Committee had when drafting the Notice of Allegations.

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motifs du Comité rendus verbalement, séance tenante, le 22 février 2017.

[199] See *Girouard v. Canada (Attorney General),* 2018 FC 1184, [2018] F.C.J. No. 1219 (QL), at paras. 15-19, aff'd 2019 FCA 252, [2019] F.C.J. No. 1160 (QL).

[200] *Slansky v. Canada (Attorney General)*, 2013 FCA 199, [2013] F.C.J. No. 996 (QL), at paras. 131 and 146 (Mainville, J.F.C.A.).

[219] Second, Justice Dugré also seeks to obtain [TRANSLATION] "details of any communications between members of the Inquiry Committees", all "notes pertaining to the preparation of the detailed Notice of Allegations and all drafts of the Notice of Allegations". The Inquiry Committee considers that these documents go well beyond what is contemplated by section 3.8 of the *2015 Handbook of Practice* and are protected by both deliberative secrecy[201] and public interest privilege, as the secrecy of the Committee's internal proceedings is necessary for "the integrity of the Canadian Judicial Council's process for enabling it to discharge its mandate effectively."[202]

[220] The third and final request concerns the letter sent to Associate Chief Justice Petras on November 14, 2018 by counsel for K.S., which was discussed above at paragraphs [105] to [109]. As noted earlier, this letter was not among the documents that were provided to the Inquiry Committee.

[221] Following the hearing, we contacted the CJC to locate this letter and to ascertain whether there were any other documents relevant to the allegations other than those that had already been forwarded. This audit identified the following additional documents:

(a) In the matter of K.S.

- E-mail from K.S. to the CJC dated November 14, 2018, with the unsigned letter of November 14, 2018 attached;
- E-mail from K.S. to the CJC dated September 9, 2019, with attachments, including the letter of November 14, 2018 signed by counsel;
- E-mail from K.S. to the CJC dated January 4, 2020, with attachment.

(b) In the matter of A

- Letter from the Acting Executive Director of the CJC to Chief Justice Fournier dated April 3, 2019;
- Letter from Chief Justice Fournier to the CJC dated April 24, 2019, with attachment.

(c) In the matter of S.C.

- E-mail from S.C. to the CJC dated October 16, 2019.

[222] These documents will be delivered to Justice Dugré's counsel and M[e] Battista at the same

[201] See *Girouard v. Canada (Attorney General),* 2018 FC 1184, [2018] F.C.J. No. 1219 (QL), at paras. 15-19, aff'd 2019 FCA 252, [2019] F.C.J. No. 1160 (QL); *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General),* 2007 NSCA 37.
[202] *Slansky v. Canada (Attorney General)*, 2013 FCA 199, [2013] F.C.J. No. 996 (QL), at paras. 131 and 146 (Mainville, J.F.C.A.).

time as these reasons.

V. NEXT STEPS

[223] Insofar as Justice Dugré maintains his application for a sealing order or anonymization and requests that the hearing be held in camera, the hearing will be held by videoconference as soon as possible.

[224] Finally, in light of the Committee's findings in this case, the inquiry into the conduct of Justice Dugré will commence as scheduled on January 18, 2021.

VI. CONCLUSIONS

[225] Finally, and for the reasons set out above, the Committee:

DISMISSES the application dated May 22, 2020 entitled *Moyen préliminaire subsidiaire demandant le sursis des enquêtes*;

DISMISSES the application dated May 22, 2020 entitled *Moyen préliminaire en récusation des membres des comités d'enquête*;

DISMISSES the application dated May 22, 2020 entitled *Moyens préliminaires en arrêt de l'enquête concernant l'Honorable Gérard Dugré et subsidiairement en radiation partielle d'allégations;*

DISMISSES the application dated May 22, 2020 entitled *Moyen préliminaire subsidiaire demandant la scission des enquêtes*;

ALLOWS in part the application dated May 22, 2020 entitled *Moyens préliminaires subsidiaires relativement à la preuve*;

ORDERS counsel for the Inquiry Committee, M[e] Giuseppe Battista, to disclose to counsel for Justice Dugré the material pertaining to François Morin's complaint (CJC-19-0374) listed in paragraph [217] hereof, within seven (7) days hereof.

Signed by:

November 17, 2020

[*original signed*]
The Honourable J.C. Marc Richard

November 17, 2020

[*original signed*]
The Honourable Louise A.M. Charbonneau

November 17, 2020

[*original signed*]
M[e] Audrey Boctor

Hearing on the preliminary motions: July 7 and 8, 2020