[ENGLISH VERSION OF THE REPORT OF THE INQUIRY COMMITTEE]

REPORT TO THE CANADIAN JUDICIAL COUNCIL

OF THE INQUIRY COMMITTEE CONSTITUTED PURSUANT TO SECTION 63 OF THE *JUDGES ACT* TO INQUIRE INTO THE CONDUCT OF JUSTICE GÉRARD DUGRÉ OF THE SUPERIOR COURT OF QUÉBEC

CJC 18-0301, CJC 18-0318, CJC 19-0014, CJC 19-0358, CJC 19-0372 and CJC 19-0392

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

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

Audrey Boctor
IMK LLP

COUNSEL FOR THE HONOURABLE GÉRARD DUGRÉ

Magali Fournier, Ad. E.
Camille Vignaud
Fournier Avocat Inc.

Raphaël Gaudreault
André Joli-Cœur
Alexandre Laforge
Louis Masson, Ad. E.
Guillaume Renauld
Therrien Couture Joli-Cœur L.L.P.

COUNSEL FOR THE INQUIRY COMMITTEE

Giuseppe Battista, Ad. E.
Jessy Héroux
Battista Turcot Israel s.e.n.c.
Counsel Responsible for Presenting the Evidence

Marc-André Grou
Emmanuelle Rolland
Audren Rolland LLP
Legal Counsel

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REPORT OF THE INQUIRY COMMITTEE
TO THE CANADIAN JUDICIAL COUNCIL

I. INTRODUCTION

[1] This is the report of the Inquiry Committee ("**Committee**") constituted pursuant to section 63 of the *Judges Act*, R.S.C. 1985, c. J-1, to inquire into the conduct of the Honourable Gérard Dugré, a judge of the Superior Court of Québec ("**Justice Dugré**").

[2] This report sets out the Committee's findings, conclusions and recommendations following a 38-day hearing on the merits that began in April 2021 and ended in December 2021. During the hearing, the Committee heard testimony from approximately sixty fact witnesses, received two expert reports and heard testimony from one expert. As well, at the request of the parties, the Committee not only read the transcripts but also listened to the full recordings of the cases relating to several allegations, and it did so during the inquiry so that counsel could make corrections to the transcripts as necessary. Lastly, it reviewed the extensive documentary evidence in the record.

[3] In addition, the Committee reviewed the parties' exhaustive memoranda and considered their oral arguments during the proceedings. The Committee wishes to thank counsel for assisting it in carrying out its mandate to seek the truth while respecting procedural fairness.

[4] The Committee notes that this report is to be read in conjunction with its decisions on preliminary motions rendered on November 17, 2020 ("**Decisions on Preliminary Motions**").[1]

[5] In sum, the Committee finds that, despite positive contributions Justice Dugré has made to the work of the Superior Court and to Canadian jurisprudence since his appointment, he has committed acts that constitute serious judicial misconduct and, when taken in context and considered as a whole, his conduct undermines public confidence to the point that he has become incapacitated or disabled from the due execution of the office of judge. Moreover, the Committee concludes that Justice Dugré has a chronic

[1] *Reasons for Decisions on Preliminary Motions Rendered on November 17, 2020*, reproduced in Annex A (notice of application for judicial review struck out (*Dugré v. Canadian Judicial Council*, 2021 FC 448)).

inability to render judgments within a reasonable time and is therefore failing to fulfill the duties of his office. This chronic inability threatens the integrity of the judiciary and, separate and apart from Justice Dugré's conduct in the courtroom, renders him incapacitated or disabled from the due execution of the office of judge within the meaning of the *Judges Act*.

II. INQUIRY

[6] Justice Dugré has been a judge of the Superior Court of Québec since January 22, 2009. Prior to his appointment, he practiced law after being called to the Barreau du Québec in 1981.

[7] In August and September 2018, the Canadian Judicial Council ("**CJC**") received two complaints regarding Justice Dugré, one concerning delay in rendering judgment (*K.S.*[2]) and another concerning Justice Dugré's conduct and comments at a hearing (*S.S.*[3]). After the initial screening of the two complaints, a Review Panel determined that a committee should be constituted to conduct an inquiry, which led to the creation of the Committee. The CJC then received five additional complaints, which were referred to the Committee (*A.*,[4] *S.C.*,[5] *LSA Avocats*,[6] *Gouin*,[7] and *Morin*[8]).

[8] On March 4, 2020, in accordance with subsection 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*[9] ("**2015 By-laws**"), the Committee provided Justice Dugré with a detailed Notice of Allegations informing him of the allegations that it intended to investigate. The notice set out 13 allegations in relation to

[2] CJC 18-0301.
[3] CJC 18-0318.
[4] CJC 19-0014.
[5] CJC 19-0392.
[6] CJC 19-0358.
[7] CJC 19-0372.
[8] CJC 19-0374.
[9] SOR/2015-203.

six of the above complaints.[10] Three of the allegations regard delays in rendering judgment, and ten concern the judge's conduct and comments in the courtroom.

[9] The allegations regarding delays in rendering judgment are as follows:

Allegation 1A

Did Justice Gérard Dugré fail in the due execution of his office by delivering judgment in *K.S.* (*J.B. c. K.S.* #500-12327801-159) more than nine months after taking the case under advisement given that the *Code of Civil Procedure* stipulates a six-month time limit, except for an exemption from the Chief Justice?

Allegation 1B

Did Justice Gérard Dugré fail in the due execution of his office by not replying to the letter from a party in *K.S.* (*J.B. c. K.S.* #500-12-327801-159) reminding him of the urgency of delivering judgment in light of his undertaking to do so quickly?

Allegation 1C

Does Justice Gérard Dugré's conduct reveal a chronic problem to deliver judgment, and, if so, has Justice Dugré become incapacitated or disabled from the execution of the office of judge?

[10] The allegations regarding the judge's conduct and comments at hearings are as follows:

S.S.

Allegation 2A

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on September 7, 2018, in *S.S.* (*S.S. c. M.L.* #700-04-029513-188) by his conduct or by his comments made at the hearing?

[10] Notice of Allegations, March 4, 2020. The Notice of Allegations was amended to include a hearing date in *S.C.* that had been omitted. In accordance with the Notice of Allegations, the complaints in *Morin* (CJC 19-0374) will be considered as part of the allegation regarding a chronic problem (CJC 18-0301). This report is rendered in the two official languages.

Allegation 2B

Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on September 7, 2018, in *S.S.* (*S.S. c. M.L.* #700-04-029513-188) by his conduct or by his comments made at the hearing?

A. **Allegation 3A**

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on April 3, 2018, in *A.* (*A.A. c. E.M.* #540-12-021200-175) by his conduct or by his comments made at the hearing?

Allegation 3B

Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on April 3, 2018, in *A.* (*A.A. c. E.M.* #540-12-021200-175) by his conduct or by his comments made at the hearing?

LSA Avocats **Allegation 4A**

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on March 18 and 19, 2019, in *Doron* (*Roch et als. c. Doron et als.* #500-17-087739-150) by his conduct or by his comments made at the hearing?

Allegation 4B

Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on March 18 and 19, 2019, in *Doron* (*Roch et als. c. Doron et als.* #500-17-087739-150) by his conduct or by his comments made at the hearing?

Gouin **Allegation 5A**

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on November 28, 29 and 30, 2017, in *Gouin* (*Karisma Audio Post Vidéo et film inc. c. Morency* #500-17-076135-139) by his conduct or by his comments made at the hearing?

Allegation 5B

Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on November 28, 29 and 30, 2017, in *Gouin* (*Karisma Audio Post Vidéo et film inc. c. Morency* #500-17-076135-139) by his conduct or by his comments made at the hearing?

S.C.

Allegation 6A

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on April 11 and 12, 2018, in *S.C.* (*D.F. c. S.C.* #540-04-013357-162) by his conduct or by his comments made at the hearing?

Allegation 6B

Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on April 11 and 12, 2018, in *S.C.* (*D.F. c. S.C.* #540-04-013357-162) by his conduct or by his comments made at the hearing?

[11] In May 2020, Justice Dugré raised a number of preliminary matters, which were heard in July 2020. The Committee dealt with them in its Decisions on Preliminary Motions.

[12] On December 23, 2020, the Committee granted Justice Dugré's request that the evidence in *A.*, *K.S.*, *S.S.* and *S.C.* be anonymized and filed under seal, and that the inquiry hearing be held in camera when the evidence filed under seal was being presented.[11]

[13] The inquiry hearing was scheduled to begin in January 2021, but the Committee granted Justice Dugré's request to postpone it because of the health situation arising from COVID-19.[12] As a result, the hearing started in April 2021 and continued in May and June 2021. The hearing had been scheduled to end on June 30, 2021; however, certain developments made additional hearing dates necessary.

[11] *Reasons for Decision on the Request for a Partial In Camera Hearing of the Inquiry Hearing Commencing January 18, 2021*.
[12] *Decision on the Request to Postpone the Hearing Scheduled for January 18 to February 5, 2021*.

[14] First, on May 31, 2021, the 13th day of the inquiry hearing, Justice Dugré announced his intention to challenge the constitutionality of article 324 of the *Code of Civil Procedure* ("**C.C.P.**"). Notice was served on the attorneys general of Canada, the provinces and the territories. Only the Attorney General of Québec ("**AGQ**") appeared. However, the AGQ was not available to make submissions until September 8, 2021.

[15] In addition, requests made in June to the CJC and to the Superior Court of Québec as part of the cross-examination of the Honourable Jacques Fournier, Chief Justice of the Superior Court ("**Chief Justice Fournier**"), remained outstanding pending the parties' agreement on admissions and the parameters of an expert opinion regarding time limits for rendering judgment.

[16] Lastly, on the day before his testimony which was scheduled for June 29 and 30, Justice Dugré informed the Committee he would need more time to prepare. The Committee therefore established a new schedule, with the inquiry set to resume on August 26 with Justice Dugré's testimony, and to conclude in early September 2021.[13]

[17] However, on August 25, 2021, Justice Dugré announced he no longer intended to testify.

[18] On the same day, Justice Dugré informed the Committee that he had retained new counsel to act as legal advisors. The August 26 hearing date was therefore utilized to deal with outstanding issues and the inquiry was suspended until September 1.

[19] On August 30, 2021, the Committee was informed that one of Justice Dugré's lead counsel could not continue the inquiry for reasons beyond her control. Since the legal advisors had no mandate to make submissions, the Committee granted the judge's request for a postponement. Dates in November and December were therefore set to ensure that the inquiry was completed.

[20] The inquiry ended on December 9, 2021, and the Committee took the matter under reserve.

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[13] Direction to Counsel, June 30, 2021.

III. LEGAL CONTEXT

[21] As noted in the Decisions on Preliminary Motions, paragraphs 65(2)(a) to (d) of the *Judges Act* indirectly define judicial misconduct by identifying the reasons for which a judge may become incapacitated or disabled from the due execution of the office of judge, namely age or infirmity, having been guilty of misconduct, having failed in the due execution of that office, or having been placed, by their conduct or otherwise, in a position incompatible with the due execution of that office.[14] In this case, the Notice of Allegations refers to two of these reasons: having been guilty of misconduct and having failed in the due execution of that office.

[22] The task of an inquiry committee is twofold. First, it must determine whether the conduct at issue falls within any of the paragraphs of subsection 65(2). If so, it must then decide whether the conduct requires recommending removal of the judge from office. In that regard, subsection 65(2) simply states that a recommendation may be made to remove a judge from office if the judge is considered "to have become incapacitated or disabled from the due execution of the office of judge".

[23] In *Marshall*, the inquiry committee described the test it used to decide this issue:

> The test we would propose to apply, as applicable to this case, is an alloy of these many considerations and takes the following form:
>
> > Is the conduct alleged so manifestly and profoundly destructive of the concept of the impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office?[15]

[24] As can be seen from the quotation above, the test was formulated to be applicable to "this case", namely *Marshall*. However, it has been adopted in numerous CJC inquiries and in investigations of provincially appointed judges.[16] For instance, it was referenced

[14] Decisions on Preliminary Motions, at para. 82.
[15] *Report to the Canadian Judicial Council of the Inquiry Committee* in *Marshall*, August 27, 1990, at p. 27.
[16] Recently, e.g., *Proulx et Gagnon*, 2020 CanLII 35821 (QC CJA) at para. 83, application for judicial review dismissed in 2021 QCCS 598, leave to appeal granted, 2021 QCCA 677.

by the Supreme Court of Canada in *Therrien (Re)*[17] and *Moreau-Bérubé v. New Brunswick (Judicial Council)*.[18]

[25] In Justice Dugré's submission, this test should guide the Committee in analyzing both the issue of conduct in the courtroom and the issue of delay in rendering judgment.[19] Counsel responsible for presenting the evidence ("**presenting counsel**") suggests that the Committee adapt the test regarding delay in rendering judgment as follows: [TRANSLATION] "Is the conduct of the judge with respect to delay serious enough to undermine public confidence and render the judge incapable of executing the duties of his office?"[20]

[26] This suggestion by presenting counsel prompted the Committee to consider the wording of the *Marshall* test and its application to the allegations in this inquiry. Ultimately, the Committee believes that there is no need to reformulate the test for the purposes of this case, for the reasons that follow.

[27] First, it should be noted that the *Marshall* test does not require that the alleged conduct directly undermine all three concepts mentioned in the test, namely, the impartiality, integrity and independence of the judicial role. Each one of these concepts is essential to maintaining public confidence in the justice system.

[28] Second, the Committee considered whether limiting the *Marshall* test to these three concepts would make it too restrictive, given that it had been developed for use in a specific factual context and that its elements do not appear in subsection 65(2) of the *Judges Act*. In the course of the inquiry into the conduct of Justice Déziel, the minority members of the CJC suggested that, depending on the circumstances, the test for removal could sometimes be reformulated to include other fundamental concepts relating to the judicial role. That said, they also noted it was likely that any judicial misconduct could be subsumed under one of the three concepts in the *Marshall* test:

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[17] *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at para. 147.
[18] *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 51.
[19] Amended Written Submission of the Honourable Gérard Dugré, at paras. 55 and 318.
[20] Written Submission of Counsel for the Committee at p. 156.

> [84] The starting point must be with the *Marshall* test itself. According to that test, for public confidence to be "sufficiently" undermined to render the judge incapable of executing the judicial office, the conduct in issue must be:
>
> - "destructive";
> - of a "fundamental" concept relating to the judicial role (impartiality, integrity and independence); and
> - "manifestly" and "profoundly" so.
>
> [85] The first line of inquiry should be to identify the fundamental concepts or values that are at stake in the case under consideration. What fundamental judicial characteristic is threatened by the occurrence of the impugned conduct? The *Marshall* test focuses on three: impartiality, integrity and independence. Whether there are further values or characteristics which, if affected adversely by the misconduct, could be regarded as destroying the fundamental nature of the judicial role is an open question that need not be decided here. **That said, it is likely that anything that strikes at the fundamental nature of the judicial role to the extent of undermining public confidence in the continuing ability of the judge to execute his or her office could be subsumed under one of the three characteristics mentioned.**[21]
>
> [Emphasis added]

[29] Most, if not all, allegations of judicial misconduct may be considered to be allegations of an abuse of judicial independence, as the Supreme Court of Canada suggested in *Moreau-Bérubé v. New Brunswick (Judicial Council)*:

> When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole.[22]

[30] In the Committee's view, this is true of the allegations in this case. As will be discussed further below, failure to deliver judgment within a reasonable time may at some point constitute an abuse of the trust and independence accorded to judges with respect to the time necessary to render judgment, and such abuse, depending on its seriousness, may undermine public confidence in that notion.[23] In the same vein, misconduct in the

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[21] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Michel Déziel*, December 2, 2015, minority reasons at paras. 84 to 85.

[22] *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 58.

[23] The Committee also notes that the Conseil de la justice administrative du Québec recently used the *Marshall* test to determine the appropriate sanction for delays in rendering judgment (*Proulx et Gagnon*, 2020 CanLII 35821 (QC CJA) at para. 83, application for judicial review dismissed in 2021 QCCS 598, leave to appeal granted, 2021 QCCA 677).

courtroom, including a lack of respect and courtesy, may constitute an abuse of the independence accorded to judges with respect to the conduct of proceedings. Both situations threaten the integrity of the judiciary as a whole.

[31] On another note, as the CJC pointed out in *Matlow*, the removal test in *Marshall* focuses on the future:

> An important aspect of the test not specifically articulated is its prospective nature. Implicit in the test for removal is the concept that public confidence in the judge would be sufficiently undermined to render him or her incapable of executing judicial office in the future in light of his or her conduct to date.[24]

[32] Finally, the Committee underscores that this inquiry concerns separate allegations of misconduct. The Committee has analyzed each case separately to determine whether the facts establish misconduct *in that case*. Evidence in one case cannot be used to establish a breach in another. However, deciding whether to recommend removal is a different matter. Indeed, the test mentioned above requires an assessment of the judge's conduct as a whole, as the Court of Appeal of Québec stated in *Ruffo (Re)*.[25].

IV. STANDARD OF PROOF AND RULES OF EVIDENCE

[33] It is well settled that the standard of proof in CJC inquiries is that of a balance of probabilities.[26] Indeed, as the Supreme Court of Canada pointed out in *F.H. v. McDougall*, our legal system does not admit of different levels of evidentiary scrutiny depending upon the seriousness of the case.[27] The Committee must therefore analyze the evidence with care and determine whether the allegations have been established on a balance of probabilities, bearing in mind that this standard requires that the evidence be clear, convincing and cogent.[28]

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[24] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Theodore Matlow*, December 3, 2008, at para. 166.
[25] *Ruffo (Re)*, 2005 QCCA 1197 (CanLII), at para. 244.
[26] *Report to the Canadian Judicial Council of the Inquiry Committee in the Matter of the Honourable Michel Girouard*, November 6, 2017, at para. 48; *Report to the Canadian Judicial Council of the Inquiry Committee in the Matter of the Honourable Theodore Matlow*, May 28, 2008, at para. 22.
[27] *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 45.
[28] *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at paras. 44 to 48.

[34] However, the Committee is not bound by strict rules of evidence. Provided the principle of procedural fairness is respected, an inquiry committee may receive evidence deemed reliable, including hearsay evidence, even though it might not be admissible in a court of law. In that event, it is up to the Committee to assess probative value.[29]

V. CONDUCT REQUIRED OF JUDGES

[35] Public confidence in the judiciary is essential to the success and legitimacy of our judicial institutions and to maintaining the rule of law. As the CJC stated in *Cosgrove*, "All judges have both a personal and collective duty to maintain this confidence by upholding the highest standards of conduct".[30]

A. CONDUCT IN THE COURTROOM

[36] When interacting with litigants or their counsel in the course of their duties, judges do not speak on their own behalf, but on behalf of the judiciary. A judge's conduct must be in keeping with the dignity of their office:

> [TRANSLATION]
>
> When interacting with litigants in the course of their duties, judges do not speak on their own behalf but on behalf of the State whose judicial powers they exercise. They therefore do not have the same freedom of tone and language as in their private communications. **Their attitude must reflect the authority vested in them; however, this authority must not be used to intimidate or belittle those with whom they interact, or to give free rein to personality traits inconsistent with a judicial setting.** A judge's manner of addressing litigants or receiving their submissions must be marked by the respect that the dignity of every human being demands. It must respect their rights under the Constitution in their dealings with judicial institutions. **It must also take into account their vulnerable position given the broad powers the judge has over them.**[31]
>
> [Emphasis added]

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[29] *Report to the Canadian Judicial Council of the Inquiry Committee in the Matter of the Honourable Michel Girouard*, November 6, 2017, at paras. 266 to 267.

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

[31] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 173.

[37] This gives rise to what might be called a duty of civility, which is associated with the concept of impartiality in the CJC's *Ethical Principles for Judges*, in the edition that was in force when the complaints against Justice Dugré were made:

> **1.** While acting decisively, maintaining firm control of the process and ensuring expedition, judges should treat everyone before the court with appropriate courtesy.[32]

[38] In addition to the duty of civility, judges have a duty to ensure that the hearings over which they preside are conducted properly. The primary purpose of court hearings is to enable the parties to present their case and their arguments to the court. The conduct and interventions of judges must contribute to achieving this objective while respecting the rules of procedure and evidence:

> [TRANSLATION]
>
> The primary purpose of hearings is to enable the parties to present their case to the court and show why it should decide in their favour. Hearings do not provide judges with a platform for abusive or excessive displays of power, unwarranted self-promotion, or the expression of personal opinions unrelated to the case at hand. The purpose of ethical standards for conducting hearings is to limit judges to the role they must play to truly and effectively fulfill the judicial function. The conduct of a judge in a trial must be guided by a certain perspective, which is to conduct the hearing according to rules of procedure and evidence that strike a balance between the parties to the dispute and the participants in the judicial process.[33]

[39] As a result, judges must conduct hearings in accordance with the rule of *audi alteram partem*.[34]

[40] Moreover, judges must be—and appear to be—impartial and objective.[35] In this regard, the Supreme Court of Canada noted in *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)* the importance of ensuring "not only the

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[32] Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2004) at p. 27. See also Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2021) at p. 18.
[33] Luc Huppé, *La déontologie de la magistrature: droit canadien: perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 176.
[34] See, e.g., *Harvey et Gagnon*, 2015 CanLII 4288 (QC CM).
[35] *M.R. c. Garneau*, 2020 CanLII 67460 (QC CM), at para. 16; *Prud'homme c. Chaloux*, 2017 CanLII 59497 (QC CM), at para. 9.

reality, but the *appearance* of a fair adjudicative process" for maintaining public confidence.[36] The test for assessing a judge's conduct in this regard is whether an informed person viewing the matter realistically and practically—and having thought the matter through—would perceive judicial bias.[37]

[41] A judge's conduct must of course be assessed on the basis of the circumstances of the case. For example, where a party is self-represented, as in *S.C.*, the judge may play a more active role. As well, in some circumstances in family law cases, Québec legislation requires that judges attempt to conciliate the parties, which may prompt the judges to play a different role before the hearing. That said, regardless of the context in which it is exercised, the judicial function retains essentially the same character and is subject to the same obligations of good conduct.[38]

B. DUTY OF DILIGENCE

[42] As a majority of the Supreme Court of Canada noted at the outset in *R. v. Jordan*, "Timely justice is one of the hallmarks of a free and democratic society."[39] Therefore, the office of judge requires judges to demonstrate a real willingness and ability to contribute to the effective functioning of judicial institutions. From this requirement stems the duty of diligence. As author Luc Huppé (now a Court of Québec judge) points out:

> [TRANSLATION]
>
> The duty of diligence is based on a fundamental premise: judges are not passive participants in the proper functioning of their court; rather, they are the **key players**. It can be defined as the duty of judges to meaningfully serve the court so that the judicial function can be effectively carried out. The Canadian Judicial Council states that diligence, in the broad sense, is concerned with carrying out judicial duties with skill, care and attention, as well as with **reasonable promptness**.

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[36] *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 (CanLII), [2015] 2 S.C.R. 282, at para. 22.
[37] *Ibid.* at para. 20. See also Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2004) at p. 27.
[38] See *Bradley (Re)*, 2018 QCCA 1145, at para. 47.
[39] *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631, at para. 1. See also *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 146.

> Diligence requires judges to take action to ensure that their tasks are completed, **without waiting for the parties to the dispute or the court administration to remind them of what is expected of them**. Their conduct should not delay or hinder the court's role in society, but rather make it possible to perform the role effectively. […][40]
>
> [Emphasis added]

[43] One component of the duty of diligence is the duty to deliver judgments with reasonable promptness, as expressed for example in *Ethical Principles for Judges*:

> **Principles:**
>
> . . .
>
> **3.** Judges should endeavour to perform all judicial duties, including the delivery of reserved judgments, with reasonable promptness.
>
> . . .
>
> **Commentary:**
>
> . . .
>
> **10.** The proper preparation of judgments is frequently difficult and time consuming. However, the decision and reasons should be produced by the judge as soon as reasonably possible, having due regard to the urgency of the matter and other special circumstances. Special circumstances may include illness, the length or complexity of the case, an unusually heavy workload or other factors making it impossible to give judgment sooner. In 1985, the Canadian Judicial Council resolved that, in its view, reserved judgments should be delivered within six months after hearings, except in special circumstances.[41]

[44] As stated in the passage above, the CJC resolved in 1985 that judgments should generally be delivered within six months of being reserved. In *R. v. K.G.K.*, a majority of the Supreme Court of Canada described the six-month time limit as a "guideline".[42] It is not an absolute rule because it "acknowledges the inherent case-specific and judge-specific nature of the balance between the considerations of the need for

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[40] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 215.

[41] Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2004) at pp. 17 and 21. See also Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2021) at pp. 27 and 30. For a discussion of this obligation in other jurisdictions, see James Thomas, *Judicial Ethics in Australia*, 3rd ed. (Chatswood, NSW: LexisNexis Butterworths, 2009), at Nos. 4.53 to 4.55 (Australia); and Guy Canivet and Julie Joly-Hurard, *La déontologie du magistrat*, 2nd ed. (Paris: Dalloz, 2009), at pp. 109 to 110 (France).

[42] *R. v. K.G.K.*, 2020 SCC 7, at paras. 63 to 64.

timeliness, trial fairness, and practical limitations".[43] Nevertheless, this six-month guideline has long been accepted as an important benchmark for flagging what may, as a matter of judicial misconduct, be an excessive delay.

[45] In Québec, the assessment of a judge's conduct must also take into account the time limits set out in article 324 of the C.C.P. for rendering judgment, depending on the nature of the case:[44]

> **324.** For the benefit of the parties, the judgment on the merits in first instance must be rendered within
>
> (1) six months after the matter is taken under advisement in contentious proceedings;
>
> (2) four months after the matter is taken under advisement in small claims matters under Title II of Book VI;
>
> (3) two months after the matter is taken under advisement in child custody or child support matters and non-contentious cases;
>
> (4) two months after the matter is taken under advisement if the judgment is to determine whether a judicial application is abusive; and
>
> (5) one month after the case is ready for judgment if a judgment is to be rendered following the defendant's failure to answer the summons, attend the case management conference or defend on the merits.
>
> The time limit is two months after the matter is taken under advisement in the case of a judgment in the course of a proceeding, but one month after the court is seized when it is to rule on an objection raised during a pre-trial examination and pertaining to the fact that a witness cannot be compelled, to fundamental rights or to an issue raising a substantial and legitimate interest.
>
> The death of a party or its lawyer cannot operate to delay judgment in a matter taken under advisement.
>
> If the advisement period has expired, the chief justice or chief judge, on their own initiative or on a party's application, may extend it or remove the judge from the case.

[43] *R. v. K.G.K.*, 2020 SCC 7, at para. 64.
[44] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 191.

[46] The existence of article 324 of the C.C.P. is one of the relevant facts set out in the Notice of Allegations.[45] Allegation 1A refers to it.

[47] Under the last paragraph of article 324 of the C.C.P., if the time limit set out in that provision has expired, the chief justice may extend it or remove the judge from the case. As discussed in the Decisions on Preliminary Motions, article 324 of the C.C.P. and the powers of the chief justice that it sets out relate to the administration of the courts. Administrative decisions by the chief justice in a given case are relevant to analyzing the issue of misconduct but are not determinative in themselves. For example, if the chief justice removes a judge from a case because the advisement period has been exceeded, the CJC should not automatically conclude that the judge committed misconduct. The opposite is also true.

VI. WHETHER EXPERT EVIDENCE IS NECESSARY TO ESTABLISH THE STANDARD OF CONDUCT

[48] In argument at the conclusion of the inquiry hearing, Justice Dugré, relying on a decision of the Tribunal des professions,[46] submitted that the standard of acceptable conduct with respect to both delays in rendering judgment and a judge's conduct in the courtroom should have been established on the basis of an independent and impartial expert opinion.[47]

[49] With regard to delays in rendering judgment, it is possible to establish the standard in light of the time periods set out in article 324 C.C.P., and the resolution of the CJC expressing the view that judgments should be delivered within six months after hearings, except in special circumstances.[48]

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[45] Notice of Allegations at para. 17.
[46] *Dupéré-Vanier c. Camirand-Duff*, 2001 QCTP 8 (CanLII).
[47] Amended Written Submission of the Honourable Gérard Dugré, at paras. 25 to 28.
[48] Counsel for Justice Dugré stated in argument that, to their knowledge, this was the first time in Québec that an attempt had been made to turn the time limits set out in the C.C.P. into an ethical standard (Submissions of Louis Masson, December 6, 2021, at p. 168). Yet, the Conseil de la magistrature du Québec refers to the time limits set out in the C.C.P. when it deals with complaints regarding delays in rendering judgment (see, e.g., *A. c. C.*, 2016 CanLII 84828 (QC CM), at para. 11; *A. c. X.*, 2013 CanLII 71464, at para. 6; and *A. c. X.*, 2009 CanLII 92147 (QC CM), at para. 16).

[50] With regard to courtroom conduct, it should be noted that during the inquiry, Justice Dugré argued against the use of expert evidence on the appropriate conduct for conciliation:

> [TRANSLATION]
>
> MAGALI FOURNIER
>
> From the outset, I wish to clarify that, in my opinion, **this is not the kind of subject that lends itself to an expert opinion**, this is not . . .
>
> . . .
>
> . . . **this is not at all something that should be dealt with on the basis of an expert opinion**. How can this be dealt with, then? I had already said that Mr. Justice Dugré would, himself, be addressing how he conducts his own conciliations, and I think that that may be enough. Let's see what Mr. Battista will have to suggest, other than what we decided, that won't be this morning.[49]
>
> [Emphasis added]

[51] In the end, Justice Dugré called Donato Centomo, Ad. E., to testify and submitted that he be qualified as an expert in Québec civil law, specifically in family law proceedings.[50] As will be described below, Mr. Centomo testified on the task of judges as conciliators, and on possible techniques and best practices.[51] The Committee will consider this evidence in analyzing the allegations regarding the judge's conduct in the courtroom in cases where he claimed to be acting as a conciliator.

[52] That said, the Committee rejects the claim that expert evidence is required to establish the appropriate standard of courtroom conduct for judges, whether they are acting as conciliators or presiding over hearings.

[53] In disciplinary matters, expert evidence may sometimes be required to establish the applicable standard, particularly when assessing the quality of the work done by a professional. *Dupéré-Vanier v. Camirand-Duff*, which Justice Dugré cited, is a good example. In this appeal of a decision by the disciplinary committee of the Ordre des

[49] Submissions of Magali Fournier, April 16, 2021 (in camera), at pp. 16 to 17.
[50] Testimony of Donato Centomo, June 28, 2021, at p. 101.
[51] See, e.g., Testimony of Donato Centomo, June 28, 2021, at pp. 129 and 150, and Testimony of Donato Centomo, June 29, 2021, at pp. 35, 56, and 88 to 112.

psychologues du Québec, the complaint was that a psychologist had failed to observe [TRANSLATION] "generally accepted scientific principles in psychology" by making a diagnosis and recommendations regarding the father of a child without ever having met the father.[52] Where a professional is alleged to have failed to follow a specific scientific rule, the existence of the rule must first be proven.[53]

[54] In short, as the Court of Appeal of Québec suggested in *Courchesne c. Castiglia*, expert evidence may be required [TRANSLATION] "where the professional is alleged to have done something that is contrary to a generally accepted scientific principle or to have engaged in conduct that is contrary to a generally accepted professional standard."[54]

[55] These principles do not apply in this case. The allegations regarding Justice Dugré's conduct in the courtroom do not involve technical breaches. In essence, they relate to the duty of civility towards litigants and their counsel, the duty to ensure the proper conduct of the proceedings, the observance of the rule of *audi alteram partem* and the duty of impartiality, none of which requires expert evidence.[55] Moreover, Justice Dugré did not provide any precedent where such evidence was required or even considered in the context of proceedings regarding judicial misconduct. Ultimately, as the Supreme Court of Canada noted in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, the judicial council has the necessary expertise to decide these issues.[56]

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[52] *Dupéré-Vanier c. Camirand-Duff*, 2001 QCTP 8 (CanLII), at para. 3.
[53] In fact, the question put to the parties by the Tribunal makes it clear that its concern was directly related to the specific wording of the complaint (*Dupéré-Vanier c. Camirand-Duff*, 2001 QCTP 8 (CanLII), at para. 9: [TRANSLATION] "**Given the specific wording of the complaint**, to what extent could the Committee find the appellant guilty, since no evidence of the "standard" or generally accepted scientific principles was provided, the syndic having deliberately limited herself in argument to simply referring the Committee to certain earlier decisions on the subject and to certain authors who had supposedly written on the subject, without calling any expert witnesses?" [emphasis added].
[54] *Courchesne c. Castiglia*, 2009 QCCA 2303, at para. 28.
[55] See by analogy *Mucciacciaro c. Chamelian*, 2018 CanLII 75482 (QC CDCM), at paras. 121 to 130.
[56] *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 73. See also *Pearlman v. Manitoba Law Society Judicial Committee*, 1991 CanLII 26 (SCC), [1991] 2 S.C.R. 869, at p. 880.

VII. REQUEST TO EXAMINE THE EXECUTIVE DIRECTOR OF THE CJC

[56] As part of the inquiry, Justice Dugré sought to compel the former executive director of the CJC, Norman Sabourin, to testify on certain matters related to the receipt of two of the complaints at issue.[57]

[57] The CJC objected on the grounds that the CJC and its members, as an administrative tribunal, were protected by judicial immunity. It asserted that this immunity stemmed from the principle of judicial independence that applies to both ordinary court judges and administrative judges, in order to maintain deliberative secrecy and the tribunal's administrative independence, particularly in terms of decision making related to the internal management of the tribunal.

[58] The Committee heard submissions from the CJC and further submissions from Justice Dugré on July 30 and August 26, 2021. The Committee took the matter under advisement and rejected the application orally on September 1, 2021, stating that the reasons for the decision would be set out in writing. The reasons are as follows.

[59] It is common ground that judicial immunity applies to Mr. Sabourin's decisions in terms of the deliberations in these cases.[58] It is also common ground that this judicial immunity is not absolute.[59]

[60] Justice Dugré stated that he did not intend to ask questions directly related to the deliberations. Specifically, he was seeking answers to questions about certain practices of the CJC related to the handling of complaints, in order to show that these practices had not been followed in his case. Since the questions he intended to ask were not directly related the deliberations, Justice Dugré claimed that he did not bear the burden of showing that the rules of natural justice had been breached.

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[57] Mr. Sabourin was summoned regarding *K.S.* and *A.*
[58] *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221, at paras. 52 to 55. See also *Comité de révision de l'aide juridique c. Denis*, 2007 QCCA 126, at paras. 22 to 24.
[59] *Ibid*. See also *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952, at pp. 964 to 966.

[61] However, without going into detail, Justice Dugré stated that he intended to raise a defence that he had been the victim of a [TRANSLATION] "cabal" instituted by the Superior Court of Québec to generate a flood of complaints against him. Without making any clear accusations against Mr. Sabourin, Justice Dugré implied that Mr. Sabourin had been somehow involved in this [TRANSLATION] "cabal".[60]

[62] This [TRANSLATION] "cabal" would have begun after a complaint was received from Mr. S., who claimed in a letter that he had been waiting for a family court judgment from Justice Dugré for more than six months, even though the judge had promised to deliver his judgment within a month, given the urgency of the case.[61]

[63] The [TRANSLATION] "cabal" continued through the actions of the late associate chief justice of the Superior Court, the Honourable Eva Petras ("**Associate Chief Justice Petras**") in relation to the complaint in *A.*

[64] As a reminder, at the initial stage of the process, the executive director of the CJC must review all correspondence to determine whether it constitutes a complaint and, if so, whether it warrants consideration. Early screening is governed by sections 4 and 5 of the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges* ("**2015 Review Procedures**"):

> 4. Early Screening by Executive Director
>
> 4.1 The Executive Director must review all correspondence to the Council that appears intended to make a complaint to determine whether it warrants consideration.
>
> 4.2 The Executive Director may also review any other matter involving the conduct of a superior court judge that comes to the attention of the Executive Director and appears to warrant consideration.
>
> 4.3 If 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.
>
> 5. Early Screening Criteria

[60] Transcript, August 26, 2021, at pp. 13, 19, 21 and 31.
[61] Exhibit KSP-1.

> For the purposes of these Procedures, the following matters do not warrant consideration:
>
> (a) complaints that are trivial, vexatious, made for an improper purpose, are manifestly without substance or constitute an abuse of the complaint process;
>
> (b) complaints that do not involve conduct; and
>
> (c) any other complaints that are not in the public interest and the due administration of justice to consider.

[65] The first stage of the process is therefore an *ex parte* triage that eliminates from the outset complaints that do not appear to be valid under the criteria of section 5 of the 2015 Review Procedures. At the next stage, if the chairperson of the Judicial Conduct Committee determines that the matter may be serious enough to warrant the removal of the judge, they refer the matter to a review panel.

[66] In *K.S.*, the CJC received an email message from K.S. on August 31, 2018, stating that Justice Dugré was late in rendering judgment in his case.[62] Mr. Sabourin opened the file and referred the matter to the vice-chairperson of the Judicial Conduct Committee, the Honourable Glenn Joyal ("**Chief Justice Joyal**"), for review. On March 14, 2019, having sought and received comments from Justice Dugré and Chief Justice Fournier, Chief Justice Joyal referred the matter to a Review Panel. After receiving three sets of comments from Justice Dugré, the Review Panel issued its report, finding that this Inquiry Committee should be constituted.

[67] In *A.*, on April 2, 2019, the CJC received a letter from Associate Chief Justice Petras, which included a recording of a hearing before Justice Dugré on April 3, 2018. The letter mentioned that counsel present at the hearing had complained verbally to the coordinating judge for the District of Laval about Justice Dugré's comments and conduct.[63] Mr. Sabourin opened the file and referred the matter to Chief Justice Joyal. Having sought and received comments from Justice Dugré, Chief Justice Joyal referred the matter directly to this Inquiry Committee.

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[62] Detailed facts can be found in the Decisions on Preliminary Motions, at paras. 31 to 40.
[63] Detailed facts can be found in the Decisions on Preliminary Motions, at paras. 49 to 52.

[68] It appears from the foregoing that, pursuant to section 4.1 of the 2015 Review Procedures, Mr. Sabourin decided that the correspondence to the Council in both *K.S.* and *A.* [TRANSLATION] “appear[ed] intended to make a complaint” and that, pursuant to section 4.3 of the 2015 Review Procedures, he subsequently [TRANSLATION] “determined that [the] matter[s] warranted consideration”.

[69] Although Justice Dugré insists otherwise, the issue on which he was seeking to examine Mr. Sabourin was directly or indirectly related to Mr. Sabourin’s deliberations in relation to these decisions.

[70] In particular, with respect to the early screening process, Justice Dugré was concerned about a letter sent by the CJC to Mr. S. informing him that complaints were typically reviewed within three to six months. Justice Dugré wanted to ask Mr. Sabourin whether this time frame was in fact typical and whether it was normal to write to the complainant and provide this kind of information. He suggested that Mr. Sabourin may have treated his case differently from others at the early screening stage. He was seeking to create [TRANSLATION] “inferences” in support of his claim that he was the victim of a [TRANSLATION] “cabal”.

[71] Similarly, Justice Dugré wanted to question Mr. Sabourin about the discussions Mr. Sabourin allegedly had with Assistant Chief Justice Petras in dealing with the complaint in *A.* Here again, the goal was to be able to allege [TRANSLATION] “inferences” about the CJC’s improper handling of the complaints against him, in connection with the plot against him.

[72] Thus, Justice Dugré was hoping to show that Mr. Sabourin’s deliberations in the early screening process were improper. While he would not ask Mr. Sabourin questions directly concerning his deliberations, he would ask questions regarding the CJC’s procedures that in his view should have governed them. He would then invite us to draw inferences regarding Mr. Sabourin’s deliberations. In short, he wanted to bring through the back door that which the law does not allow through the front door.

[73] The CJC has cited extensive case law on the principles of judicial independence as they apply to administrative tribunals. There is no doubt that these principles, and particularly the principle of deliberative secrecy, are well recognized by our courts.[64] Justice Dugré does not dispute this state of the law.

[74] *Ellis-Don* provides an example of the application of these principles. In a case before the Ontario Labour Relations Board, the panel had prepared and written a decision. However, the panel changed its decision following a full Board meeting held to ensure consistency in the Board's decisions. The Supreme Court had previously approved this process on certain conditions, including the condition that only questions of law be discussed. The panel was not to be influenced in its assessment of the evidence. The litigant who was the victim of this reversal submitted that the change in the decision was based on a new assessment of the evidence and sought to examine the panel members on this point but was refused because of the principle of deliberative secrecy. The litigant was unable to prove his point. He therefore applied for judicial review. The Court stated the following:

> [52] The case reveals a tension between the fairness of the process and the principle of deliberative secrecy. The existence of this tension was conceded by Gonthier J. in *Tremblay*, *supra*, at pp. 965–66. Undoubtedly, the principle of deliberative secrecy creates serious difficulties for parties who fear that they may have been the victims of inappropriate tampering with the decision of the adjudicators who actually heard them. Even if this Court has refused to grant the same level of protection to the deliberations of administrative tribunals as to those of the civil and criminal courts, and would allow interrogation and discovery as to the process followed, Gonthier J. recognized that this principle of deliberative secrecy played an important role in safeguarding the independence of administrative adjudicators.
>
> [53] Deliberative secrecy also favours administrative consistency by granting protection to a consultative process that involves interaction between the adjudicators who have heard the case and the members who have not, within the rules set down in *Consolidated-Bathurst*, *supra*. Without such protection, there could be a chilling effect on institutional consultations, thereby depriving administrative tribunals of a critically important means of achieving consistency.

[64] *Mackin v. New Brunswick (Minister of Finance); Rice v. New Brunswick*, [2002] 1 S.C.R. 405, 2002 SCC 13, at paras. 34 to 35.

> [54] Satisfying those requirements of consistency and independence comes undoubtedly at a price, this price being that the process becomes less open and that litigants face tough hurdles when attempting to build the evidentiary foundation for a successful challenge based on alleged breaches of natural justice (see, e.g., H. N. Janisch, "Consistency, Rulemaking and *Consolidated-Bathurst*" (1991), 16 *Queen's L.J.* 95; D. Lemieux, "L'équilibre nécessaire entre la cohérence institutionnelle et l'indépendance des membres d'un tribunal administratif: *Tremblay c. Québec (Commission des affaires sociales)*" (1992), 71 *Can. Bar Rev.* 734). The present case provides an excellent example of those difficulties.
>
> [55] After the dismissal of its interlocutory motion, the appellant could not examine the officers of the Board on the process that had been followed. In the absence of any further evidence, this Court cannot reverse the presumption of regularity of the administrative process simply because of a change in the reasons for the decision, especially when the change is limited on its face to questions of law and policy, as discussed above. A contrary approach to the presumption would deprive administrative tribunals of the independence that the principle of deliberative secrecy assures them in their decision-making process. It could also jeopardize institutionalized consultation proceedings that have become more necessary than ever to ensure the consistency and predictability of the decisions of administrative tribunals.[65]

[75] The same findings apply in this case. Moreover, Justice Dugré falls far short of meeting the burden of presenting "valid reasons for believing that the process followed did not comply with the rules of natural justice", which the case law imposes in order to have deliberative secrecy lifted.[66] Deliberative secrecy cannot be lifted on the basis of speculation; otherwise, the bare allegation of some form of lack of impartiality would suffice to make any decision maker compellable. That is not the state of the law.

[76] In any event, even if Justice Dugré had established differential treatment with respect to the correspondence in *K.S.*, or the [TRANSLATION] "cabal" theory by, for example, cross-examining Associate Chief Justice Petras on this issue—which he did not do—the Committee's task is to determine whether Justice Dugré engaged in misconduct within the meaning of the *Judges Act* and, if so, whether to recommend his removal. The

[65] *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, [2001] 1 S.C.R. 221, at paras. 52 to 55.
[66] *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952, at p. 966.

facts that Justice Dugré was seeking to put in evidence are simply irrelevant to this analysis.

[77] For these reasons, the Committee concluded that Mr. Sabourin was not compellable with respect to the proposed testimony on the basis of the principles of deliberative secrecy, and that the testimony Justice Dugré was seeking to adduce was irrelevant to the inqury.

VIII. ALLEGED BREACHES OF THE PRINCIPLE OF THE SEPARATION OF FUNCTIONS

[78] Justice Dugré submits that he is the victim of a breach of procedural fairness in that the CJC's process fails to comply with the principle of the separation of functions within administrative bodies. While it is not readily apparent that some of these arguments fall within the separation of functions, the Committee will address his arguments under this rubric.

A. OPEN LETTER TO CANADIANS FROM THE CJC, JULY 31, 2020

[79] First, Justice Dugré claims that the CJC is seeking to limit the right of judges who are the subject of complaints to make full answer and defence. He describes this at the very beginning of his written submission:

> [TRANSLATION]
>
> [5] There are concerns about procedural fairness. Indeed, the Canadian Judicial Council is waging an unprecedented campaign to limit the right of the judges it investigates to make full answer and defence. This concern was expressed in an open letter to Canadians on July 31, 2020:
>
> > Specifically, over the past decade, we have all witnessed public inquiries that have taken far too long and have been far too expensive. We have witnessed countless applications for judicial review, covering every imaginable aspect of the process. These have been enormously time-consuming, expensive and taxing on our federal courts. Furthermore, all costs, including those incurred by the judge who is at the centre of the inquiry, are fully funded by the taxpayer. The judge at issue continues to receive full salary and pension benefits as time passes. <u>This leaves the perception that the judge benefits from these</u>

> delays. Highlighting this problem, we refer to a painfully obvious pattern, as opposed to any individual case: a pattern that is contrary to the public interest and access to justice. (Emphasis added TCJ)
>
> [6] An informed person might be concerned about such intervention by the administrative tribunal hearing their case, in this case the Canadian Judicial Council. Norman Sabourin's testimony on this issue could have provided the Inquiry Committee with additional information, but the Committee refused to hear this key witness. Therefore, with respect to the appearance of bias, the informed person standard has limited application.[67]
>
> [Emphasis in original]

[80] The letter cited by Justice Dugré is not in the record of the inquiry. It is mentioned for the first time in the written submission filed after the close of evidence. Justice Dugré assumes that the Committee may take judicial notice of it, without further explanation. Without ruling on the admissibility of the document, the Committee may nevertheless dispose of the argument raised by Justice Dugré on the basis of the open letter itself.

[81] The letter refers to cases that predate the case now before the Committee, and it does not relate or refer to Justice Dugré in any way. Moreover, it makes no criticism of the judges involved in those inquiries.

[82] Justice Dugré implies that he would have liked to examine the executive director of the CJC in 2020, Norman Sabourin, to obtain more information about the circumstances surrounding the open letter. Justice Dugré requested that Mr. Sabourin testify about his screening of the complaints against Justice Dugré, and it was on this point that the objection to the evidence by counsel for the CJC was allowed. No mention was made of the open letter or anything related to it. Moreover, as mentioned above, Justice Dugré never referred to the open letter during the inquiry.

[83] Justice Dugré submits that the open letter left the perception that the CJC intended to limit the right of defence of the judges it investigates:

[67] Amended Written Submission of the Honourable Gérard Dugré, at paras. 5 to 6.

> [TRANSLATION]
>
> [20] By stating that the disciplinary process "leaves the perception that the judge benefits from these delays", the Canadian Judicial Council is leaving the impression that it will take steps to eliminate the delays and consequently the time spent on full answer and defence, which undermines its independence and impartiality.[68]

[84] With respect, an informed person would have read the open letter and understood that the CJC had worked with superior court judges to submit joint proposals for legislative change to the government. In any event, there is nothing in the letter that would lead a thoughtful, informed person to believe the CJC seeks to deny any rights afforded to those under investigation as the solution for addressing perceived deficiencies in its process.

[85] Lastly, an informed person would also take into account the fact that Justice Dugré did in fact have the opportunity during a lengthy inquiry to call numerous witnesses and cross-examine those called by presenting counsel, and to present all his arguments. This aspect of Justice Dugré's submissions is without merit.

B. CONCURRENT COMPLAINTS

[86] The second part of Justice Dugré's submissions relates to four additional complaints made to the CJC by litigants after this inquiry was announced.

[87] Two complaints, namely those filed by K.S. and S.S. in August and September 2018 were referred to a Review Panel to decide whether to launch an inquiry. The decision to conduct an inquiry was announced by the CJC on September 6, 2019.[69]

[88] Following this announcement, new complaints from litigants or counsel were received by the CJC, all of which involved allegations similar to the ones that the inquiry was to examine.

[89] In his written submission, Justice Dugré's argument is as follows:

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[68] Amended Written Submission of the Honourable Gérard Dugré, at para. 20.
[69] Amended Written Submission of the Honourable Gérard Dugré, at para. 8.

> [TRANSLATION]
>
> [8] The concomitance is obvious: four of the six were made within a short period after the CJC's press release was issued on September 6, 2019. Some of the complaints deal with matters that date back more than six years. The Inquiry Committee should be concerned that the appearance of an impartial process has been undermined. Yet it refuses to hear from the key witness at the heart of the complaints process, the bypassing of the screening process and the implementation of the ethics process who could inform and reassure the Committee that the process is consistent with the principles of judicial independence and procedural fairness. This evidence was rejected.
>
> [9] That decision supports the argument that an informed person can come to only one conclusion: that appearances would point to an orchestration that is the antithesis of an impartial and independent process. However, in this case, it is impossible for a person to be reasonably informed because the necessary information is unavailable.[70]

[90] There is no merit to this argument. Justice Dugré had the opportunity to fully cross-examine the witnesses called by presenting counsel, including Chief Justice Fournier and Associate Chief Justice Petras, and the complainants and counsel involved in the complaints. Counsel for Justice Dugré did not identify any evidence that would support a finding of misconduct by anyone in connection with the filing of the additional complaints.

[91] A conspiracy cannot be inferred from the mere fact that new complaints were filed after the constitution of the Committee was announced. It should come at no surprise that litigants and even counsel may be somewhat reluctant to complain immediately after a bad experience in court. Litigants may not even be aware that they can make a complaint, while some counsel may fear the repercussions of doing so.That news of an inquiry might have a certain ripple effect on litigants, especially if they had a similar experience to what is being investigated, is hardly surprising. None of the complainants suggested that they had been pressured into making a complaint.

[92] Justice Dugré's argument on this issue cannot be accepted.

[70] Amended Written Submission of the Honourable Gérard Dugré, at paras. 8 to 9.

C. INVOLVEMENT OF CHIEF JUSTICE FOURNIER AND ASSOCIATE CHIEF JUSTICE PETRAS

[93] Justice Dugré submits that chief justices Fournier and Petras were heavily involved in his review process and then in the disciplinary process while members of the CJC. Justice Dugré criticizes the CJC for a complete lack of separation to shield the Committee or to isolate chief justices Fournier and Petras.

[94] First, it should be noted that the task of investigating a judge's conduct and issuing a report rests solely with the members of the Committee. Under paragraph 3(4)(b) of the 2015 By-Laws, members of the same court as that of the judge who is the subject of the inquiry or investigation are not eligible to be members of the inquiry committee, which means that chief justices Fournier and Petras were not eligible to be part of this Committee.

[95] Justice Dugré insists that his argument was not directed at the members of the Committee and in no way challenged the presumption of integrity that they enjoy. It is the system and the process that he submits are flawed.

[96] Justice Dugré seeks to distinguish between an apprehension of individual bias and an apprehension of institutional bias, as discussed by the Supreme Court of Canada in *R. v. Lippé*, where Chief Justice Lamer dealt with the institutional aspect of judicial independence:

> Notwithstanding judicial independence, there may also exist a reasonable apprehension of bias on an institutional or structural level. Although the concept of institutional impartiality has never before been recognized by this Court, the constitutional guarantee of an "independent and impartial tribunal" has to be broad enough to encompass this. Just as the requirement of judicial independence has both an individual and institutional aspect (*Valente*, *supra*, at p. 687), so too must the requirement of judicial impartiality. I cannot interpret the Canadian *Charter* as guaranteeing one on an institutional level and the other only on a case-by-case basis. . . .
>
> . . .
>
> The objective <u>status</u> of the tribunal can be as relevant for the "impartiality" requirement as it is for "independence". Therefore, whether or not any particular judge harboured pre-conceived ideas or biases, if the system is structured in such a way as to create a reasonable

> apprehension of bias on an institutional level, the requirement of impartiality is not met. As this Court stated in *Valente*, *supra*, the appearance of impartiality is important for public confidence in the system (at p. 689):
>
> > Both independence and impartiality are fundamental not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial, and that the test for independence should include that perception. The perception must, however, as I have suggested, be a perception of whether the tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees.[71]
>
> [Emphasis in original]

[97] The Supreme Court of Canada considered the institutional aspect of independence in the context of a judicial council in *Ruffo v. Conseil de la magistrature*.[72] In the majority reasons written by Justice Gonthier, the Court adopted the test for institutional independence:

> [45] In the same case, it was established that the test for institutional impartiality should be that set out by de Grandpré J. in *Committee for Justice and Liberty*, *supra*, at p. 394:
>
> > . . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude . . . ."[73]
>
> [Emphasis in original]

[71] *R. v. Lippé*, 1990 CanLII 18 (SCC), [1991] 2 S.C.R. 114, at pp. 140 to 141.
[72] *Ruffo v. Conseil de la magistrature*, 1995 CanLII 49 (SCC), [1995] 4 S.C.R. 267.
[73] *Ibid.* at para. 45.

[98] In *Ruffo*, the complaint was filed by Chief Judge Gobeil of the Court of Québec, the court of which Judge Ruffo was a member. The chief judge also happened to be the chair of the Conseil de la magistrature du Québec.

[99] In addition, some members of the inquiry committee established by the Conseil de la magistrature were also judges of the Court of Québec. The appellant argued that, in his role as Chief Judge, Judge Gobeil could be called upon to make specific assignments that would confer certain benefits on the designated judges. The Supreme Court found that there could be no reasonable apprehension of bias on such grounds.

[100] In the case of the CJC, there is no such proximity between those involved. None of the members of this Committee is a member of the Superior Court of Québec, of which justices Fournier and Petras are respectively Chief Justice and Associate Chief Justice.

[101] Returning to *Ruffo*, the Supreme Court concluded as follows on the issue of institutional bias in the context of the Conseil de la magistrature du Québec:

> [78] Where the Chief Judge makes use of the formal disciplinary process by taking the initiative of laying a complaint, as authorized by the statute, there is no reason to think that the Conseil and its Comité do not, in the eyes of a reasonable and well-informed observer, have the impartiality required to carry out their duties. As I stated earlier, the Chief Judge's authority under the *CJA* is essentially administrative; **as a result, any scenario involving possible negotiations about benefits to be conferred on or withdrawn from Conseil members dealing with the complaint, depending on what decision is made, is impossible to imagine**.
>
> [79] Accordingly, the only issue that remains is the Chief Judge's possible influence on Court of Québec judges who are members of the Conseil by virtue of the moral authority that is naturally associated with his status and functions. With respect, I cannot accept the appellant's arguments on this point. It is normal, legitimate and desirable for the Chief Judge to have moral authority. Such authority is associated with the Chief Judge as an individual and with the office he holds, and is necessary for its exercise. It is not restrictive and is part of the context in which all judges perform their duties. **It does not in itself affect the capacity of a judge to decide to the best of his or her knowledge and belief and on the basis of the relevant factors. In ethical matters judges take account of established rules, precedents, theory, their own experience and authoritative opinions —**

> **including that of the Chief Judge — not as restrictive standards but for their persuasive value, in order to make decisions they consider fair. In this context, therefore, the Chief Judge's moral authority cannot be seen as giving rise to a reasonable apprehension of bias**.[74]
>
> [Emphasis added]

[102] In this case, Justice Dugré simply states that a lack of independence results from the mere fact that chief justices Fournier and Petras are members of the CJC, without giving any specific reasons to explain how this may prevent the two Committee members who are also members of the CJC from determining this case impartially.

[103] The Committee concludes that there is no reasonable apprehension of institutional bias in this case.

IX. THE ABSENCE OF TESTIMONY FROM JUSTICE DUGRÉ

[104] Justice Dugré had initially announced his intention to testify before the Committee to answer the allegations. However, on the eve of the scheduled date, he announced that he no longer intended to testify. Out of respect for his decision, presenting counsel chose not to summon him to testify.

[105] In argument, Justice Dugré submitted he would have been incompetent to testify because the allegations against him involved matters that were subject to deliberative secrecy.[75] He further stated that, for this reason, no negative inference could be drawn from his decision not to testify.[76]

[106] Two concurrent immunities flow from the principle of judicial independence: (1) the immunity of judges from civil action for acts performed in the course of their duties; and

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[74] *Ibid.* at paras. 78 to 79. See also *Conseil de la magistrature (N.-B.) v. Moreau-Bérubé*, 1999 CanLII 32991 (NB CA), at para. 7.

[75] Submissions of Magali Fournier, December 7, 2021, at pp. 7 to 10.

[76] The Committee notes the apparent contradiction in the judge's position, since he does invite the Inquiry Committee to draw negative inferences from the fact that the CJC objected to summoning its former executive director, Norman Sabourin: [TRANSLATION] "Mr. Sabourin may be able to invoke the privileges he is claiming, but his silence has a price: it allows the respondent and the Inquiry Committee to draw negative inferences" (Amended Written Submission of the Honourable Gérard Dugré, at para. 16).

(2) the immunity of judges from being compelled to testify on issues of judicial independence.[77]

[107] By the very nature of its mandate, the CJC may be called upon to investigate allegations involving matters that touch upon judicial independence.[78] Indeed, in *Slansky v. Canada (Attorney General)*, Justice Mainville of the Federal Court of Appeal stated that "the process that is put in place to investigate the conduct of the judge is, in effect, an investigation into allegations of abuse of judicial independence".[79] Therefore, raising judicial immunity to impede an investigation must not be allowed, lest the CJC's mission, which is essential to maintaining public confidence in the judiciary, be entirely frustrated.[80]

[108] However, in exercising the right to make full answer and defence, judges must be free to present evidence on their own behalf without fear of breaching deliberative secrecy or otherwise violating the principle of judicial independence. This is why the jurisprudence recognizes that a judge who is the subject of an inquiry may voluntarily testify on matters covered by judicial immunity:

> [30] The rule of judicial immunity protects a judge from civil action and from dismissal on account of governmental displeasure at the judge's decisions or statement, but it does not render the judge unaccountable for misconduct or incapacity. The proposed inquiry into Judge Allen's conduct is not accordingly one that is barred by the rule.
>
> [31] I turn not to the assertion that Judge Allen is precluded by law from testifying about, or providing any reason for, any statement made by him in the course of rendering judgment and to the further assertion that he is deprived of his legal right to make full answer and defence.
>
> . . .
>
> [35] **The real issue is** not whether a judge is ordinarily competent to testify, the answer to which is still in doubt (see *R. v. Moran* (1987), 36 C.C.C. (3d) 225 (Ont. C.A.), at p. 244), but **whether a judge may be permitted to testify on his own behalf before a body properly**

[77] *Crédit Transit inc. c. Chartrand*, 2021 QCCS 4329, at paras. 19 to 21, leave to appeal refused, *Malo c. Synnott*, 2021 QCCA 1716.
[78] In fact, as author Luc Huppé explains, one of the functions of judicial ethics is precisely to regulate acts that are covered by immunity from prosecution (Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 28).
[79] *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (CanLII), [2015] 1 FCR 81, at para. 138.
[80] *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (CanLII), [2015] 1 FCR 81, at para. 160.

> **constituted to inquire into complaints of judicial misconduct or incapacity. To this I answer a resounding "yes"**.
>
> [36] The great principles of public policy which may render a judge incompetent to testify as to what he meant by a statement from the bench, or as to his reasons for making it, have no relevance in the kind of proceedings to which I have just referred. To the extent that these principles conflict with the equally important principle of judicial accountability, the latter must prevail. Otherwise, a judge, unable to make full answer and defence, would not have to account for even the most outrageous conduct.
>
> [37] Not every inappropriate statement by a judge constitutes misconduct. Once it has been established that the judge made the statement or statements alleged, the issue before the Judicial Council conducting an inquiry into the judge's conduct is whether the making of the impugned statement or statements is of itself misconduct sufficient to warrant a reprimand or more. Alternatively, the issue is whether what was said demonstrates an incapacity to execute the duties of judicial office. **In his defence, the judge is entitled to explain what he meant by what he said and to give his reasons for stating it**.[81]
>
> [Emphasis added]

[109] Moreover, the Court of Appeal of Québec stated the following in *Ruffo (Re)*: "Of the persons apt to testify on the relevant facts, the judge against whom the complaint is filed is one of the most important".[82] Author Luc Huppé also observes that [TRANSLATION] "no rule of law precludes judges from providing testimony and explanations about what they said at a hearing", adding that "judges regularly testify as part of the disciplinary process".[83]

[110] The CJC also has the tools to maintain the confidentiality of certain information disclosed in the course of its investigations. These tools provide sufficient guarantees for judges to be able to explain themselves freely without fear of compromising their judicial independence. In *Slansky*, Justice Mainville stated:

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[81] *Allen v. Manitoba (Judicial Council)*, 1992 CanLII 12878 (MB CA), at paras. 30, 31 and 35 to 37. These passages were cited with approval by the Conseil de la magistrature du Québec in an inquiry regarding time limits for rendering judgments (*G. R. c. Lafond*, 1997 CanLII 4662 (QC CM); for the Committee's report, see *G. R. c. Lafond*, 1999 CanLII 7234 (QC CM)). See also *Québec (Ministre de la justice) c. Plante*, 1997 CanLII 4668 (QC CM).

[82] *Ruffo (Re)*, 2005 QCCA 1197 (CanLII), at para. 106.

[83] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 116.

> [144] It may be necessary, in appropriate circumstances, to refuse to disclose information gathered in the course of an examination into a judge's conduct, particularly when such disclosure risks impairing the independence and impartiality of the judiciary. The *Judges Act* recognizes this.
>
> [145] Significantly, the Canadian Judicial Council is not subject to the *Access to Information Act*, R.S.C. 1985, c. A-1. Moreover, pursuant to subsection 63(6) of the *Judges Act*, an inquiry or investigation carried out by the Council may be held in public "or in private", unless the Minister of Justice of Canada requires that it be held in public. Pursuant to subsection 63(5) of the *Judges Act*, the Canadian Judicial Council may prohibit the publication of any information or documents placed before it in connexion with, or arising out of, such an inquiry or investigation "when it is of the opinion that the publication is not in the public interest." Pursuant to subsection 61(2) of the *Judges Act* "the work of the Council shall be carried out in such manner as the Council may direct."
>
> [146] All these provisions serve to protect judicial independence, while giving the Council the tools required for ensuring public confidence in the judiciary through effective and appropriately transparent inquiry and investigation processes. . . .[84]
>
> [Emphasis added]

[111] If Justice Dugré wished to testify in response to the allegations but was concerned that his testimony might draw him into matters that raised questions about his judicial independence, he could have asked the Committee to take the necessary measures. His decision not to testify about these matters was his to make; it cannot be justified *ex post facto* on the grounds that he is incompetent to testify.

[112] In determining whether misconduct occurred, the Committee will not draw any negative inference from the fact that Justice Dugré chose not to testify. However, his choice leaves the Committee without any direct explanation regarding the impugned acts from the principal party involved.

[84] *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (CanLII), [2015] 1 FCR 81, at paras. 144 to 146.

X. JUSTICE DUGRÉ'S EVIDENCE APPLICABLE TO ALL THE ALLEGATIONS

[113] Although Justice Dugré did not testify, he filed voluminous evidence and called many witnesses in support of his defence. The evidence, which is applicable to all the complaints under investigation, is essentially intended to establish the following points:

- Justice Dugré is a compassionate judge with a unique style who is well regarded by the legal community ("**personality and style**")
- Justice Dugré is a conciliatory and effficient judge ("**conciliatory skills**")
- Justice Dugré is a hard-working, prolific and competent judge ("**competency and work ethic**")

[114] These points and their related evidence are discussed below.

A. PERSONALITY AND STYLE

[115] Marie-Josée Houde-Dumont ("**Ms. Dumont**") has been Justice Dugré's assistant for 10 years.[85] She acted as clerk at hearings presided over by Justice Dugré on nearly 800 occasions.[86]

[116] She describes Justice Dugré as [TRANSLATION] "passionate" and very interested in people's problems and in finding solutions to those problems.[87] Ms. Dumont believes that the judge has his own unique style; he does not hesitate to use anecdotes or humour to put people at ease and facilitate discussions:

> [TRANSLATION]
>
> Every judge has their own style. Every judge has their own way of doing things. His way is to be human, to be straightforward, while maintaining a very, very strict line of law, but . . . He uses . . . he will use humour, sometimes. He will tell anecdotes. . . . Then the magic happens.[88]
>
> . . .
>
> Mr. Dugré, whether there are 10, 20 or 4 of us, always uses anecdotes or humour to lighten the mood. I would notice that people would begin to speak more freely, stress was reduced, people started talking, the lawyers started

[85] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 118.
[86] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 129 and 136.
[87] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 129 to 130.
[88] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 132, ll. 17 to 24.

> talking, discussion was facilitated, and I saw that this was his way of doing things.[89]

[117] Ms. Dumont noted that Justice Dugré often used the same anecdotes or humorous comments. She added that, after 10 years, [TRANSLATION] "you end up knowing them by heart".[90] She gave the following examples:

> [TRANSLATION]
>
> - "You know the kids have a good lawyer: me."[91]
> - "Well then, I'm just going to order you to get back together."[92]
> - "We'll put them up for adoption" (referring to children).[93]

[118] In her opinion, this approach made litigants laugh or smile.[94] She pointed out that litigants were well aware that the statements were being made in jest, stating that [TRANSLATION] "you'd have to be a bit dense to take them at face value".[95]

[119] Another example Ms. Dumont gave is that the judge frequently refers to contempt of court by saying, [TRANSLATION] "Contempt!" when a person fails to tell the whole truth or fails to comply with an order, or when a party makes a mistake.[96] The judge then asks the bailiff if there are [TRANSLATION] "dungeons downstairs".[97] According to her, this method creates a more relaxed atmosphere and makes people laugh.[98] In addition, counsel have sometimes told her at the end of a trial that they found Justice Dugré to be congenial or that they enjoyed the trial. She said that she sometimes passes these comments on to the judge.[99]

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[89] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 133, ll. 15 to 23.
[90] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 133, ll. 5 to 7.
[91] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 134, ll. 9 to 10.
[92] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 134, ll. 11 to 12.
[93] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 135, ll. 1 to 2.
[94] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 135.
[95] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 135, ll. 5 to 7.
[96] She gave the example of misspelling the name of an author of doctrine.
[97] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 135 to 136.
[98] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 136.
[99] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 137.

[120] Justice Dugré also called as witnesses over 30 lawyers who had appeared before him.[100] Virtually all of them had won their case or had their case resolved favourably before Justice Dugré.

[121] A number of the witnesses corroborated Ms. Dumont's testimony that he had his own unique way of conducting hearings.

[122] Some stated that the judge would quickly identify, within minutes of the start of the hearing, what he considered to be the pitfalls in the case. He did not hesitate to tell the parties about these pitfalls in an attempt to settle the case. In doing so, Justice Dugré would sometimes use expressions that were surprising but that enabled the parties to quickly grasp the substance of his thoughts. Philippe Trudel put it this way:

> [TRANSLATION]
>
> What I found . . . at first, I was a bit surprised by his . . . the way he approached the case. And I will always remember a comment he made. Before the case started, he discussed the positions of the parties, and then he asked about the possibility . . . whether the possibility of a settlement had been discussed, and then he said, "What would Daddy do in those circumstances?" And when I heard that, I confess that I was surprised, perhaps a little worried, but I realized afterwards that there was no hidden agenda, no prejudice.
>
> I realized that Justice Dugré was a . . . a deeply compassionate person, and his remark was probably clumsy. . . . but it was really meant to get the parties to try to talk to each other one last time. And that wasn't the only thing he said—he said a lot of other things. And in his style, I knew his style from having seen it before, in *Krantz*, but his style was to . . . to speak out loud, he speaks out loud, and you might almost say it's a monologue. He says, "OKAY, well, if there's this, but if we add that," and then he makes hypothetical calculations. Then he says: "OKAY, well, basically, if you read between the lines, well, you're going to lose."[101]

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[100] They were Ayda Abedi, Stela Alivodej, Yves Archambault, Fadi Amine, Robert Astell, Nawal Benrouayene, Elaine Bissonnette, Josiane Brault, André Breton, Robert D. Brisebois, Daniel Brook, Jonathan Claude-Étienne, Sophie Cloutier, Jocelyn Dubé, Frédéric Dupont, John Steven Foldiak, Vincent Grenier-Fontaine, Patrick Henry, Luc Lachance, Félix Lalonde, Haytoug Léon Chamlian, Marie-Andrée Malette, Herbert Madar, Érik Paul Masse, Miriam Morissette, James Nazem, Danielle Oiknine, James O'Reilly, Ad. E., Karim Renno, Jean Roberge, Philippe Trudel and Bruno Verdon. Most of Justice Dugré's judgments in the cases to which the witnesses referred have been entered into evidence. They are exhibits D-1 to D-14, D-16 to D-24, D-31 to D-40, and D-93.

[101] Testimony of Philippe Trudel, June 28, 2021, at p. 18, l. 1 to p. 19, l. 9.

[123] Most stated that Justice Dugré was a [TRANSLATION] "very interventionist" judge who asked a large number of questions.[102]

[124] Some witnesses commented on the judge's efforts to put the parties at ease, to lighten the mood and to remind the parties that a judgment would not fix everything. Marie-Andrée Malette stated the following:

> [TRANSLATION]
>
> It was nice appearing before Justice Dugré. From the outset, he tried to put us at ease. . . . So, right from the start, I really appreciated that he took time to explain to both parties, "You know, regardless of the judgment I'll be required to deliver in this case, you're going to have to continue to live as neighbours, unless you decide to sell or move, because"—he said—"you know, I'm not going to settle everything. It's not like that, unfortunately." And that's what we do as lawyers, we try to remind them of that, but the message is always more powerful when it comes from the judge.[103]

[125] Lastly, some emphasized his courtesy and good conduct in the courtroom. Jocelyn Dubé stated the following:

> [TRANSLATION]
>
> I found Justice Dugré's conduct to be entirely appropriate. I found him to be a judge who delivers compassionate justice, a down-to-earth person, a practical person, a very courteous person, one who gives each party a chance to be heard as well. He was very generous with his time.[104]

B. CONCILIATORY SKILLS

[126] Ms. Dumont believes that Justice Dugré is a [TRANSLATION] "great conciliator".[105] She stated that every morning of a trial, Justice Dugré would start with a conciliation.

[127] She cites as an example *Krantz*, a class action brought on behalf of residents alleging that they were adversely impacted by the reconstruction of a highway. The trial was set before Justice Dugré from September to the end of November 2017 for 60 days.

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[102] See, e.g., Testimony of Frédéric Dupont, June 16, 2021, p. 86.
[103] Testimony of Marie-Andrée Mallette, June 18, 2021, at p. 65, l. 11 to p. 66, l. 7.
[104] Testimony of Jocelyn Dubé, June 17, 2021, at p. 72, ll. 8 to 15.
[105] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 130.

Before the trial began, Justice Dugré held a case management conference and, through his interventions, a settlement was reached with several defendants. A second settlement was reached later with the rest of the defendants such that the trial was not held. Ms. Dumont adds that Justice Dugré [TRANSLATION] "worked his magic".[106]

[128] Philippe Trudel, one of the plaintiff's counsel in *Krantz*, explained in greater detail what happened at this case management conference. He states that Justice Dugré quickly began to identify the weaknesses in the case (both the plaintiff's and the defendants') and that he [TRANSLATION] "harshly berated" certain defendants.[107] He described the judge's approach as follows:

> [TRANSLATION]
>
> The method was…it was…"You're going to the slaughterhouse." "You're going to the slaughterhouse." Everyone is going to the slaughterhouse. Okay? So.. and there were no…arguments that came out of nowhere, I mean he really pointed at things that, yes, okay, there is a risk, or it isn't clear, that question.[108]
>
> . . .
>
> So he, I would say, gave the little push that was needed to convince those who were hesitating to sit down and find an honourable compromise, and that was a very honourable compromise . . . Justice Dugré really contributed to the outcome.[109]

[129] Ms. Dumont also referred to the family law case *L.*, which involved complex issues of aeronautical invention patent transfers. In her opinion, it was another example of Justice Dugré's conciliation skills, as he [TRANSLATION] "convinced the parties to settle".[110] She added that that same day, Justice Dugré was able to turn the trial into a settlement conference.

[130] Robert D. Brisebois, counsel in the case, explained the events in greater detail. He stated that *L.* was a very highly contested case. Consent for the patent transfer had been

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[106] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 132.
[107] Testimony of Philippe Trudel, June 28, 2021, at pp. 27-29.
[108] Testimony of Philippe Trudel, June 28, 2021, at p. 29, ll. 9 to 15.
[109] Testimony of Philippe Trudel, June 28, 2021, at p. 31, l. 25 to p. 32, l. 14.
[110] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 141.

approved by the Court, and Justice Dugré had an action for damages before him, to quantify the value of the patent, as well as an application for disqualification.

[131] Mr. Brisebois stated that at the start of the hearing, the judge addressed the parties, wondering if he was seized with the correct procedure. In the judge's opinion, the issue was one of enforcement of the judgments.[111] Mr. Brisebois describes the events as follows:

> [TRANSLATION]
>
> He went up to the Bench saying, "I was given this case because of the complexity of your case and my experience in the issue of enforcing judgments, and was asked, 'Mr. Dugré, would you please take the case.'"
>
> So, once he was on the Bench, he explained his view of the proceeding I had introduced, and there was a polite, respectful debate about could I do this, that or the other, yes or no?
>
> And at one point…because I wanted everyone to know what had happened, he gave us a few examples, because he had previously told us, "I know what I am talking about, I have rendered several judgments on similar matters and I'm proud of them."
>
> So he gave us the case law and I must admit that I was impressed by the quality of his presentation, which he was giving with the help of his assistant, because when he spoke about a case, it was clear to me, anyway, that she, the clerk, was putting the citations he would give on screen, and this was very constructive.
>
> It went well, and once the debate was finished, he said to us: "why not try a settlement conference in this case? Don't you think this has gone on long enough?"[112]

[132] Mr. Brisebois stated that during the settlement conference, the judge was very proactive, courteous and respectful during the entire session, which ended around 8:15 p.m. with a settlement ending the dispute. He added that it was one of the best experiences of his life.[113]

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[111] Testimony of Robert D. Brisebois, June 18, 2021, at pp. 41 to 50.
[112] Testimony of Robert D. Brisebois, June 18, 2021, at p. 50, l. 12 to p. 51, l. 17. Justice Dugré has written a scholarly article and given a presentation to members of the Settlement Conference Chamber on the homologation of settlements and ratification of agreements entered into following settlement conferences (Exhibit D-57A).
[113] Testimony of Robert D. Brisebois, June 18, 2021, at p. 53.

[133] The evidence also shows that through his career, Justice Dugré has presided over at least 71 settlement conferences, 61 of which led to a settlement, thereby saving 357 trial days.[114]

[134] Lastly, Justice Dugré carried out conciliations that led to a settlement or agreement in approximately 84 cases, thereby saving 272 trial days.[115]

C. COMPETENCY AND WORK ETHIC

[135] We must note from the outset that Justice Dugré's competency is not at issue in this inquiry; indeed his competency is the subject of an admission.[116] We add that the evidence shows that three of Justice Dugré's decisions were reviewed and upheld by the Supreme Court of Canada.[117] Only one of these three decisions included a dissenting opinion and the others received the Court's agreement on several grounds.[118]

[136] Moreover, it seems that Justice Dugré rendered other significant decisions. including *Intact, compagnie d'assurances c. Mapp*, 2011 QCCS 5770, in which he circumscribed the obligation to report a latent defect. This decision was affirmed unanimously by the Court of Appeal of Québec and is now settled law in Québec.[119]

[137] Some witnesses noted Justice Dugré's decision writing skills and the quality of his legal reasoning.[120]

[138] Others added that Justice Dugré was generally renowned for his command of the law, his curiosity and his thorough knowledge of the case law. James Nazem stated the following:

> [TRANSLATION]
>
> If we are talking about legal competency, he was clearly superior to all the other judges I have seen. He definitely impressed me with his…his

[114] Exhibit D-48 and admission in lieu of Exhibit D-56.
[115] Exhibit D-49 and admission in lieu of Exhibit D-58.
[116] Admission in lieu of Exhibit D-77.
[117] They are: *Loyola v. Québec (A.G.)*, [2015] 1 S.C.R. 613, *Uniprix v. Gestion Gosselin et Bérubé*, [2017] 2 S.C.R. 5 and *Québec (CNESST) v. Caron*, [2018] 1 S.C.R. 35.
[118] Admission in lieu of Exhibit D-77.
[119] Testimony of Karim Renno, June 28, 2021, at pp. 70-74.
[120] Testimony of John Steven Foldiak, June 18, 2021, at pp. 105 to 106.

> knowledge of civil law. In the end, in his judgment, the things I was arguing, they were based on the case law, but he managed to pinpoint the civil law concept that was in the Civil Code and he raised that point; something that I, frankly, I had not seen this nuance. So, superior . . . So Justice Dugré, as you said, in terms of the law, he impressed me, so in that respect, he was superior. At the hearing he was…he was courteous to everyone.[121]

[139] Karim Renno added:

> [TRANSLATION]
>
> He is a first class jurist in my opinion. His skills, his analytical framework, the way he presents the issues, for me, Justice Dugré has always been…in my opinion, one of the best at the Superior Court, here in Québec.[122]
>
> . . .
>
> Well, for me, I would qualify him as, what I consider to be the ideal judge. He is not the only one who does this, but I think Justice Dugré has a great deal of legal courage, meaning that often, he analyzes the existing legal principles and he is never afraid to go beyond these principles, either by applying them in a different way, or by moving the law forward. And I know this may be naïve of me, but this is my vision of any judge who sits in a superior court.[123]

[140] The evidence shows that through his career, Justice Dugré has rendered 416 judgments published by the Société d'information juridique du Québec ("**SOQUIJ**"),[124] 170 of which have been selected as being important.[125]

[141] Lastly, Ms. Dumont and others noted Justice Dugré's assiduity, often keeping lawyers until late at night if a case required it.[126]

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[121] Testimony of James Nazem, June 23, 2021, at p. 68, l. 22 to p. 69, l. 22.
[122] Testimony of Karim Renno, June 28, 2021, at p. 54, ll. 8 to 13.
[123] Testimony of Karim Renno, June 28, 2021, at p. 69, ll. 6 to 17. Mr. Renno added that he published forty posts about Justice Dugré's decisions on his legal blog, *À bon droit* (Exhibit D-41).
[124] Exhibit D-52. SOQUIJ is an organization established under the *Act respecting the Société québécoise d'information juridique* (Exhibit D-26). It collaborates in the publication of judgments rendered by the courts of justice sitting in Québec. The *By-law respecting the collection and selection of judicial decisions* (Exhibit D-27) establishes the selection criteria for important judgments to report, be it a judgment that contains a new point of law, unusual facts, substantial documentary information, or a discussion of a specific social problem.
[125] Exhibit D-52.
[126] See for example, the testimony of Vincent Grenier-Fontaine, June 28, 2021, at pp. 41 to 42.

XI. ALLEGATIONS REGARDING THE JUDGE'S CONDUCT AND COMMENTS AT HEARINGS

A. PRELIMINARY ISSUES

[142] From the start of the inquiry, Justice Dugré correctly insisted on the importance of the Committee considering the entire context of the hearings in assessing his conduct and comments.[127] It is with this in mind that the Committee, at the request of the parties, listened to the complete recording of these hearings during its inquiry, which represents 46 hours.

[143] However, in argument, Justice Dugré submitted that his right to a full answer and defence was compromised because the Notice of Allegations describes the allegations expressed by the complainants in a sometimes general manner, without directly quoting the statements he allegedly made, such that [TRANSLATION] "what the phrases mentioned in the Notice of Allegations correspond to has to be decoded".[128] In respect of *A.*, *S.S.* and *S.C.*, he also argues that presenting counsel identified statements in his arguments that [TRANSLATION] "cannot be linked to any one of the complainants' allegations"; however, he does not indicate which statements he is referring to and how they do not relate to the complaints.[129]

[144] Such arguments do not accurately represent the nature of the complaints made against the judge and the allegations formulated by the Committee. Justice Dugré is not being reproached for a specific phrase or two in the course of an otherwise impeccable hearing. Rather, each of the complainants complained about Justice Dugré's general conduct during a hearing at which they were present as a party or counsel.

[145] The Notice of Allegations reflects this reality, and this is why, after a general summary of the nature of the allegations, each was expressed in general terms. Justice Dugré was informed that the inquiry would concern his overall conduct and the statements

[127] Amended Written Submission of the Honourable Gérard Dugré, at para. 155.
[128] Amended Written Submission of the Honourable Gérard Dugré, at para. 46.
[129] Amended Written Submission of the Honourable Gérard Dugré, at paras. 108, 155 and 223.

he made at the hearings in question. We are not dealing with additional faults of the judge discovered in the course of the inquiry.

[146] Moreover, in respect of *A.*, *S.S.* and *S.C.*, Justice Dugré also argues that some of the statements mentioned by presenting counsel in argument [TRANSLATION] "are elements involving the merits of the case"; again, however, he fails to indicate to which statements he refers.[130] The Committee is well aware that complaint review proceedings do not allow the CJC to sit on appeal or review of decisions.

[147] As noted by author Luc Huppé, appellate mechanisms and complaint review proceedings serve different purposes:

> [TRANSLATION]
>
> The purpose of an appeal or judicial review is to produce for the parties a solution to their dispute that is fair and compliant with the law, while the purpose of judicial ethics is to maintain the trust of litigants in judicial institutions and to serve its other underlying objectives. This position makes judges individually accountable for their conduct regardless of the value the legal system places on their decisions. An appeal or review tribunal's affirming or overturning a decision does not prevent a disciplinary body from considering the conduct of the judge who rendered the decision.[131]

[148] That said, these are not watertight compartments. Indeed, because they play two different roles, appellate mechanisms and complaint review proceedings may concern the same conduct, a reality that was well articulated by the inquiry committee in *Matlow*:

> [83] Some aspects of the behaviour and comments of a judge may involve only a question of conduct and the propriety or acceptability of that conduct must be judges on the basis of its conformity to ethical principles. Such conduct is not, in the ordinary course, subject to review by an appellate court; rather it is ordinarily subject to review only in the exercise of the jurisdiction conferred on the CJC by the *Judges Act*. Other aspects of the behaviour and comments of a judge will involve only a question of the exercise of judicial discretion and the propriety or

[130] Amended Written Submission of the Honourable Gérard Dugré, at 109, 156, 224. Inexplicably, in respect of *A.* and *S.S.*, Justice Dugré added that these issues were dealt with on appeal even though there was no appeal in either case.

[131] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective internationale* (Montréal: Wilson & Lafleur, 2018) at No. 79. See also *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Justice Camp*, at para. 32.

> correctness of that exercise of discretion is ordinarily reviewable only by the appellate court having jurisdiction. There can be circumstances, however, where the behaviour or comment may be challenged both as to its conformity to ethical principles and as to its compliance with legal principles applicable to the proceedings between the parties. In such a case, the same behaviour or comments of a judge may result in the exercise of jurisdiction both by an appellate court and by the CJC, without either trespassing on the jurisdiction of the other. Again, that is what occurred in the inquiry into the conduct of Justice Bienvenue.[132]
>
> [Emphasis in original]

[149] In the same vein, presenting counsel correctly noted that the Committee is not bound by the decisions rendered by the Court of Appeal of Québec in *S.C.* and *Gouin*,[133] although they are among the factual elements we must consider.

[150] Lastly, the Committee heard several witnesses. Some of these witnesses, including of course the complainants, described their perception of Justice Dugré's conduct during the hearings in question. The Committee took all of these testimonies into consideration, but it is ultimately up to the Committee to determine whether Justice Dugré committed misconduct. To this end, the recordings of the hearings remain the most reliable evidence, the probative value of which is indisputable.

B. EXPERTISE ON QUÉBEC JUDGES' MISSION TO FOSTER CONCILIATION

[151] Justice Dugré called Donato Centomo, Ad. E., to testify as an expert witness on the mission of Québec judges to foster conciliation. His report was also admitted into evidence.[134]

[152] First, it must be noted that Mr. Centomo's task was not to give an opinion on Justice Dugré's conduct;[135] it was to provide a factual and legal history of the new missions assigned to judges, and more specifically that of conciliation, and to verify whether such functions exist elsewhere in Canada.[136] In his report, Mr. Centomo

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[132] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Theodore Matlow*, at para. 83.
[133] Written Submission of Counsel for the Committee, at pp. 42 and 47.
[134] Exhibit D-50.
[135] Testimony of Donato Centomo, June 29, 2021, at p. 103.
[136] Description of Donato Centomo's task, Tab 2 of Exhibit D-50.

therefore provided a history of the relevant legislative provisions and compiled the decisions that apply or interpret them.[137]

[153] Mr. Centomo explained that the duty of Québec judges to foster conciliation has evolved over time. In family matters, it dates back to 1991 with the enactment of the new *Civil Code of Québec* (the "**C.C.Q.**") and articles 400 and 496, pursuant to which judges have a duty to foster conciliation between spouses. The purpose of conciliation is to [TRANSLATION] "foster appeasement" between the parties.[138]

[154] In 2002, the concept of conciliation was introduced as one of the guiding principles of the *Code of Civil Procedure*. Judges could generally attempt to reconcile the parties in carrying out their duties, but article 4.3 specified that in family matters and matters involving small claims, "it [was] the judge's duty to attempt to reconcile the parties".

[155] In 2016, the *Code of Civil Procedure* underwent a major reform and the mission to foster conciliation was expanded to all matters. The second paragraph of article 9 C.C.P. states that the mission of the courts includes "facilitating conciliation whenever the law so requires, the parties request it or consent to it or circumstances permit, or if a settlement conference is held".[139]

[156] The mission of the courts as set out in article 9 C.C.P. can be summarized as follows:

- Adjudicate the disputes brought before them, in accordance with the applicable rules of law;
- Ensure proper case management in keeping with the principles and objectives of procedure;
- Facilitate conciliation;

[137] Testimony of Donato Centomo, June 29, 2021, at p. 24.
[138] Exhibit D-50, at p. 1. See also articles 521.9, 521.17 and 604 C.C.Q.
[139] This amendment was in keeping with the legislator's efforts to encourage private dispute prevention and resolution processes to relieve the burden on the legal system. For example, paragraph 1(2) C.C.P. states that parties "must consider private prevention and resolution processes before referring their dispute to the courts."

- Be impartial; and
- Have regard to the best interests of justice.[140]

[157] Mr. Centomo explained that according to Justice Québec [TRANSLATION] "conciliation is an informal and confidential means by which a neutral individual, a conciliator, can help people find a satisfactory agreement to resolve a dispute between two parties". He added that the conciliation process is similar to mediation, the difference being that mediation relies on a third party who is not a judge.[141]

[158] As for the conciliation process itself, Mr. Centomo reported that he had been unable to identify a specific process. He did mention a scholarly article regarding settlement conferences written by former Court of Appeal of Québec Justice the Honourable Louise Otis:

> While exercising a conciliatory role, a judge pursues a narrower course of intervention than a private mediator in that the judge cannot, in any way, bind the Court nor alter the course of the adversary debate in the event conciliation fails. His in-depth knowledge of judicial cases (procedures, documentary evidence and judgment) will enable him to evaluate the rightfulness of the parties' respective claims in the perspective of compromise rather than adjudication.
>
> Within the framework of his intervention, the conciliator-judge must allow the parties to examine the case in all its aspects, to define the essential questions as well as the underlying interest of a settlement. In short, the conciliator-judge must create a secure environment, enabling the parties to sincerely, openly and spontaneously enter into the negotiation process without fear of altering the balance of powers.
>
> The privileged role of the conciliator-judge, as a neutral facilitator, will enable him to present to the parties – in due course – their options for a solution. After all, parties who have chosen the judicial track have often alienated their objective perception of the conflict. By his broad vision, the conciliator steers the parties away from the narrow frame of the judicial dispute so as to lead them to explore avenues likely to constitute valuable settlement options.
>
> The conciliator-judge is entirely responsible for the progress of the conciliation process. However, the responsibility of the outcome rests entirely on the parties. It is a true judicial transfer. Though the process

[140] Exhibit D-50, at pp. 3 to 4.
[141] Exhibit D-50, at p. 10.

> encourages the parties to take the necessary risks to put an end to the dispute that opposes them, never does it take from them their decision-making power.[142]

[159] Under cross-examination, Mr. Centomo stated that the Québec legislator has not circumscribed judges' conciliation duty in hearings, except in matters of small claims, where article 540 C.C.P. provides that if conciliation fails, the judge can still preside over the trial.[143]

[160] Mr. Centomo also explained that the conciliation approach can vary from one judge to another. He described conciliation as an opportunity given to the parties to settle before the hearing or even just to bring the parties closer in order to reduce the number of issues.[144]

[161] He also gave the following warning: if, during a settlement conference, the judge goes beyond a certain level of intervention and becomes too involved in their attempts to bring the parties closer, the judge cannot sit as trial judge because of a potential appearance of bias.[145]

[162] On the issue of using humour in conciliation, Mr. Centomo felt that it was a desirable technique, but that judges nonetheless had to be tactful and not exacerbate tension.[146]

[163] He added that the duty to conciliate did not allow judges to disregard the applicable rules of evidence.[147] For example, judges cannot examine or cross-examine or question parties who have not been sworn in.[148]

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[142] Exhibit D-50, which refers to Louise Otis, "Alternative Dispute Resolution: Judicial Mediation" in *The Early Settlement of Disputes and the Role of Judges*. 1st European Conference of Judges, Proceedings, held November 24 and 25, 2003, in Strasbourg (Strasbourg: Council of Europe Publishing, 2005) at pp. 74 to 75.
[143] Testimony of Donato Centomo, June 29, 2021, at pp. 28 to 31.
[144] Testimony of Donato Centomo, June 28, 2021, at pp. 125 to 126.
[145] Testimony of Donato Centomo, June 29, 2021, at pp. 43 to 46.
[146] Testimony of Donato Centomo, June 29, 2021, at pp. 88 to 89.
[147] Testimony of Donato Centomo, June 29, 2021, at pp. 91 to 95.
[148] Testimony of Donato Centomo, June 29, 2021, at p. 96.

[164] Mr. Centomo admitted that conciliation (or mediation) cannot be imposed on parties. In his opinion, it is not open to judges to do whatever they want in conciliation. Moreover, if it becomes clear that the parties wish to proceed, the judge must proceed.[149]

[165] Lastly, Mr. Centomo acknowledged that his knowledge in comparative law is limited and that he had done little research into comparables outside Québec. When confronted with other models in Canada that are similar to the Québec judge's conciliation duty in family law , he recognized a similarity between the situation in Québec and that in certain other provinces, and acknowledged that others seem to have a regime that fosters conciliation even more.[150]

C. S.S.

1. Background

[166] On June 29, 2018, the Court was to hear Ms. S.'s application in respect of custody, child support, choice of school and a safeguard order. Because of a lack of time, the choice of school for the child born from Ms. S. and Mr. L.'s union was postponed to the following September.[151]

[167] On September 7, 2018, Justice Dugré was seized of Ms. S.'s application regarding choice of school; Ms. S. was represented by counsel, Stéphanie Caron. Mr. L., represented by counsel, Nicolas Laurin, opposed the application and wanted to maintain the *status quo*.

[168] The scheduled three-and-a-half-hour hearing was suspended after approximately thirty minutes. In the late morning, Justice Dugré signed an interim consent order of the parties, who had decided to accept the *status quo*.

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[149] Testimony of Donato Centomo, June 29, 2021, at pp. 99 to 112, referring to *Bradley (Re)*, 2018 QCCA 1145.
[150] Testimony of Donato Centomo, June 29, 2021, at pp. 46 to 87.
[151] Exhibits SSP-6 and SSP-10. Custody of the children was postponed to a later date.

2. Complaint to the CJC

[169] On September 11, 2018, the CJC received Ms. S.'s complaint by email, in which she complained about Justice Dugré's conduct and statements during the above-noted hearing. More specifically, she alleges that he:

- Said the application was [TRANSLATION] "ridiculous" because classes had already started;
- Suggested that the former spouses get back together;
- Suggested they give their son up for adoption or have him placed with a foster family; and
- Did not give the lawyers a chance to speak.[152]

[170] Ms. S. added that she had gone into debt for a hearing before a judge who had decided on the outcome of the application before the hearing had even begun. She also stated that she never had an opportunity to express herself and had entered into an agreement because she had been too shaken up to return before Justice Dugré. The experience had led her to lose faith in the justice system.[153]

[171] When asked by the CJC to comment on the complaint, Chief Justice Fournier wrote that he would never endorse the types of comments Justice Dugré allegedly made about putting the child up for adoption. In his opinion, [TRANSLATION] "the [judge's] statements were hurtful, and the metaphor attempted by the judge did not belong in a courtroom, especially when issues linked to the custody of children are concerned".[154]

3. Evidence Before the Committee

a) Testimony of Ms. S. (complainant)

[172] Ms. S. testified at the hearing to explain to the Committee what she had experienced and felt as a result of Justice Dugré's comments.

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[152] Exhibit SSP-1.
[153] Exhibit SSP-1.
[154] Exhibit JC-1.

[173] The reason for Ms. S.'s application was that she was preparing to return to work after maternity leave and wanted her child's school to be in a location she considered more accessible for both parties.[155]

[174] When questioned on the reasons for her complaint, Ms. S. explained that she had been so upset that she had agreed to everything her former spouse proposed.[156] This decision to settle the case out of court had a significant impact on her family routine, her finances and her work. She would have liked to have been heard.[157]

[175] About her reaction to the judge's comments at the hearing, Ms. S. explained:

> [TRANSLATION]
>
> Ah, I was crying. I was crying a lot. Having witnessed a few Court hearings [as part of her work as a corrections officer], I found it hard to believe that a judge would treat me that way. I am not a criminal. I am an upstanding person in life.[158]
>
> . . .
>
> When I see an incarcerated person who is accused of driving under the influence for the sixth time, and they are given a third chance and are released, and then you have me, a mother, who doesn't even get the chance to explain herself, yes, I found that hard.
>
> It made me lose faith in the justice system a little, to be honest. Because even today, people ask me, [TRANSLATION] "Why don't you go back to court, considering the costs for M. are exorbitant," and I am the one paying for everything. But I tell them, [TRANSLATION] "Oh, my god! Lose all that money again just to be treated like that—I said—no thank you, I'd rather just live with the costs."[159]

b) Testimony of Nicolas Laurin (counsel for Ms. S.'s former spouse)

[176] Nicolas Laurin, a member of the Barreau du Québec since 1986, practices in business law and occasionally family law.[160]

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[155] Testimony of S.S., April 12, 2021 (in camera), at p. 16 to 18.
[156] Testimony of S.S., April 12, 2021 (in camera), at p. 22.
[157] Testimony of S.S., April 12, 2021 (in camera), at pp. 22 to 23.
[158] Testimony of S.S., April 12, 2021 (in camera), at p. 25, ll. 10 to 15.
[159] Testimony of S.S., April 12, 2021 (in camera), at p. 25, l. 20 to p. 26, l. 11.
[160] Testimony of Nicolas Laurin, June 10, 2021 (in camera), p. 6.

[177] He explained that in June 2018, the parties did not have the time to deal with Ms. S.'s choice of school. When they were informed that the first available date was September 7, 2018, he felt that this would help his client's position to maintain the *status quo*, considering the child was already registered in school.[161]

[178] He added that in his opinion, counsel for Ms. S. had not been very insistent on obtaining a date prior to the start of the school year. If he had been in her position, he would have insisted.[162]

[179] When asked to comment on the conduct of the hearing, Mr. Laurin said he felt that [TRANSLATION] "it [had been] difficult."[163] In his opinion, the application had no chance of success.[164]

[180] As for Justice Dugré's conduct, he was on the view the judge knew the file well. In his opinion, the judge raised some facts in respect of the child's best interests that were unfavourable to Ms. S. in order to steer the discussion.[165] In doing so, Justice Dugré raised elements that were essential to the case and guided the parties in finding a solution.[166] Then, he gave the parties some time to settle the case. They returned before the judge to update him on the developments.[167] The judge took the opportunity to attempt to find an agreement. Mr. Laurin recalled the following intervention by the judge in this regard:

> [TRANSLATION]
>
> Come on! Are we going to have to find a driver for days he can't…when there's no transportation for the child ? Find me solutions, intelligent ones, and get back to me with an agreement if you can.[168]

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[161] Testimony of Nicolas Laurin, June 10, 2021 (in camera), p. 12 to 14.
[162] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 14 to 15.
[163] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 18.
[164] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 18 to 21.
[165] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 21 to 22.
[166] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 23.
[167] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 23 to 26.
[168] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 24, ll. 6 to 12. Note that these exchanges reported by Mr. Laurin are not part of the recordings on the record.

[181] In Mr. Laurin's opinion, Justice Dugré was relying on the relevant criteria. and there is no doubt he had the child's interests at heart. He stated that Justice Dugré has a colourful style and sometimes thinks out loud.[169] He saw the judge's comments about having the former couple's son adopted as a way to [TRANSLATION] "push" the parties to find a solution, and stated that [TRANSLATION] "they were definitely not a suggestion".[170]

[182] When asked to comment on certain elements of the complaint, Mr. Laurin stated the following, among other things:

- The judge said that it was ridiculous to choose a school at such a late date, but in his opinion, the judge had been thinking out loud.[171]
- The suggestion to the parties to get back together was nothing but a harmless joke.[172]
- The judge had not prejudged the case. His comments involved things to consider since there was nothing in the proceeding in favour of the child changing schools.[173]
- Ms. S. had cried at the hearing. In his opinion, her tears were related to things the judge said that she did not want to hear. She had expected to win.[174]
- He had not noticed any inappropriate remarks by Justice Dugré. Justice Dugré has a more colourful style than most judges he has known, but he did not feel that the judge had intended to hurt anyone through his comments. He added that he did not hear any unjustified reprimands or any vexatious or inappropriate remarks. The judge had been very patient and tolerant.[175]

[183] Lastly, Mr. Laurin felt that the agreement entered into at the hearing with Justice Dugré had resolved the case in full.[176]

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[169] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 28.
[170] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 35 and 29.
[171] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 29 to 30.
[172] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 30.
[173] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 31.
[174] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 32 to 33.
[175] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 34 to 35.
[176] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at p. 42.

[184] The cross-examination showed that Mr. Laurin's memory was faulty in respect of certain aspects of the case.[177]

c) Other evidence

[185] In order to present a full picture, presenting counsel submitted Ms. S.'s complaint, the recordings, the transcripts, the minutes of hearing, [178] the relevant procedural documentation and the court ledger[179] related to the hearing under inquiry.[180]

4. Discussion

[186] The Committee listened to the entire recording of the hearing and read the transcripts.

[187] From the outset, from the very first sentence spoken, the judge asked whether it was not too late to choose a school when the school year had already begun, which led counsel for Ms. S. to explain the reason for the delay.

[188] From that moment on, and for its entire duration, the hearing of Ms. S.'s application became a constant back-and-forth between Justice Dugré and counsel for the parties. Although counsel for Ms. S. stated several times that her client had points to address and wanted to explain them to the Court,[181] the hearing never reached a point when Ms. S. could testify. The exchanges concluded after approximately 30 minutes when counsel for Ms. S., whose client had been crying for several minutes, requested that the hearing be suspended.

[189] When the recording resumed, the parties announced they had reached an agreement included in an interim consent that would be confirmed by the Court.

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[177] Testimony of Nicolas Laurin, June 10, 2021 (in camera), at pp. 46 and following.
[178] The minutes of a hearing is a summary recording the main events or exchanges at the hearing.
[179] A court ledger is a record of the hearing that identifies the parties and the counsel representing them (where applicable) and that provides the details of the judicial proceeding, including the date, name and nature of the pleadings filed, their sequence number, the date and outcome of the pleadings, and the name of the decision maker. Testimony of Danielle Blondin, June 25, 2021, at pp. 96 to 100.
[180] Exhibits SSP-1 to SSP-11.
[181] Exhibit SSP-5, Transcript of the September 7, 2018, hearing, at pp. 9, 12,13, 28, 57.

[190] In his submissions, Justice Dugré indicates that he had been fulfilling his duty as a conciliator judge, as required by the C.C.Q. and the C.C.P.[182] If this is the case, he never announced it.

[191] At any rate, conciliation does not give judges free rein. While it does require them to intervene more often and in certain circumstances may even lead them to speak more directly and informally, it does not release them from their obligation to maintain a courteous and respectful attitude towards the parties and their counsel. Whether acting as decision-makers or conciliators, judges must conduct themselves in a manner that is worthy of their function.

[192] As mentioned earlier, judges must adapt their conduct to the context in which they are acting. Judges sitting on a family matter must always be sensitive to the fact that at the root of the cases before them is often a heartrending conflict between two people and that the parties appearing before them are very likely highly emotionally invested in the outcome of the dispute. While judges should always remain calm and dignified and while all parties are entitled to respect and courtesy, hearings in family matters require a particularly high degree of tact and empathy. Justice Dugré's attitude throughout the hearing was the opposite.

[193] It is important to note that the concerns Justice Dugré raised at the beginning, namely the lateness of the application and the appropriateness of the child changing school districts when he had been there since preschool, seem motivated by the child's best interests. That said, while the concerns are justifiable on their merits, the same cannot be said of how they were raised.

[194] After noting that the school year had already begun, Justice Dugré harshly criticized counsel for Ms. S. for not insisting on an earlier hearing date:

[182] Submissions of Magali Fournier, April 12, 2021, at pp. 24 to 25.

> [TRANSLATION]
>
> So now we're going to turn his life upside down and say: [TRANSLATION] "Listen buddy, you know what, we got the school wrong, we got the address wrong, we took you to the wrong school, let's start over."
>
> What's he going to do to start at his new school?
>
> . . .
>
> You know, it's hurting the child for no reason.[183]

[195] This set the tone for the remainder of the hearing. During all of the exchanges that followed, the judge's attitude was harsh, even unpleasant. Several times, his remarks were insensitive and pointed blame, particularly at Ms. S.; these remarks had nothing to do with the circumstances of the case, where there was no indication that either of the parents had anything but their child's best interests at heart.

[196] For example, on two occasions, Justice Dugré proposed the solution of sending the child to boarding school or putting him up for adoption:

> [TRANSLATION]
>
> We could send him to boarding school; problem solved. They'll see him on June 24, when, uh, we'll give the little boy some peace and quiet. We'll tell him: "Look, stay at boarding school, have fun with your friends and then mom and dad, you'll see them on June 24. There."[184]
>
> . . .
>
> Okay, but let's send him to boarding school, give him up for adoption, that's the other solution I can see, give the child up for adoption. Listen, if the parents aren't able to take care of him, that's the other option. When the first option doesn't work, saying, "well okay, we don't want to get back together…".[185]

[197] It is understood that these remarks were not to be taken at face value, but the image is harsh and completely inappropriate. Why suggest that the parents [TRANSLATION] "aren't able" to take care of their child when the application before the Court primarily concerned logistical issues? The Committee is of the view that a reasonable and well-informed person could see this as a form of bullying. Indeed, Justice Dugré made these

[183] Exhibit SSP-5, Transcript of the September 7, 2018, hearing, at p. 8, ll. 12 to 17 and ll. 23 to 24.
[184] Exhibit SSP-5, Transcript of the September 7, 2018, hearing, at, p. 30, ll. 7 to 11.
[185] Exhibit SSP-5, Transcript of the September 7, 2018, hearing, at p. 79, ll. 1 to 6.

statements after he had already repeatedly noted the negative effects on the child he felt would result from Ms. S's request to change schools, and criticized Ms. S for her lack of foresight with regard to the situation. There is no doubt that the comments made by Justice Dugré were likely to make Ms. S. fear that he had already decided the application before even having heard her.

[198] According to the testimony of Ms. Dumont, who was not present at this hearing, the suggestion to put children up for adoption is among the [TRANSLATION] "figures of speech" Justice Dugré frequently uses to make people laugh.[186] The Committee finds it difficult to imagine a context in which such a comment would be appropriate. In any event, in this case it is clear from listening to the recording that this remark, and Justice Dugré's comments throughout the hearing, were not intended to make anyone laugh. To the contrary, when Justice Dugré came back, a second time, with the idea of sending the child to boarding school or putting him up for adoption, Ms. S. had already been crying audibly for several minutes.

[199] To be clear, there is nothing funny in the comments made by Justice Dugré or in the tone he used throughout the hearing. From beginning to end, his tone was unpleasant and often aggressive.

[200] It is particularly distressing to note that Justice Dugré did not seem at all concerned by the fact that Ms. S was crying during a good portion of his conciliation exercise. One would expect a judge who sees one of the litigants before them crying to inquire into the situation or at the very least, to adjust their tone and language accordingly. Instead, Justice Dugré continued as if nothing were amiss and it was when he raised the idea of adoption a second time that counsel for Ms. S. requested that the hearing be suspended.

[201] When the hearing resumed, Justice Dugré addressed counsel after confirming the interim consent and said for absolutely no reason, [TRANSLATION] "I guess you would have liked to have been raised that way, right, you would have liked it?"[187]

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[186] Testimony of Marie-Josée Dumont, June 29, 2021, at pp. 134 to 135.
[187] Exhibit SSP-5, Transcript of the September 7, 2018, hearing, at, p. 87, ll. 11 to 12.

[202] In his written submission, Justice Dugré disputes that there was a link between his conduct and Ms. S.'s emotional reaction. In his opinion, it is clear that Ms. S. [TRANSLATION] "[was] angry not because of the judge's comments, but because of the concessions she had made to her former spouse".[188] But Ms. S.'s testimony does not support this, and counsel for Justice Dugré did not cross-examine her.

[203] The Committee is of the view that Ms. S. provided credible and convincing testimony on this issue, explaining that she had been crying because of the way Justice Dugré had treated her.[189] She had been in such a state that she had not felt capable of resuming the hearing and had preferred to settle:

> [TRANSLATION]
>
> Q- Okay. For what reason did you decide to settle the case—at least, with regard to that aspect—on September 7?
>
> A- Well, the simple reason was I did not want to return before the judge. I felt too emotional. So I decided to settle, and basically let [my former spouse] win, and to just forget about everything.[190]

[204] As already noted, the very nature of family law cases makes them fraught with emotion. In the Committee's opinion, Justice Dugré's conduct and words undeniably contributed to Ms. S.'s emotional state, when he should have fostered a healthy, dignified, empathetic and respectful environment. His conduct clearly violated his duty to treat the parties with courtesy and respect.

[205] Justice Dugré submits that the agreement reached between the parties was in the best interests of Ms. S. and her child. He also notes that counsel for Ms. S., and counsel for her former spouse, thanked the judge when leaving the courtroom, thereby showing that the parties had entered into the agreement freely and to their satisfaction.[191]

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[188] Amended Written Submission of the Honourable Gérard Dugré, at para. 90.
[189] Testimony of S.S., April 12, 2021 (in camera), at p. 25.
[190] Testimony of S.S., April 12, 2021 (in camera), at p. 26, ll. 24 to 25, p. 27, ll. 1 to 6.
[191] Amended Written Submission of the Honourable Gérard Dugré, at paras. 93 to 98.

[206] It is not the Committee's role to rule on the merits of the agreement or on the quality of Ms. S.'s consent. Even accepting for the sake of discussion that the final agreement was favourable to Ms. S., this does not change Justice Dugré's misconduct at the hearing.

5. Conclusion

[207] For the above reasons, the Committee answers the following two allegations in the affirmative:

> Allegation 2A
>
> Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on September 7, 2018, in *S.S.* (*S.S. c. M.L.* #700-04-029513-188) by his conduct or by his comments made at the hearing?
>
> Allegation 2B
>
> Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on September 7, 2018, in *S.S.* (*S.S. c. M.L.* #700-04-029513-188) by his conduct or by his comments made at the hearing?

D. A.

1. Background

[208] On April 3, 2018, Justice Dugré presided over an application for provisional measures and a safeguard order in a family matter.[192] Mr. A. was represented by Chantal Décarie, and Ms. M. was represented by Luc Tétreault. One of their two children was represented by Annie Miele.

[209] The hearing was to last two hours. In reality, it lasted approximately 50 minutes, resulting in an interim judgment.

2. Complaint to the CJC

[210] On March 27, 2019, Associate Chief Justice Petras filed a complaint with the CJC together with a CD recording of the hearing held before Justice Dugré on April 3, 2018, and the minutes of that hearing. She pointed out that counsel present at the hearing had

[192] Exhibit AP-7.

verbally complained to the coordinating judge for the District of Laval, the Honourable Christiane Alary, about Justice Dugré's conduct and comments at this hearing.[193]

3. Evidence Before the Committee

a) Testimony of Chantal Décarie (counsel for Mr. A.)

[211] Ms. Décarie has been a member of the Barreau du Québec since 1988 and practices in family law in the judicial district of Laval.[194]

[212] Ms. Décarie stated categorically at the start of her testimony that in her 32 years of practice she had never experienced a hearing like the one before Justice Dugré.[195] In her opinion, her client was simply not heard. She was unable to present her evidence. In fact, her client was never sworn in.[196]

[213] She explained that the judge had based his decision on the record as if it had been a hearing on the interim (safeguard) application (which normally takes place without witnesses) even though the hearing was to deal with the provisional application and he should have heard the witnesses.[197] She added that even if she had wanted to appeal, her client had not testified. Considering the costs, the best option was to wait for the divorce proceeding.[198]

[214] Ms. Décarie referred to several examples of remarks or conduct she found to be inappropriate:

- In addressing Ms. Miele, Justice Dugré allegedly asked whether it was possible to get a discount on appliances ("Miele" is the name of a well-known brand of appliances).
- Justice Dugré repeated several times that Mr. A. should take out a loan, apply for an MBNA credit card or sell his house.

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[193] Exhibit AP-1.
[194] Testimony of Chantal Décarie, April 12, 2021 (in camera), at p. 73.
[195] Testimony of Chantal Décarie, April 12, 2021 (in camera), at p. 77.
[196] Testimony of Chantal Décarie, April 12, 2021 (in camera), at p. 85.
[197] Testimony of Chantal Décarie, April 12, 2021 (in camera), at pp. 85 to 86.
[198] Testimony of Chantal Décarie, April 12, 2021 (in camera), at pp. 90 to 91.

- Justice Dugré began speaking loudly and saying that Ms. M. was poor ([TRANSLATION] "P-O-O-R").
- He suggested to Ms. Décarie's client that he [TRANSLATION] "borrow from his pension fund".
- He told her client's former spouse that she had been [TRANSLATION] "foolish".
- He stated that if other lawyers (family law specialists) had been on the case, Mr. A. would have been out on the street.
- It was the judge's assistant [Ms. Dumont] who calculated the child support payments.[199]

[215] Ms. Décarie explained that the purpose of her complaint had been to report this unacceptable situation so that Justice Dugré would not return to Laval. She added that the other two lawyers, Mr. Tétreault and Ms. Miele, had agreed that the hearing was abnormal.[200] She therefore requested the recording of the hearing and sent it to the assistant of the Honourable Christiane Alary, the coordinating judge for the District of Laval[201].

b) Testimony of the Honourable Christiane Alary, coordinating judge for the District of Laval

[216] Justice Alary was appointed to the Superior Court in 2005. She has been the coordinating judge for the District of Laval since 2015.[202]

[217] Justice Alary stated that after the hearing in *A.*, two lawyers spoke to her assistant (who is in frequent contact with the lawyers) to express their displeasure.[203]

[218] Justice Alary stated that, after her assistant informed her of the situation, she had asked the lawyers to make an official complaint and to submit a written report. She told them that upon receipt, she would discuss the matter with the chief justices.[204]

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[199] Testimony of Chantal Décarie, April 12, 2021 (in camera), at pp. 81 to 85.
[200] Testimony of Chantal Décarie, April 12, 2021 (in camera), at p. 78.
[201] Testimony of Chantal Décarie, April 12, 2021 (in camera), at p. 79.
[202] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at p. 20.
[203] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at pp. 21, 28 to 29.
[204] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at p. 29.

[219] Following this, she received the recording of the hearing. Although she only listened to part of it, she affirmed that she heard enough to realize that something was amiss.[205] Given that the content of the recording added to other issues related to Justice Dugré's work in the Laval district, Justice Alary phoned Associate Chief Justice Petras to inform her of the situation. She also followed up with a letter that included the recording.[206]

[220] In sending the information to Associate Chief Justice Petras, Justice Alary's goal was to ask that Justice Dugré no longer be assigned to the District of Laval. According to Justice Alary, she [TRANSLATION] "had reached her limit". She added that, at the time, she knew there had been other complaints about Justice Dugré, but felt that, as coordinating judge, it was not her role to manage misconduct issues.[207]

[221] She concluded by stating that she did not inform Justice Dugré of the complaint against him.[208] She also did not tell him what she had heard about him.[209]

c) Testimony of Associate Chief Justice Eva Petras (complainant)

[222] At the time of her testimony, Associate Chief Justice Petras had been a Superior Court justice since 2006. She was appointed Associate Chief Justice on July 1, 2015.[210]

[223] In her March 27, 2019 letter, Associate Chief Justice Petras wrote to the executive director of the CJC that [TRANSLATION] "this [was] another example of Justice Dugré's courtroom behaviour in a family matter." She included the recording of the hearing and the minutes. Lastly, Associate Chief Justice Petras explained that she did not send a copy to Justice Dugré because she knew the CJC would do so.[211]

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[205] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at pp. 29 to 30.
[206] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at pp. 30 to 31.
[207] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at pp. 33 to 34.
[208] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at p. 34.
[209] Testimony of the Honourable Christiane Alary, J.S.C., April 16, 2021 (in camera), at p. 36.
[210] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at p. 10.
[211] Exhibit AP-1. At the hearing, Justice Dugré was opposed to describing the March 27, 2017, letter from Associate Chief Justice Petras as a complaint. The Committee rejected his objection again, for the same reasons as those given in its Decisions on Preliminary Motions (paras. 171 and following.), noting that in her testimony, Associate Chief Justice Petras had confirmed that her letter was indeed a complaint (Testimony of the Honourable Petras, J.S.C., April 13, 2021 (in camera), at p. 46).

[224] She explained that she had held back before sending her complaint to the CJC because she had been waiting for other information from lawyers who had complained about Justice Dugré's courtroom behaviour, the way he responded to witnesses and lawyers, etc. The complainants had told Associate Chief Justice Petras about this by telephone or at meetings of the Superior Court Liaison Committee for civil and family matters. She said that she had also received telephone calls from coordinating judges of other districts complaining that Justice Dugré often did not take breaks, made [TRANSLATION] "bad jokes" and argued constantly with counsel, witnesses and experts such that hearings lasted much longer.[212]

[225] Since these complaints were hearsay, she would ask complainants to send her a letter, provide more detail regarding their complaint or complain to the CJC.[213] She stated that she had also contacted the coordinating judges of approximately seven districts to ask them to contact lawyers to get concrete information about Justice Dugré's behaviour so that she could listen to the hearings or read the transcripts.[214]

[226] Associate Chief Justice Petras stated that, in the end, she did not receive any other complaint. She explained that lawyers are very reticent to file complaints about judges.[215]

[227] She also confirmed that, after the letter from Justice Alary in September 2018, Justice Dugré stopped being assigned to the District of Laval.[216]

[228] Finally, Associate Chief Justice Petras stated that she did not inform Justice Dugré of the complaints and comments concerning him.[217]

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[212] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at pp. 13, 15 and June 28, 2021 (in camera), at p. 41. Justice Dugré objected to Associate Chief Justice Petras's testimony on these other [TRANSLATION] "complaints" that were never sent to the CJC. It is understood that the Committee cannot consider this testimony in its analysis of the conduct of Justice Dugré that is the subject of this inquiry. However, the testimony is relevant on the issue of the time that elapsed between Ms. Décarie's communication and Associate Chief Justice Petras sending her complaint, an issue raised by Justice Dugré in his challenge (Amended Written Submission of the Honourable Gérard Dugré, at paras. 145 to 146).
[213] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at pp. 12, 49.
[214] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at pp. 13, 20 to 21, 35 to 36.
[215] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at p. 13.
[216] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at p. 20.
[217] Testimony of the Honourable Eva Petras, J.S.C., April 13, 2021 (in camera), at pp. 50 to 51.

d) Testimony of Annie Miele (counsel for one of the children)

[229] Annie Miele has been a member of the Barreau du Québec since 2007. She practices in youth protection and family law.[218]

[230] She began her testimony by stating that she did not recall the hearing before Justice Dugré as such. She described Justice Dugré's style as being [TRANSLATION] "very down to earth, unpretentious, using humour to, in my opinion, lighten the mood".[219] She did not notice any impoliteness, lack of courtesy or inappropriate humour by the judge. In her opinion [TRANSLATION] "he was trying to be funny, but I did not sense any meanness or bad faith".[220]

[231] As for the judge's joke about her surname and the brand of appliances, she stated that she hears this type of comment regularly in her practice. She noted that this type of comment can lighten the mood in family matters.[221]

[232] She did not recall that the judge had used a preaching tone, that any of his comments had verged on bullying or that he had ridiculed the father's situation. She also did not remember the hearing being disorderly.

[233] Ms. Miele stated that she learned about the complaint about Justice Dugré when counsel for Justice Dugré contacted her to ask her to testify, and she affirmed not having filed any complaint against Justice Dugré.[222]

[234] Ms. Miele's cross-examination confirmed that her memory of the hearing was vague. For example, she had no memory of the judge suggesting to the mother of the child she was representing that she was [TRANSLATION] "foolish for leaving the [family] home" or that if two lawyers who specialized in family law, Ms. Battaglia or Ms. Goldwater,

[218] Testimony of Annie Miele, June 14, 2021 (in camera), at p. 6.
[219] Testimony of Annie Miele, June 14, 2021 (in camera), at p. 10, ll. 8 to 10.
[220] Testimony of Annie Miele, June 14, 2021 (in camera), at p. 10, ll. 22 to 24.
[221] Testimony of Annie Miele, June 14, 2021 (in camera), at p. 11.
[222] Testimony of Annie Miele, June 14, 2021 (in camera), at p. 13.

had been the lawyers on the case, Mr. A. would have been kicked out of the home in five minutes.[223]

[235] She also did not remember that Justice Dugré had called the library or that Ms. Décarie had said at the end of the hearing, [TRANSLATION] "I've never seen anything like this!".[224]

e) Testimony of Ms. M. (former spouse of Mr. A.)

[236] Ms. M. was represented by Mr. Tétreault during the hearing before Justice Dugré.

[237] When questioned about Justice Dugré's behaviour, Ms. M. stated that she was happy with the judgment in her favour. That said, she had not seen anything in the judge's conduct that had been out of the ordinary, nor had she noted any inappropriate statements.[225]

f) Other evidence

[238] In order to provide the full picture, presenting counsel submitted the complaint, recordings, minutes of hearing, transcripts, relevant evidence and procedural documentation, and the court ledger related to the hearing under inquiry.[226]

4. Discussion

[239] The Committee listened to the entire recording of the hearing and also read the transcripts.[227]

[240] Justice Dugré began the hearing with comments that were intended to be humorous. First, associating Ms. Miele's name with the well-known appliance manufacturer, he asked if he could get a discount on appliances. He continued by asking the parties what he described as a [TRANSLATION] "more serious" question, namely,

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[223] Testimony of Annie Miele, June 14, 2021 (in camera), at pp. 18 to 19.
[224] Testimony of Annie Miele, June 14, 2021 (in camera), at pp. 20 to 21.
[225] Testimony of E.M., June 23, 2021 (in camera), at pp. 8 to 9.
[226] Exhibits AP-1 to AP-12.
[227] According to the minutes (Exhibit AP-2), the hearing began at 9:34 a.m. and ended at 11:06 a.m., with a break from 10:24 a.m. to 10:53 a.m. The audio recording (Exhibit AP-4) and the transcript (Exhibit AP-5) only document the hearing until the 10:24 a.m. break.

[TRANSLATION] “what are we doing on April 5?” Noticing that the parties did not understand, the judge reminded them this was the birthday of one of the couples’ two children. This was followed by an approximately three minute exchange between the Court and the parents about how each parent would celebrate this birthday and about the two children’s situation more generally. All these conversations resulted in delaying the start of the proceeding by approximately five minutes.

[241] The Committee notes that humorous comments may sometimes negatively impact the dignity of the proceedings, if they are offensive or when they otherwise interfere with the proper conduct of the hearing. In this case, although Justice Dugré’s jokes at the beginning of the hearing were not immediately understood by the parties and created some confusion, they were not offensive and seem to have been made in good spirit and with the intention of lightening the mood. The exchange that followed between the Court and the parents may seem long, but it was also lighthearted and did not unduly delay the hearing. Overall, the Committee does not see anything in these first minutes of the hearing that undermined the dignity of the proceedings.

[242] The same cannot be said with respect to the rest of the hearing.

[243] The proceeding concerned an application for interim (safeguard) measures and a provisional order filed by Ms. M. to obtain support payments for the children.[228] Mr. A. challenged the application on the ground of undue financial hardship.

[244] Before Ms. Décarie even had an opportunity to argue her case, Justice Dugré very quickly declared that Ms. M.’s application would be allowed and that Mr. A. would have to take out a loan:

> [TRANSLATION]
>
> THE COURT:
> … Okay. But now, mom needs help, so we aren’t going to leave…
>
> CHANTAL DÉCARIE:
>
> My client has assumed…

[228] Exhibit AP-7. A custody issue raised in the same application had already been resolved.

> THE COURT:
>
> …today…
>
> CHANTAL DÉCARIE:
>
> …more, and obviously, his testimony will…
>
> THE COURT:
>
> Even if he takes out a loan . . .
>
> . . .
>
> THE COURT:
>
> But one thing is sure. Mommy isn't leaving penniless today. Let him take out a loan. He already has a 200,000.00 loan, so what's another 5,000.00, so what, you know.[229]

[245] The judge's decision seemed to have been made. As far as he was concerned, all that remained was determining the right formula to calculate the child support to be paid.[230] Ms. Décarie tried to plead her case, but Justice Dugré bluntly declared that it was a lost cause, because his mind was made up:

> [TRANSLATION]
>
> THE COURT:
> So, whatever we do today, even if you want to take three hours to convince me, when we leave here, Mr. A. is either going to go to the bank, put it on a credit card or put it on a line of credit.
>
> . . .
>
> But one thing is sure, mom is going to leave with the amount of…
>
> . . .
>
> … 493.69. And he can argue undue hardship when we get to the merits. Okay.[231]

[246] The evidence presented at the inquiry was not always clear about whether the application heard by Justice Dugré was at the interim (safeguard) or provisional stage. According to the explanations provided to the Committee, interim proceedings are generally decided on the record, that is, on the basis of the documentary evidence and

[229] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 39, ll. 8 to 22, p. 42, ll. 19 to 22.
[230] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 43.
[231] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 50, l. 14 to p.51, l. 6.

sworn statements, whereas cases at the provisional stage proceed with witness testimony.

[247] According to Ms. Décarie, the parties agreed to proceed directly to the provisional stage, and she was therefore expecting her client to testify.[232] It is clear from the recording of the hearing that this was her understanding and that she assumed that Mr. A. would be able to testify.[233]

[248] Throughout the hearing, Justice Dugré's comments are confusing on this issue. At times, he stated the file was at the provisional stage.[234] Later, when Ms. Décarie insisted on her right to present evidence, the judge replied the file was at the interim (safeguard) stage and, in any event, led her to believe that hearing Mr. A.'s evidence would not change his mind:

> [TRANSLATION]
>
> CHANTAL DÉCARIE:
>
> And one other thing, because we haven't begun the evidence, but Ms.…
>
> THE COURT:
>
> But we are not taking evidence, here, this morning! We have affidavits, we're at the interim stage now. We are not hearing evidence. We have two hours.
>
> CHANTAL DÉCARIE:
>
> We're not at the interim, we're at…
>
> THE COURT:
>
> Well, safeguard or…
>
> CHANTAL DÉCARIE:
>
> We're at…
>
> THE COURT:
>
> … provisional.

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[232] Testimony of Chantal Décarie, April 12, 2021 (in camera), at pp. 77, 95.
[233] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 39, 61. Moreover, according to the testimony of Mr. Centomo, even at an interim (safeguard) hearing the judge always has the discretion to allow testimonial evidence at a party's request: Testimony of Donato Centomo, June 28, 2021, at p. 148 and June 29, 2021, at p. 20.
[234] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 25, 51.

CHANTAL DÉCARIE:

Well, we're at the provisional. Provisional, sorry, but there is evidence.

THE COURT:

A two-hour provisional is not, well, we can wait for the evidence, now, I don't have any issues, but I know it…

CHANTAL DÉCARIE:

But anyway, your…

THE COURT:

So…

CHANTAL DÉCARIE:

… you won't change your mind, that's what I understand.

THE COURT:

But I mean…

. . .

THE COURT:

…I will order an interim, to be reviewed by the trial judge.[235]

[249] This exchange ended with Justice Dugré calling his assistant to calculate the child support payment, using the prescribed form.

[250] Regardless of whether the case should have been dealt with on a provisional basis, as Ms. Décarie believed, or on an interim basis, it is clear that the *audi alteram partem* rule was not respected. In fact, Justice Dugré simply refused to hear Mr. A.'s objection on the ground that his interim decision could always be reviewed by the trial judge if found to be flawed.[236] The recording reveals that Ms. Décarie tried her best to present her client's position, but she was constantly interrupted by Justice Dugré, who casually, even derisively, rejected her arguments. The interruptions are so frequent that it is difficult to identify times when counsel was able to complete a sentence. Even if one accepts that the case could be dealt with solely on the basis of the documentary evidence and affidavits, the fact remains that Ms. Décarie never had a real opportunity to plead the facts or the law supporting her client's position.

[235] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 104, l. 16 to p. 106, l. 12.
[236] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 91 to 92, 122, 151, 162, 164, 181 to 182.

[251] In his written submission, Justice Dugré states that it is [TRANSLATION] "common in Québec" to prevent counsel from presenting their evidence, noting as follows:

> [TRANSLATION]
>
> If judges accused of not respecting the *audi alteram partem* rule were subject to disciplinary complaints, the Canadian Judicial Council would need to open a branch at the Montreal courthouse![237]

[252] With respect, such a statement, with no supporting evidence, brings the administration of justice into disrepute: there was nothing "common" about the way the hearing was conducted in this case. At issue is not a slight departure from the *audi alteram partem* rule but the fact that Justice Dugré had closed his mind to Mr. A.'s arguments from the very start and refused to hear them.

[253] As Justice Dugré notes, it is true that erroneous judgments resulting from a breach of the *audi alteram partem* rule can be rectified on appeal.[238] But while review mechanisms (be it appeal or judicial review) can rectify the *legal effects* of judicial misconduct, they cannot sanction the misconduct directly. As an inquiry committee of the Conseil de la magistrature du Québec recently summarized,

> [TRANSLATION]
>
> whereas an appeal essentially aims to correct errors made at trial, the conduct process has another goal: "the primary purpose of ethics . . . is to prevent any violation and maintain the public's confidence in judicial institutions."[239]

[254] It is understood that not every violation of the *audi alteram partem* rule will automatically constitute judicial misconduct. However, the Committee is of the view that a judge who, as in the present case, manages a hearing in such a manner that one party is entirely precluded from pleading their case, commits an act that is derogatory to the honour and dignity of the judiciary and could directly undermine the public's confidence

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[237] Amended Written Submission of the Honourable Gérard Dugré, at para. 47.
[238] In her testimony, Ms. Décarie explained why it was decided not to appeal the interim decision rendered by Justice Dugré: Testimony of Chantal Décarie, April 12, 2021 (in camera), at pp. 90 to 91.
[239] See *M.R. c. Garneau*, 2020 CanLII 67460 (QC CM), at para. 7, citing *Ruffo v. Conseil de la magistrature*, 1995 CanLII 49 (SCC), [1995] 4 SCR 267, at para. 110.

in the judiciary.[240] We therefore reject Justice Dugré's argument that such criticism is outside the CJC's jurisdiction.

[255] Moreover, Justice Dugré's untimely and constant interruptions show a lack of restraint, civility and composure that could bring the image of justice into disrepute. For example, after clearly telling Ms. Décarie that he would not hear her arguments at this stage, he warned her that if she argued the issue with too much insistence on the merits, the trial judge will award retroactive child support to Ms. M.:

> [TRANSLATION]
>
> THE COURT:
> But you can address this at the merits stage. You will…
>
> CHANTAL DÉCARIE:
>
> But at…
>
> THE COURT:
>
> … you will have a day to convince the judge: I want my $3,500 back. Do you understand? I was suffering undue hardship.
>
> But what will happen there, if you argue too much on the merits, the judge will retroactively, three years before the thing, he will award Ms. M. the child support Mr. A. should have paid. That's what's going to happen. That's going to be a lot of dough. So, maybe you should come to an agreement with him right here, to say: Look…Because this is what's going to happen, the creditor is entitled to three years retroactively, right? And then…
>
> CHANTAL DÉCARIE:
>
> If, if there is an application…[241]

[256] It is important to note that at this stage that there is no indication that Ms. M. had requested retroactive child support. However, Justice Dugré made it a point to mention her right in this regard and went as far as suggesting that it was practically certain that she would be successful, such that her lawyer would not need to argue for long:

> THE COURT:
>
> May 2014. You filed in March 2017. So, you have the right…

[240] See *Harvey et Gagnon*, 2015 CanLII 4288 (QC CM).
[241] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 55, ll. 5 to 25.

CHANTAL DÉCARIE:

Mr., Mr.…

THE COURT:

… to three years.

CHANTAL DÉCARIE:

… Okay, Mr. [A.] filed because she had stopped paying.

THE COURT:

Yes, that's right, but what is going to happen, is that Ms. M., she. Uh, uh.…

CHANTAL DÉCARIE:

Yes.

THE COURT:

…in my opinion, if he, if we take the forms, 2014…

CHANTAL DÉCARIE:

Yes, yes.

THE COURT:

… until December 2015, all that, with your forms, 2014, 2015, 2016, 2017 2018, for the ongoing. And then, he'll give it to the judge. And he'll say: Look, he should have paid this much, he paid nothing. The difference…

CHANTAL DÉCARIE:

Mm-hmm.

THE COURT:

… are we within the three years? Yes. Madame will have 25,000.00. This is just going to add to monsieur's problems, you understand?

Because kids, it's public order. We can't …

CHANTAL DÉCARIE:

I understand.

THE COURT:

But he will argue for a day, counsel, he'll stay seated and then he'll let Mr. A. plead undue hardship. But at the end, he'll get up, he'll say: Mr. Justice, this is of public order, the two kids. Thank you very much.[242]

[242] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 57, l. 21 to p. 59, l.24.

[257] Justice Dugré raised issue twice more and flat out suggested that counsel for Ms. M. should amend her pleadings on this matter, adding that it might lead to a settlement:

> [TRANSLATION]
>
> THE COURT:
> But you'll see that practically, in my opinion, I think that she [Ms. Miele], will take a good half hour, he [Mr. Tétreault] will take about a minute, a minute and a half, and then that's it, he'll have prepared the forms, shared custody, he'll put the salaries there and he'll say …
>
> . . .
>
> THE COURT:
>
> … me, I want to have three years retroactively. Thank you very much, Mr. Justice. It's been a pleasure.
>
> CHANTAL DÉCARIE:
>
> But he will have to amend his pleadings, because there is no application to this effect.
>
> THE COURT:
>
> Maybe.
>
> . . .
>
> Ah! But yes, he, yes, because he has the right to that.
>
> . . .
>
> Now…
>
> . . .
>
> …does he need to amend? Maybe, but he should notify you of that. So, we will schedule the date, counsel, October 26, for a day? Let's go. You'll have a full day.[243]
>
> . . .
>
> …that's it, there'll be an interim that will apply. And you [Ms. Décarie] will have it cancelled retroactively. And that's it. Then you [Mr. Tétreault], if you want to claim arrears, well, you'll amend, and that may give you the opportunity to settle, eh. The worst, the worst settlement, the worst settlement…[244]

[243] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 143, l. 10 to p. 145, l. 8.
[244] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 162, ll. 12 to 18.

[258] Justice Dugré also made several comments about past conduct and insinuated that Ms. M.'s legal strategy should have been more aggressive. For example, he was surprised that Mr. A. lives in the former family home and suggested that this would not be the case if Ms. M. had had more experienced lawyers:

> [TRANSLATION]
>
> THE COURT:
>
> Ah! Mr. A. lives in the house?
>
> . . .
>
> So the kids are there, that's good. Usually though, it's always the opposite. Usually, when either Ms. Goldwater…
>
> . . .
>
> …appears or Mr. Battaglia appears, the husband is out, it takes around five minutes.
>
> . . .
>
> And the wife keeps the house, keeps the furniture, gets child support and all that. And the husband, well, he takes his bag and leaves.[245]

[259] In the same vein, although he had not heard any evidence, Justice Dugré declared that Ms. M. had been [TRANSLATION] "really, really patient", suggesting that she should have requested child support earlier:

> [TRANSLATION]
>
> THE COURT:
> …when the house is sold, Ms. M. will recover her… She will recover her… She is very patient, and she seems like a really, really patient lady. It's been three years that she…
>
> CHANTAL DÉCARIE:
>
> Patient why?
>
> THE COURT:
>
> …has been waiting.
>
> CHANTAL DÉCARIE:
>
> I'm sorry, but you have not even heard the evidence Mr. Justice.
>
> THE COURT:

[245] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 62, l. 10 to p. 63, l. 9.

Excuse me?

CHANTAL DÉCARIE:

You say she is patient. You know…

THE COURT:

Well it's been three years she hasn't had any child support payments. This is a patient …

CHANTAL DÉCARIE:

Well…

THE COURT:

…. woman[246]

[260] Later, he added that Ms. M. had been [TRANSLATION] "nice" and that she could have forced the sale of the house a long time ago, but needed [TRANSLATION] "Mr. Dugré" to say "enough is enough":

[TRANSLATION]

THE COURT:
But she was certainly…

…

… nice, she was certainly nice, Ms. M., because what rights could she have exercised?

CHANTAL DÉCARIE:

What rights could she have…

THE COURT:

What rights could she have exercised as co-owner of the house?

CHANTAL DÉCARIE:

She didn't do it, what can I say?

. . .

THE COURT:

She could have said: Hey! Enough is enough, let's stop paying the house, we can't do it anymore. I am at my dad's, you go to your mom's, we'll sell it, pay me the arrears, we'll think of the two kids first.

[246] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 96, l. 16 to p. 97, l. 21. When Ms. Décarie reacted and tried to explain why no child support was requested in the past, Justice Dugré quickly moved on to another topic.

> But now, it's taken Mr. Dugré, who is shaking the couple up a bit this morning, to say: Look, enough is enough, kids first. Okay. The kids come first. So, if Mr. A. is unable to pay, we'll have the amount, but the house has to be sold.[247]

[261] Immediately following this last comment, Justice Dugré went on to suggest that Ms. M. should "seriously think" about having Mr. A's custodial rights terminated, which made his lawyer jump up, for good reason:

> [TRANSLATION]
>
> THE COURT:
> … if he can't, okay, pay $400.00, okay, find $400.00 for his two kids, Ms. M. will seriously need to think about changing custody to have her kids.
>
> CHANTAL DÉCARIE:
>
> Hey! Mr…[248]

[262] At another point, Justice Dugré addressed Ms. Miele and essentially put words in her mouth regarding the need to grant child support, even though she was there to represent the interests of child C. regarding custody, which was the subject of an agreement:

> [TRANSLATION]
>
> THE COURT:
> So, Ms. Miele, how are you?
>
> ANNIE MIELE:
>
> I'm doing well.
>
> THE COURT:
>
> Good. So now, why are you here this morning?
>
> ANNIE MIELE:
>
> Well, because I represent C., and there is currently no judgment in the file, with regard to custody. So…
>
> THE COURT:
>
> Does he need money, little, what's his name? What is the little one's name?

[247] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 123, l. 14 to p. 125, l. 18.
[248] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 126, l. 10 to p. 127, l. 17.

. . .

ANNIE MIELE:

I represent C.

THE COURT:

C., the big girl then, she needs money, that one.

ANNIE MIELE:

I…

THE COURT:

She needs things to wear, little shoes…

ANNIE MIELE:

Well, I understand, I understand.

THE COURT:

…little outfits, a little purse.

ANNIE MIELE:

I understand.

THE COURT:

All that. She needs money, right?

ANNIE MIELE:

Listen, I'm representing the child, I will definitely…

THE COURT:

But you, it's a public order issue, the law is in your favour?

ANNIE MIELE:

It is. Absolutely.

THE COURT:

So you have the best lawyer here, eh, who is representing C. Me, I want the children's best interests.

. . .

THE COURT:

But okay, that's the idea. We need $3,500.00, that's it, $500.00 per month, for seven months, $3,500.00. Do you think that C., and the other one, the little boy, J., are they entitled to this?[249]

[249] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 77, l. 13 to p. 80, l. 17.

[263] To use a familiar image, Justice Dugré seems to have "traded in his judge's robe for that of a lawyer."[250] A reasonable, informed person could certainly conclude from Justice Dugré's behaviour that he expressed a bias towards Ms. M. It is understood that the Court's role is to protect the children's best interests. However, this cannot be relied on to abandon any appearance of objectivity and (1) refuse to hear a party's arguments; (2) insinuate, when one doesn't know all the facts, that the other party should have been more aggressive in the past; and (3) suggest to the other party that it amend its pleadings to seek arrears and invite the party to seek a change in the custody arrangements.

[264] In addition to the above, the recording also reveals that Justice Dugré was often sarcastic and disrespectful towards Ms. Décarie and her client. For example, Justice Dugré:

- Told Mr. A. that he would have to pay [TRANSLATION] "the exorbitant amount of 4,993.00 per month" which is a [TRANSLATION] "real bargain [for] "precious little angels", to then explain that he had just [TRANSLATION] "got a deal" because the actual amount would be $493;[251]

- Told Mr. A. he would have to [TRANSLATION] "call mommy" to borrow the money he needed;[252]

- Told Mr. A., whose credit cards were apparently maxed out, that he simply had to apply for an MBNA credit card [which he already had];[253]

- Insinuated that Mr. A. was trying to [TRANSLATION] "punish" and [TRANSLATION] "take advantage of" Ms. M., who [TRANSLATION] "[was] foolish enough" to live at her father's;[254]

- Said that, if his interim judgment were to be overturned by the trial judge, Mr. A. could [TRANSLATION] "wait three years to be reimbursed" since Ms. M. had waited three years to apply for child support payments;[255]

[250] See *Prud'homme c. Chaloux*, 2017 CanLII 59497 (QC CM), at para. 16.
[251] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 48 to 49.
[252] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 54.
[253] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 69.
[254] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 73.
[255] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 77.

- Said that [TRANSLATION] “the riot act” should be read to Mr. A., who needs a [TRANSLATION] “reality check”, a [TRANSLATION] “small electric shock” so that he take care of his children;[256]

- After suggesting that Mr. A. sell his 2004 Mazda to pay for a month of child support, said that he hoped that Ms. M. was driving a Porsche 911;[257]

- Offered to reserve three days for the hearing on the merits because he wanted Ms. Décarie to have [TRANSLATION] “all the time she needed to explain to the judge that Mr. A. is unable to pay child support” and he [TRANSLATION] “had a feeling it would take a long time”;[258]

- After saying that Mr. A. would have to give one out of four paychecks to Ms. M. and that he was not in debt because he had $3,000 in net assets, addressed Ms. Miele, and sarcastically stated that [TRANSLATION] “it is a pleasure to tighten one’s belt for children”; and[259]

- After saying that Ms. M. needed child support payments because she could not afford going to the movies with the children, said that if Mr. A. did not have enough money to go out with his children, they could just stay in the basement and watch TV.[260]

[265] These repeated condescending and disdainful comments towards a litigant and his counsel are incompatible with the honour and dignity required of a judge.

[266] In short, the Committee is of the view that Justice Dugré’s conduct at the hearing violated his ethical duties in that he did not give Mr. A. a genuine opportunity to be heard before ruling on Ms. M.’s application.[261] In addition he breached his duties of restraint, civility and composure through several inappropriate interventions and comments.

[267] Before concluding, we note that Justice Dugré argues that he [TRANSLATION] “began this hearing with a conciliation”, as was allegedly [TRANSLATION] “recognized” by the Inquiry Committee at paragraph 37 of the Notice of Allegations.[262] Paragraphs 37 and 38 summarize the complaints made and the relevant facts that are the subject of the inquiry. They do not constitute admissions or proven facts. In the case of some

[256] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 95 to 96, 100, 135.
[257] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 132 to 133.
[258] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 137 to 138, 142.
[259] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at p. 180.
[260] Exhibit AP-5, Transcript of the April 3, 2018, hearing, at pp. 155 to 158, 181 to 182.
[261] *Harvey et Gagnon*, 2015 CanLII 4288 (QC CM).
[262] Amended Written Submission of the Honourable Gérard Dugré, at para. 147.

paragraphs of the Notice of Allegations, the evidence presented at the inquiry confirmed the facts described; in others, the evidence showed the facts to be different. Here, the wording of paragraph 37 of the Notice of Allegations refers to the fact that the allegations prepared by Chief Justice Joyal note that Justice Dugré, in his comments on the complaint, stated that it was a conciliation. However, the evidence presented at the inquiry contradicts this statement. Even if Justice Dugré intended to begin the hearing with a conciliation (which cannot be confirmed since there is no indication of this), it is clear that, at some point, the conciliation ended because the hearing concluded not with a settlement between the parties but with the issuance of an interim judgment from the Court allowing Ms. M.'s application against an unwilling Mr. A., who, through his counsel, tried his best to have his position heard.[263]

5. Conclusion

[268] For the above reasons, the Committee answers the following two allegations in the affirmative:

> Allegation 3A
>
> Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on April 3, 2018, in *A.* (*A.A. c. E.M.* #540-12-021200-175) by his conduct or by his comments made at the hearing?
>
> Allegation 3B
>
> Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on April 3, 2018, in *A.* (*A.A. c. E.M.* #540-12-021200-175) by his conduct or by his comments made at the hearing?

E. LSA AVOCATS

1. Background

[269] On March 18 and 19, 2019, Justice Dugré had to rule on objections and requests for undertakings in advance of discovery made in the context of a complex trust dispute.

[270] For the purposes of this inquiry, it is sufficient to note that Éric Lefebvre and Dominique Noël of Norton Rose Fulbright ("**Norton Rose**") (formerly Ogilvy Renault)

[263] Exhibit LSAP-2, at p. 4.

and a lawyer from LCM were representing several of the plaintiffs. Ugo Brisson and Louis Linteau, then with LSA Avocats, were representing Ms. Doron and other defendants, who had previously been represented by the firm Lavery.

[271] An injunction had also been granted by a Superior Court justice, but Justice Michel Déziel, J.S.C., had refused to extend it and a related file was joined to the one that is the subject of this inquiry.

[272] Given its complexity, the case was under special case management, overseen by Associate Chief Justice Petras. Considering the nature of the case, she had scheduled two hearing days to deal with the objections.[264]

2. The Complaint to the CJC

[273] On September 17, 2019, Ugo Brisson and Louis Linteau filed a complaint regarging the way their clients were treated at the hearing presided over by Justice Dugré on March 18 and 19, 2019.[265] In particular, they allege that Justice Dugré:

- Did not understand or take the time to understand the defendants' claims and did not listen;
- Did not read the file before the hearing, continually slowed down the hearing and was biased towards several subjects; ultimately, the hearing had to be concluded in a hurry because of a lack of time, to such an extent that the judge limited the issues he was going to determine;
- Made inappropriate comments about the Honourable Michel Déziel, J.S.C., and questioned counsel about why they had not appealed the Déziel judgment;
- Stated or clearly implied that the allegations were serious accusations, that counsel risked being disbarred and were complicating the matter in order to make more money;
- Was surprised that Lavery's services were no longer retained and stated that a change in counsel can raise questions about the client; and
- Made laudatory comments bordering on cronyism about counsel from Norton Rose and LCM Avocats, to the point of providing them with legal advice about how to formulate a question that was objected to, suggesting that they file a

[264] Testimony of Éric Lefebvre, June 11, 2021, at pp. 26 to 27.
[265] Exhibit LSAP-1.

motion to dismiss on the ground of *lis pendens* and insinuating that they immediately file a motion for severance of proceedings.

3. Evidence Before the Committee

a) Testimony of Louis Linteau (counsel for the defendants)

[274] Mr. Linteau has been a member of the Barreau du Québec since 1974. He practices in commercial and corporate law and commercial litigation.[266] Mr. Linteau and his then associate, Mr. Brisson, were representing the defendants.

[275] Mr. Linteau explained that Justice Dugré had to dispose of objections made by the former counsel of record (Lavery) and requests for advance undertakings by LSA Avocats in preparation for the examinations to come.

[276] He stated he felt that Justice Dugré had a tendency to favour the [TRANSLATION] "big firms" such as Lavery and Norton Rose. He recalled that Justice Dugré had been surprised that the case had been transferred from Lavery to LSA Avocats, stating [TRANSLATION] "Yet, Lavery is a good firm". In his opinion, such comments suggested that there were double standards in Justice Dugré's mind, one for the [TRANSLATION] "big firms" and the other for [TRANSLATION] "small firms".[267] He added that he had noticed in the transcripts that Justice Dugré occasionally remarked that Norton Rose was a [TRANSLATION] "good firm" with [TRANSLATION] "serious people".[268] Mr. Linteau admitted, however, that he had not thought about what objections were lost because of this alleged bias.[269]

[277] According to Mr. Linteau, Justice Dugré continually interrupted Mr. Brisson, who agued the case for the defendants. He explained that these interruptions were very often followed by long monologues on subjects unrelated to the case. He added that he noticed that his colleague had trouble finishing a single sentence during the entire hearing.[270] When asked to compare his experience before Justice Dugré to his experience before

[266] Testimony of Louis Linteau, June 10, 2021, at p. 9.
[267] Testimony of Louis Linteau, June 10, 2021, at pp. 15 to 16.
[268] Testimony of Louis Linteau, June 10, 2021, at p. 19.
[269] Testimony of Louis Linteau, June 10, 2021, at p. 36.
[270] Testimony of Louis Linteau, June 10, 2021, at pp. 22 to 23.

other judges during his career of over 45 years as a lawyer, Mr. Linteau gave the following explanation:

> [TRANSLATION]
>
> **Q-** And you're an experienced lawyer. How does the hearing compare to other hearings in similar matters in which you participated in the past, and I mean in terms of both form and substance.
>
> **A-** Well, I would say that in my first years of practice, the judiciary did not necessarily have the same rigour that it has since developed. Well, it happened that a judge didn't listen or…didn't properly manage the case, but it was very rare.
>
> I remember two experiences when, among other things, the judge gave a monologue for around 15 or 20 minutes and when I asked if I could present my arguments, he replied that I just had to go before the court of appeal to do so.
>
> So that was in the 70s. Nothing like that has happened to me since. **So no, I have not had any similar experiences**.[271]
>
> [Emphasis added]

[278] Mr. Linteau also remembered that Justice Dugré wondered why Norton Rose had not appealed Justice Déziel's decision not to renew the injunction. He also indicated that Justice Dugré seemed to be giving advice to the lawyers from Norton Rose, including on two occasions, where he went so far as to advise them to file a motion for severance (since a related case had been joined to the case).[272]

[279] He also said he had considered appealing Justice Dugré's decision. But as the case could still move forward despite the judge's determinations, he did not want the file to be delayed for the time it would take to appeal.[273] Lastly, he explained that he had not asked the judge to recuse himself for the following reasons:

> [TRANSLATION]
>
> In 45 years, I have never requested this, but in the middle of the first day, after the noon adjournment, it was something that crossed my mind.

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[271] Testimony of Louis Linteau, June 10, 2021, at p. 17, l. 12 to p. 18, l. 8.
[272] Testimony of Louis Linteau, June 10, 2021, at pp. 22 to 23.
[273] In response to a question asked by a member of the Committee, Mr. Linteau stated that it was an interlocutory decision for which leave to appeal was required (Testimony of Louis Linteau, June 10, 2021, at pp. 27 to 29).

> As I was still concerned about moving the case forward, a motion to recuse seemed to be an extremely heavy burden in terms of time because it would involve everything that had been said that morning being set aside, we would have to wait for another judge to be available, and that was assuming that the motion to recuse was accepted immediately.
>
> If it wasn't accepted immediately, there would have been a trial within a trial. Similarly, similarly, as I mentioned for the appeal, there was the concern of moving the case forward.
>
> There was another thing on my mind. It's that Justice Dugré had taken a very strong interventionist stance right from the start of the day, and I know from experience that it is not easy to tell someone, [TRANSLATION] "You've gone too far." So I was already afraid of ending up with a case within a case.[274]

[280] When cross-examined, Mr. Linteau acknowledged that Justice Dugré greeted him at the start of the hearing, mentioning *L.* (mentioned above), a case in which he had appeared and in which a settlement conference, led by Justice Dugré, had resolved the dispute. He also stated that Justice Dugré asked him why such a settlement conference had not been considered in this file.[275]

b) Testimony of Ugo Brisson (counsel for the defendants)

[281] Ugo Brisson has been a member of the Barreau du Québec since 2004. He works mainly in the areas of civil, commercial and real estate litigation.[276]

[282] He explained that he did not feel welcome in Justice Dugré's courtroom. He qualified the hearing as being [TRANSLATION] "very painful" and [TRANSLATION] "very difficult" because he was not given an opportunity to explain his clients' theory or justify their position during the hearing. He added that, at the outset, Justice Dugré had not read their defence or counterclaim.[277]

[283] Mr. Brisson felt he was treated differently than the lawyers from Norton Rose. He stated the following:

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[274] Testimony of Louis Linteau, June 10, 2021, at p. 25, l. 10 to p. 26, l.10.
[275] Testimony of Louis Linteau, June 10, 2021, at pp. 32 to 33.
[276] Testimony of Ugo Brisson, June 10, 2021, at p. 66.
[277] Testimony of Ugo Brisson, June 10, 2021, at pp. 75 to 76.

> [TRANSLATION]
>
> There was a difference between when Norton Rose spoke and when I spoke. I was continually interrupted about matters that had absolutely nothing to do with the case, in any way, shape or form.
>
> I would make a point and the judge would interrupt to talk about Blue Trust or Breaking Bad, which is a series I am not familiar with, or about John McGill, who is an actor or character in a series that I am not familiar with.
>
> And so, that first day was extremely difficult, yes, to get back to your question, Mr. Battista, when I was unable to make any progress or present the points I wanted to make.
>
> We had two days to debate several objections, several requests for advance undertakings, and we had worked with Norton Rose prior to the hearing to avoid having to debate each request to be as efficient as possible at the hearing, such that two days should have been more than sufficient for us to get through all of the requests from both parties.
>
> That being said, with the never-ending interruptions from Justice Dugré, we were unable to finish, and my clients were the ones who suffered from this lack of time since Norton Rose was able to complete its requests.
>
> To save time, at the end, I simply agreed to all of their advance undertakings because I wanted to have time to present my requests, and the judge said to me, [TRANSLATION] "Group all of it together in five or six groups of advance undertakings, because there is no way we are going to go through the ninety requests you're making."
>
> So the second day was more productive, because we had to get the work done, but we ran out of time.[278]

[284] Mr. Brisson had the following to say about Justice Dugré's comments concerning Norton Rose and LCM Avocats:

> [TRANSLATION]
>
> So, if a judge says to a lawyer once, [TRANSLATION] "Say hello to such and such a lawyer" because that lawyer is a friend or something, I wouldn't make a big deal out of it. I think it is something that can happen.
>
> When, from start to end of the hearing, the judge says to say hello to Québec's former chief justice, Justice Michaud, who is now counsel Norton Rose, when the judge lauds a lawyer's work, I believe it was Pierre Bienvenu who had apparently made two…who had won two cases in the Supreme Court shortly before, when the judge explains

[278] Testimony of Ugo Brisson, June 10, 2021, at p. 77, l. 22 to p. 79, l. 14.

> what a credible, professional firm Norton Rose is, when the judge says this and repeats it over and over to make sure that it's clear to everyone, when the judge says that he still calls this firm Ogilvy Renault, because of an attachment to its roots, when the judge praises Mr. Sbire, who was a lawyer in the firm with which the LCM lawyer had worked previously, for me, this was more than a little disturbing.
>
> This sets up a two-tiered system and it is the main reason why, when my clients asked me to file a complaint with the Judiciary, I agreed to do it for them.[279]
>
> . . .
>
> . . . At one point, he said…it is quite something because he was talking…he was talking to Norton Rose and he said, [TRANSLATION] "Listen, maybe what you should do is just seek the Court's approval to accept that your clients are no longer trustees, and that could be a solution for the case" and then he turned to me and said, [TRANSLATION] "You know, their work is very good, Norton Rose, they know what they're doing, you know."
>
> So that's the type of comment…did it mean that I, I didn't know what I was doing? Does it mean that clients represented by big firms are necessarily starting off one step ahead, with greater credibility just because they are paying big money to a big firm?
>
> That was how I took it, and the judge certainly insisted on it several times during the hearing.[280]

[285] Mr. Brisson added that he noticed two comments made by Justice Dugré that were offensive to him. First, Justice Dugré insinuated that Mr. Brisson was filing multiple proceedings in order to maximize his fees. This was a [TRANSLATION] "gratuitous, unfounded" attack.[281]

[286] Mr. Brisson said that he then had to defend himself for the change in counsel. He stated the following:

> [TRANSLATION]
>
> The second example was at the end of the second day, and it was more or less how the second day ended, he asked if there was a reason on the record to explain why Lavery had stopped representing my clients and he said, "Lavery is a good firm" and I had to defend myself by saying that it was the only change in counsel that my clients had made, that at

[279] Testimony of Ugo Brisson, June 10, 2021, at p. 79, l. 22 to p. 80, l. 24.
[280] Testimony of Ugo Brisson, June 10, 2021, at p. 81, l. 18 to p. 82, l. 13.
[281] Testimony of Ugo Brisson, June 10, 2021, at p. 85.

> that time I had been representing them for three years, nearly three years, and the judge said, “Listen, no, well that’s fine, it’s just that one always wonders when a party regularly changes their counsel—and he said—you know, for example, when a party has changed counsel four or five times, one wonders, ‘maybe the lawyer isn’t the problem, maybe it’s the client’” and then I said, “No, but here it was just one time.” And he gave an example from one of his 25 cases where a client who asked him to represent them and wanted to change counsel for the first time, well, he had said, “Given how it looks, you will keep your former counsel and I will become your legal advisor.” And so, what I understand is that for him, a change in counsel, especially when the first firm is Lavery, which is a good firm, as he had just told me, well, that was problematic. And so, that’s the type of thing that allowed me to understand what had happened during the two days we had just spent in his presence.[282]

[287] Lastly, Mr. Brisson stated he had not appealed Justice Dugré’s decision because he thought he could get certain documents he had relinquished during the examinations. He added that it was important to expedite the case.[283] He also explained that he did not ask the judge to recuse himself because the reasons that led him to conclude the judge was biased arose over the two days of hearing. He stated that, in his opinion, the judge would not have recused himself and that he [TRANSLATION] “didn’t dare imagine what the hearing would have looked like after the judge would have dismissed a motion for recusal”.[284]

[288] When cross-examined, Mr. Brisson also confirmed that he had not calculated how many objections he lost because of the judge’s lack of familiarity with the case. He admitted that he had not tallied the number of objections he won and that he had not examined which objections he lost because of Justice Dugré’s alleged bias. He specified, however, that he had been unable to present all the advance undertakings he would have liked and that in his opinion, Justice Dugré had been inclined to allow Norton Rose’s theory of the case from the very start of the hearing.[285]

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[282] Testimony of Ugo Brisson, June 10, 2021, at p. 86, l. 4 to p. 87, l. 11.
[283] Testimony of Ugo Brisson, June 10, 2021, at pp. 90 to 91.
[284] Testimony of Ugo Brisson, June 10, 2021, at p. 91.
[285] Testimony of Ugo Brisson, June 10, 2021, at pp. 95 to 96.

[289] He also recognized that Justice Dugré twice stated that Norton Rose had perhaps made the case more complex by filing an overly long motion to institute proceedings.[286]

[290] Mr. Brisson also stated that Justice Dugré told him he was risking getting disbarred by accusing lawyers of dishonest conduct. Mr. Brisson did not agree that the judge's comment was in fact aimed at the allegedly dishonest lawyers.[287]

[291] When asked to testify on the fact that Justice Dugré had limited Mr. Brisson's advance undertakings to those that could be categorized under five or six themes, he stated that he had asked for an additional theme to be heard.[288] He added that this certainly did not mean that there were no other undertakings he would have liked to raise before Justice Dugré.[289]

[292] Lastly, he explained that he had not asked Justice Dugré for extra time in order to allow for a full debate of the objections and advance undertakings to be disposed of:

> [TRANSLATION]
>
> I could tell you, maître Fournier, that when the time came to ask for an additional group, Justice Dugré's patience seemed to have run out and no, I did not have the presumptuousness to ask for additional advance undertaking groups to be added.[290]

c) Testimony of Éric Lefebvre (counsel for one of the plaintiffs)

[293] Mr. Lefebvre has been a member of the Barreau du Québec since 1996. As a member of Norton Rose since 2000, he works in the area of commercial litigation.[291] Mr. Lefebvre was representing one of the plaintiffs.

[294] In his opinion, while the debate on the objections took than usual, it proceeded normally.[292] He recalled that, during the morning of the first day, the judge had many interactions with counsel in order to understand the real issues. Justice Dugré had also

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[286] Testimony of Ugo Brisson, June 10, 2021, at p. 100.
[287] Testimony of Ugo Brisson, June 10, 2021, at pp. 103 to 104.
[288] Testimony of Ugo Brisson, June 10, 2021, at pp. 106 to 107.
[289] Testimony of Ugo Brisson, June 10, 2021, at p. 107.
[290] Testimony of Ugo Brisson, June 10, 2021, at p. 106, l. 22 to p. 107, l. 2.
[291] Testimony of Éric Lefebvre, June 11, 2021, at p. 6.
[292] Testimony of Éric Lefebvre, June 11, 2021, at pp. 8 to 9.

made comments that, in his opinion, were aimed at convincing the parties it was preferable to settle.[293]

[295] He described Justice Dugré as having a colourful personality, noting that he intervened a lot at the hearing, asked several questions and [TRANSLATION] "not hesitated to look back on his days as a lawyer to find analogies".[294]

[296] When questioned about Justice Dugré's alleged comments and conduct, Mr. Lefebvre stated he did not recall that anyone was prevented from presenting their arguments. He had also not perceibed any bias from the judge. He added that he did not recall any inappropriate comments towards counsel, their clients or Justice Michel Déziel.[295]

[297] Although Justice Dugré did not appear to have a detail knowledge of the dispute, Mr. Lefebvre believed that he had reviewed some of the pleadings.[296]

[298] Conserning the allegation of bias, Mr. Lefebvre did not recall the judge showing any, be it towards him or his clients. While he recalled that the judge had wondered about the reasons why severance had not been requested in the case, he had not considered this as legal advice.[297] He added he had not noticed any inappropriate conduct by Justice Dugré. However, Mr. Lefebvre specified:

> [TRANSLATION]
>
> Okay. "Inappropriate" no, the qualifier "inappropriate," no, but if you said to me: "Is he an average person? Is he like one of the average judges of the Superior Court in Montreal that I have appeared before?" No. He stands out, he is much more colourful and he interjects, anyway, from my limited experience of two days, yes, he is much more assertive, hands-on and colourful than the average judge before whom I have appeared over the past 25 years.[298]

[293] Testimony of Éric Lefebvre, June 11, 2021, at p. 10.
[294] Testimony of Éric Lefebvre, June 11, 2021, at pp. 11 to 12.
[295] Testimony of Éric Lefebvre, June 11, 2021, at p. 14.
[296] Testimony of Éric Lefebvre, June 11, 2021, at p. 13.
[297] Testimony of Éric Lefebvre, June 11, 2021, at pp. 16 to 17.
[298] Testimony of Éric Lefebvre, June 11, 2021, at p. 19, l. 23 to p. 20, l. 9.

[299] Lastly, Mr. Lefebvre stated that, based on his experience, when dealing with objections, judges generally do not read the record beforehand. Judges generally ask the parties to describe the issues and to tell them which pleadings to read before adjourning so that they can review them.[299]

d) Testimony of Marie Dumont (clerk and Justice Dugré's assistant)

[300] Ms. Dumont acted as clerk at the hearing in question. She stated it was not the first time she had attended a hearing on objections. She found the judge's conduct during this hearing was [TRANSLATION] "typical Mr. Dugré, invested".[300] She recalled that [TRANSLATION] "things were heated between the lawyers".[301]

e) Other evidence

[301] In order to provide a full picture, presenting counsel submitted the complaint, recording, transcripts, minutes of hearing, the relevant procedural documentation, and the court ledger related to the hearing under inquiry.[302]

4. Discussion

[302] The Committee listened to the entire recording of the hearing and read the transcripts.

[303] The Committee notes that half of the first day was devoted to preliminary exchanges between the Court and counsel and that it was only after the lunch break, after approximately two and a half hours of hearing, that the parties were finally able to present arguments on the objections.[303] During these preliminary exchanges, Justice Dugré explained these were necessary either for his own understanding of the case so that he could rule on the objections,[304] or as a type of conciliation.[305]

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[299] Testimony of Éric Lefebvre, June 11, 2021, at pp. 24 to 25.
[300] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 140, l. 11.
[301] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 141, ll. 3 to 4.
[302] Exhibits LSAP-1 to LSAP-18.
[303] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at pp. 4 to 226.
[304] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at p. 35.
[305] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at pp. 86 and 90.

[304] It is of course appropriate for judges to ensure that they properly understand the factual context of a case before ruling on objections or any other applications before them. Justice Dugré can therefore not be criticized for enquiring about the facts of the case or for having discussions akin to a conciliation exercise with counsel. That being said, the exchanges were lengthy, and Justice Dugré, as seems to be habitual for him, digressed at times to talk about subjects that deviated from the case (for example, the television series *Better Call Saul* or the book *Blue Trust*), which significally delayed oral arguments. According to Mr. Brisson's testimony, Justice Dugré's many interventions throughout the hearing, but more particularly over the first day, contributed to his running out of time to argue in support of the advance undertakings he was seeking.

[305] It is undeniable that Court time could have, at times, been put to better use. In keeping with his approach, Justice Dugré told anecdotes, gave advice to counsel and discussed peripheral matters. Such interventions may be harmless if they occur in moderation and if they do not interfere with the conduct of the hearing. In this case, Justice Dugré should have shown more restraint and been more aware of the time constraints. However, if the parties were worried about running out of time to argue their case, they could have politely mentioned this to Justice Dugré in an attempt to shorten the preliminaries. They did not. On the contrary, when it was time to take the noon break on the first day, Dominique Noël of Norton Rose confirmed to Justice Dugré that one or two hours would be sufficient to address the objections, and counsel from LSA did not object.[306] In the end, although the Committee notes a certain lack of efficiency in the management of the hearing time, this was not a case where the management was so deficient as to constitute a violation of the judge's duty to properly conduct the hearing.

[306] Moreover, the Committee does not see anything inappropriate in Justice Dugré's comments on the judgment rendered by his colleague Justice Déziel. While he may have said that it could have been worthwhile to appeal the judgment, the comment was not meant as a criticism of the merits of Justice Deziel's decision. Justice Dugré was merely

[306] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at p. 199.

expressing his opinion that it would have been useful to have the Court of Appeal's guidance on an issue that was central to the dispute.[307]

[307] The complaint also alleges that Justice Dugré made comments bordering on cronyism about Norton Rose and LCM Avocats and certain colleagues or former colleagues of counsel before him, and expressed surprise that Lavery had withdrawn as counsel. Judges should avoid making this type of comment. However, after listening to the entirety of the recording, the Committee is of the opinion that the comments do not meet the threshold for misconduct.

[308] With regard to Justice Dugré's comments about the fact that Lavery had withdrawn as counsel, it is true that he returned to this issue at the end of the hearing and stated that judges sometimes wonder when parties in a case constantly change lawyers. However, in the same breath he recognized that this was not the case in the matter before him.[308] The Committee does not believe he wanted to discredit anyone through his comments. Rather, this seems to be yet another example of Justice Dugré digressing and sharing his opinion on a subject that is more or less related to the facts before him.

[309] In addition, it seems that the allegation that Justice Dugré insinuated that counsel from LSA risked being disbarred because of certain allegations in their defence and counterclaim is the result of a misunderstanding. In the Committee's opinion, Justice Dugré's comments were actually directed at certain plaintiffs mentioned in these allegations. What Justice Dugré seemed to be explaining is that these plaintiffs, who were lawyers, might want to settle rather than risk disbarment should the alleged facts be proven.[309]

[310] Similarly, the Committee notes that Justice Dugré did not assume that the plaintiffs were honest simply because they were represented by Norton Rose; but rather that he doubted that they had intended to appropriate shares illegally since they had reported

[307] Exhibit LSAP-11, Transcript of the March 19, 2019, hearing, at p. 54.
[308] Exhibit LSAP-11, Transcript of the March 19, 2019, hearing, at pp. 473 to 475.
[309] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at p. 132.

being shareholders in the Registre des entreprises du Québec.[310] Indeed, Justice Dugré allowed the plaintiffs' requests for advance undertakings on this issue.[311]

[311] Ultimately, the evidence presented at the inquiry does not establish that Justice Dugré had a real or apparent bias in the conduct of the hearing. While on several occasions, Justice Dugré may have insinuated that the parties were needlessly complicating the case, his comments were aimed at both the plaintiffs and the defendants.[312] As for characterizing Mr. Brisson as [TRANSLATION] "bellicose", the recording confirms that Justice Dugré's tone was friendly and that he stated it was not a personal attack.[313]

[312] To conclude, Justice Dugré intervened numerous times during the hearing, either to ask questions or to comment on the case, or even to discourse at length about subjects that did not have a direct link with the matter. It is understandable that this manner of presiding over a hearing may have thrown counsel off balance at times and even made the experience occasionally painful. It is also regrettable that this seems to have encroached on the time for oral arguments. However, it did not seem to the Committee that Justice Dugré's interventions and digressions were aimed at or favoured one party over the other. While far from perfect, Justice Dugré's conduct at the hearing does not meet the threshold required to constitute judicial misconduct.

5. Conclusion

[313] For the above reasons, the Committee answers the following two allegations in the negative:

> Allegation 4A
>
> Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on March 18 and 19, 2019, in *Doron* (*Roch et als. c. Doron et als.* #500-17-087739-150) by his conduct or by his comments made during the hearing?

[310] Exhibit LSAP-11, Transcript of the March 19, 2019, hearing, at pp. 439, 445.
[311] Exhibit LSAP-11, Transcript of the March 19, 2019, hearing, at p. 446.
[312] See for example, LSAP-10, Transcript of the March 18, 2019, hearing, at pp. 52 to 54, 119, 160.
[313] Exhibit LSAP-10, Transcript of the March 18, 2019, hearing, at pp. 196 to 197, 347 and following.

Allegation 4B

> Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on March 18 and 19, 2019, in *Doron* (*Roch et als. c. Doron et als.* #500-17-087739-150) by his conduct or by his comments made during the hearing?

F. GOUIN

1. Background

[314] Marcel Gouin was the representative of the plaintiff, Karisma Audio Post Vidéo et Film, in a case where the plaintiff was claiming damages from Mr. Gouin's former associate, Stéphane Morency.

[315] The hearing before Justice Dugré lasted four days, from November 27 to 30, 2017. Karisma Audio Post Vidéo et Film was represented by Jean-François Hudon, and Mr. Morency by Steven Roch.

[316] Justice Dugré rendered his decision on June 2, 2018, dismissing Mr. Gouin's claim.[314]

[317] Mr. Gouin appealed the decision, alleging both reviewable error and that Justice Dugré was biased. The appeal was allowed in part, but solely to order Mr. Morency to pay $2,000.

[318] On the issue of bias, the Court of Appeal concluded as follows:

> [TRANSLATION]
>
> [41] It is understandable that the appellant complained about the judge's attitude during the trial. For most of Mr. Gouin's testimony, while Mr. Gouin was trying to explain the distribution of the claims, the judge regularly interrupted him and suggested his own hypotheses, which did not correspond to the reality being described to him. He complained about the lack of a written contract. Several times, he criticized the complexity of the case, concluding abruptly by asking the witness to [TRANSLATION] "explain this to him", only to interrupt him again almost immediately. He was often impatient when Gouin tried to refer him to his calculations, assembled in Exhibit P-9. At times he was sarcastic.

[314] Exhibit GP-18.

> [42] This gave the impression that the judge had trouble keeping up with the witness and was frustrated by the lack of an accounting opinion that would have made his job much easier. Nobody asked him to order an expert report, perhaps for proportionality reasons, and he had not considered it appropriate to do so.
>
> [43] Is the judge's attitude a sufficient ground to allow the appeal?
>
> [44] In *Quebecor inc. c. Société Radio-Canada*, the Court wrote that, while it is not a virtue, being blunt, cantankerous or caustic is not, in itself, a ground for recusal, nor is the judge's trouble understanding evidence that is not easy to comprehend. Judges have a duty to try and understand what they are told, but in turn, parties have a duty to make this easier for them. As for the determination of whether there was bias or the appearance of bias, the test is a very strict one: the conduct being reviewed must lead to a reasonable apprehension of bias, that is a logical and serious apprehension in a right-minded, informed individual, viewing the matter realistically and practically – and having thought the matter through.
>
> [45] This threshold has not been met. The judge was exasperated by the evidence being presented to him. He was also impatient and extremely interventionist. However, the difference in his attitude towards the parties is not sufficiently marked to give rise to a reasonable apprehension of bias.
>
> . . .
>
> [54] Given the above, the judge's conduct, while unfortunate, was not determinative of the outcome of the dispute, as the judge was correct to find that the appellant failed to meet its burden of proof.[315]

2. Complaint to the CJC

[319] On September 13, 2019, Mr. Gouin filed a complaint with the CJC in respect of Justice Dugré's conduct. The following is an excerpt from his complaint:

> [TRANSLATION]
>
> From the start of the trial, Justice Dugré was hostile towards the plaintiff and lectured and intimidated him, gave a speech about his own social opinions, showing his bias and lack of impartiality, which is contrary to his position as a judge. He even made inappropriate comments about the defendant's spouse at the beginning of the hearing and did not stop jumping from one topic to another throughout the trial, telling stories about all kinds of unrelated subjects and wasting the parties' time. He constantly interrupted the plaintiff and his counsel, making it impossible

[315] Exhibit GP-19, at paras. 41 to 45, 54.

> to stay focused and present evidence. Almost each time the plaintiff or his counsel attempted to answer the judge's questions, they were interrupted by the judge; the same happened while counsel for the plaintiff was making oral arguments. The judge did not even look at the evidence, and simply criticized the plaintiff for producing an Excel table that made it possible to navigate through 10 years of evidence. When the defendant presented his arguments, Justice Dugré turned to the plaintiff several times and with a look of satisfaction, made comments like "you see" as if everything had been decided and the plaintiff was unable to make valid arguments. And indeed he failed to do so, because he was so thrown off by the judge. The judge even directed counsel for the defendant to stop talking when he admitted that the defendant had committed certain irregularities, in support of the evidence.
>
> The outcome of the trial was plain to see from the outset and, in the end, the judge addressed the plaintiff in a threatening manner, saying that he would soon feel the weight of the law on oppression.
>
> The plaintiff was greatly affected by the conduct of the judge and shaken to the core in terms of his moral compass, his relationship with the justice system and judges. Images of Bolshevik trials came to mind. After this traumatic experience, it became very clear to the plaintiff that Justice Dugré uses his position as a judge to impose his personal values, likely stemming from his personal resentments, instead of applying the law. He has clearly lost any notion of the duties and responsibilities associated with his position and abuses his power for personal ends. Justice Dugré showed that he is unworthy of being a judge and has tainted the dignity of the judiciary, justice and his relationship with the public.[316]

3. Evidence Before the Committee

a) Testimony of Marcel Gouin (complainant)

[320] Marcel Gouin was the representative of the plaintiff in a dispute against his former associate Stéphane Morency. The plaintiff was represented by counsel.

[321] He stated having filed his complaint with the CJC to make three types of complaint against Justice Dugré. First, he complained that, in conversations about work done for Just for Laughs (whose founder, Gilbert Rozon, was accused of sexual assault), Justice Dugré asked Mr. Morency's spouse whether Mr. Morency had been accused of sexual

[316] Exhibit GP-1.

assault. He also mentioned the judge's comments about transgender persons, which were also inappropriate.[317] He had the following to say:

> [TRANSLATION]
>
> I did not find this appropriate for a judge, to do things like that.
>
> . . .
>
> A- Well, of course it surprised me, and it offended me. This isn't 1950, you know, I mean, maybe there were things that people said back then that…that are no longer appropriate today, and are offensive for the people concerned.[318]

[322] Second, Mr. Gouin complained that Justice Dugré [TRANSLATION] "lectured" him like a child. He added that the judge assumed many things, including that his company did not pay sales tax, that he did not have an active role in the company, or even that he paid his counsel with the company's money. Mr. Gouin said he saw these comments as being entirely [TRANSLATION] "gratuitous" and out of place, and that he felt intimidated by Justice Dugré. When these comments were made, it became clear to him [TRANSLATION] "where the judge was going".[319]

[323] Third, he complained about Justice Dugré's numerous interruptions, often about subjects that had nothing to do with the dispute. He explained:

> [TRANSLATION]
>
> A- Yes, and it was very, very, very disorganized, aside from the interruptions that constantly prevented us from speaking, he talked…he talked at length about the Gomery Commission, I don't see what that had to do with anything. He talked about movies with Tom Cruise, he talked about novels. He talked about all kinds of things in life as if he were…like a conversation at a dinner party.
>
> Then I realized that much of what he was doing was to try and make the clerk laugh. So, that was his audience, the clerk, that was his audience, and then "like… Wow. Eh, eh, that was a good one, right?." Well, it's like. Come on!
>
> . . .

[317] Testimony of Marcel Gouin, May 31, 2021, at p. 8.
[318] Testimony of Marcel Gouin, May 31, 2021, at p. 8, ll. 14 to 15, ll. 19 to 25.
[319] Testimony of Marcel Gouin, May 31, 2021, at pp. 9 to 10.

> A- Anyway. That doesn't mean one can always… one has to be strict and … not be human beings, but, I mean, there is still… And there is a limit. Also, he complained that, with all the details involved, a six months trial would be required and then he went on to waste the time of the two parties to present the... their case.[320]
>
> . . .
>
> A- As soon as we tried to explain something, he would cut us off. So it made it, it was hard to get…it meant that what should have taken three minutes ended up taking two hours. And then of course, at one point, being pestered with all kinds of questions that had nothing to do with it or…that's when you lose track and then you can't present…there wasn't enough time to present our evidence. And then he, it's…well, I found that it let him draw conclusions a bit hastily, because he didn't have all the information. And in the end, for me, what I felt was that he didn't really want it, the information. His mind was made up from the start, and he just wanted to make it all fit in his mould.[321]

[324] Mr. Gouin stated that he had discussed with his counsel whether or not to file a motion asking Justice Dugré to recuse himself, but his lawyer had advised him to continue with his evidence. Mr. Gouin feels that, in retrospect, he should have sought recusal.[322]

[325] Lastly, he explained that he complained nearly two years after the events because he needed some time to take stock of what had happened before Justice Dugré and to consult legal counsel. He also confirmed that his complaint was filed after the appeal was heard.[323]

b) Testimony of Stéphane Morency (defendant)

[326] Stéphane Morency is Mr. Gouin's former associate. In this dispute, he was represented by Steven Roch at the hearing before Justice Dugré, and by Armand Elbaz on appeal.

[327] He stated that the hearing before Justice Dugré had been his first experience in court, that he had been nervous and that the judge had tried to lighten the mood.

[320] Testimony of Marcel Gouin, May 31, 2021, at p. 10, l. 10 to p. 11, l. 8.
[321] Testimony of Marcel Gouin, May 31, 2021, at p. 11, l. 14 to p. 12, l. 5.
[322] Testimony of Marcel Gouin, May 31, 2021, at p. 13.
[323] Testimony of Marcel Gouin, May 31, 2021, at pp. 13, 17, 20, 22.

Mr. Morency believed that the judge had acted in good faith, that he had listened and that it was up to the judge to choose his methods to get the right answers.[324]

[328] He described Justice Dugré as being [TRANSLATION] “a little extroverted”. He compared him to a father at Sunday night dinner, making jokes for his children who have come to visit. He felt that this approach was intended to get the parties to talk and to lighten the mood.[325]

[329] In his opinion, the judge had not [TRANSLATION] “lectured” Mr. Gouin. Instead, he had tried to make him aware of the costs of a hearing day before the Court ($15,000) in order to put things in perspective. Concerning the judge’s bias, he noted that it was the judge’s job to be impartial and that he did not see [TRANSLATION] “how a person of that calibre could do that”.[326]

[330] Regarding the comment the judge made about Just for Laughs and its founder being accused of sexual assault, he said it was a joke that had not offended him in the slightest. He did not understand why anyone would want to criticize Justice Dugré for these comments.[327]

c) Testimony of Anne-Marie Gélinas (spouse of defendant Morency)

[331] Anne-Marie Gélinas is Mr. Morency’s spouse. She was at the hearing before Justice Dugré, having helped prepare for the trial.[328]

[332] She described Justice Dugré as a rather extroverted person who had tried to put the parties at ease. She stated that when Justice Dugré had asked her if Mr. Morency had been accused of sexual assault, it had been quite clear to her that he was merely joking.

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[324] Testimony of Stéphane Morency, June 11, 2021, at pp. 37 to 39.
[325] Testimony of Stéphane Morency, June 11, 2021, at pp. 39 to 40.
[326] Testimony of Stéphane Morency, June 11, 2021, at pp. 41 to 42.
[327] Testimony of Stéphane Morency, June 11, 2021, at p. 42.
[328] Testimony of Anne-Marie Gélinas, June 11, 2021, at pp. 52 to 53.

[333] Ms. Gélinas added she had not been bothered by the judge's comments about Tom Cruise and John Grisham movies or the movie *Gone with the Wind*.[329]

[334] Lastly, she stated that she had been impressed by her experience before Justice Dugré, stating that her only other experience in court had been before the Federal Court of Appeal.[330]

d) Testimony of Steven Roch (counsel for Mr. Morency before Justice Dugré)

[335] Steven Roch has been a member of the Barreau du Québec since 2006. After practicing in commercial litigation and business law, he joined a company as director of legal affairs.[331] Mr. Roch represented Mr. Morency at the hearing under inquiry.

[336] He described the trial before Justice Dugré as being like any other trial, with the understanding that every judge has their own style. In his opinion, Justice Dugré was impartial, and the trial was conducted in the same manner as all his other previous trials. When asked to comment on the complaint, Mr. Roch denied that Justice Dugré had made any attempt to bully or [TRANSLATION] "lecture" Mr. Gouin.[332] He also denied that the judge showed any bias.

[337] Mr. Roch stated that Justice Dugré's complaints about Mr. Gouin's Excel table and the lack of expertise are the same as those he himself had made to counsel for Mr. Gouin.[333] He noted that Justice Dugré had to determine whether Mr. Morency had been overpaid by the company, and that is what he did. He also refuted the allegation that Justice Dugré had helped him argue his case, insisting on the fact that the judge had not made any arguments, but had merely asked questions like any other judge would have done to clarify certain portions of the testimony.[334]

[329] Testimony of Anne-Marie Gélinas, June 11, 2021, at p. 55.
[330] Testimony of Steven Roch, June 11, 2021, at pp. 55 to 56.
[331] Testimony of Steven Roch, June 11, 2021, at pp. 60 to 61.
[332] Testimony of Steven Roch, June 11, 2021, at pp. 63 to 65.
[333] Testimony of Steven Roch, June 11, 2021, at pp. 64 to 65.
[334] Testimony of Steven Roch, June 11, 2021, at pp. 65 to 66.

[338] He admitted that the judge had told anecdotes, related to Just for Laughs, for example, but insisted that this was merely the judge's style. He noted that some judges have a very military style and do not talk at all during a trial; others, like Justice Dugré, ask many questions. He stated he prefers Justice Dugré's approach.[335] Moreover, Mr. Roch felt that Mr. Gouin had had ample opportunity to present his evidence.[336]

[339] Lastly, Mr. Roch stated that the only difference he noticed between this and the other trials in which he has participated, was that Justice Dugré had asked the clerk whether she could stay after hours to complete the hearing and, in fact, the hearing did end later than usual.[337]

[340] Under cross-examination, he admitted that Justice Dugré had interrupted Mr. Gouin often, but, in his opinion, this had not prevented him from testifying. The judge's interventions and the assumptions he made were connected to problems in Mr. Gouin's evidence.[338]

e) Testimony of Armand Elbaz (counsel for Mr. Morency on appeal)

[341] Armand Elbaz has been a member of the Barreau du Québec since 1981. He practices in commercial, family and immigration law. He was not at the hearing before Justice Dugré, as Steven Roch was representing Mr. Morency at the time. Mr. Elbaz took over the case for the appeal.[339]

[342] When questioned about the allegation of bias made by Mr. Gouin on appeal (paragraph 35 of the decision), he could not recall that this issue had been the subject of much debate. He stated that the issue was discussed before the Court of Appeal, but that the debate had been more focused on the issue of quantum. Moreover, to his recollection, the Court of Appeal had all of the transcripts of the hearing before Justice Dugré.[340]

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[335] Testimony of Steven Roch, June 11, 2021, at pp. 67 to 68, 75.
[336] Testimony of Steven Roch, June 11, 2021, at p. 68.
[337] Testimony of Steven Roch, June 11, 2021, at p. 69.
[338] Testimony of Steven Roch, June 11, 2021, at pp. 70 to 72.
[339] Testimony of Armand Elbaz, June 23, 2021, at pp. 10 to 11.
[340] Testimony of Armand Elbaz, June 23, 2021, at pp. 12 to 13.

f) Testimony of Marie Dumont (clerk and Justice Dugré's assistant)

[343] Ms. Dumont acted as clerk in the *Gouin* case. She described the judge's conduct at this hearing as being [TRANSLATION] "as usual, straightforward, affable",[341] and she said she had not noticed any inappropriate comments by the judge during the trial. On the contrary, Ms. Dumont stated that his conduct is evidence of the interest the judge demonstrated towards litigants. Since Mr. Gouin was a sound engineer, Justice Dugré asked him questions about sound. If Mr. Gouin had been a psychologist, Justice Dugré would have asked him questions about psychology.[342]

g) Other evidence

[344] In order to provide the full picture, presenting counsel submitted the complaint, minutes of hearing, recordings, transcripts, the relevant procedural documentation and judgments, and the court ledger related to the hearing under inquiry.[343]

4. Discussion

[345] The Committee listened to the entire recording of the hearing and read the transcripts.

[346] The first 40 minutes of the hearing were dedicated to introductions and housekeeping. During these exchanges, Justice Dugré made a few jokes in reference to the allegations of sexual misconduct against Gilbert Rozon:

> [TRANSLATION]
> THE COURT:
> So is that the new or old Just for Laughs?
> STEVEN ROCH:
> I don't know, Mr. Justice.
> THE COURT:

[341] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 138, ll. 22 to 23.
[342] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 138 to 139.
[343] Exhibits GP-1 to GP-20.

> You don't know. It's going to change, it was sold? Are you part of the class action, Madam, the action they filed yesterday? Anyway, because I see Just for Laughs now, and it's going to be Just for Tears soon.
>
> STEVEN ROCH:
>
> So…
>
> THE COURT:
>
> ...but it doesn't make it funny just because we are laughing.
>
> STEVEN ROCH:
>
> No, I know. We take this seriously, Mr. Justice.[344]
>
> . . .
>
> THE COURT:
>
> But your client hasn't been accused of sexual assault yet, right?
>
> STEVEN ROCH:
>
> Not yet, I hope…
>
> THE COURT:
>
> No, well, I don't know.
>
> STEVEN ROCH:
>
> His wife is in the room, never, I hope.
>
> THE COURT:
>
> Okay. Good, it's okay, he's behaved himself until now, yeah.
>
> STEVEN ROCH:
>
> I am not a criminal lawyer, I don't know, Mr. Gouin hasn't made any accusations against Mr. Morency.
>
> THE COURT:
>
> That's fine. Okay, I was just making sure that everyone's behaved themselves. So, it's fine, let's go. So, Juste pour rire TV Inc.[345]

[347] The Committee's is of the view that these comments were inappropriate and diminished the dignity of the proceedings. Sexual assault and violence against women are serious issues, and it is not appropriate for a judge to make jokes about them in a courtroom, no matter what the judge's intentions may have been. Indeed, it is now well-recognized that survivors of sexual violence face unique challenges in their interactions

[344] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at p. 28, ll. 9 to 25.
[345] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at p. 43, l. 12 to p. 44, l. 6.

with the legal system. As a result, it is essential for judges, at all times and in all circumstances, to ensure that they act in a manner that fosters trust in the justice system. Although the people directly targeted in Justice Dugré's jokes, namely Mr. Morency and his spouse, testified that they had not been offended, the fact remains that such comments were objectively likely to give the impression that Justice Dugré, and by extension, the justice system, do not take the subject of sexual violence as seriously as they should. The Committee underscores that it is not implying any improper intent or opinion on the part of Justice Dugré, but such jokes, which are of questionable taste in any place or circumstance, have absolutely no place in a courtroom and cannot be condoned.

[348] During an exchange on the spelling of the name of the accountant and administrative assistant of the defendant at the time of the events, Justice Dugré also commented on the fact there are more transgender persons these days:

> [TRANSLATION]
> THE COURT:
> Chantal could be a guy, eh?
> STEVEN ROCH:
> I've never seen that, Mr. Justice, but I defer to you.
> THE COURT:
> France, that could be a guy.
> STEVEN ROCH:
> France, yes. Chantal, I don't think so. Maybe with an s.
> THE COURT:
> There is a hockey player…wasn't there a hockey player who was called Chantal something? I don't know, maybe they have a Chantal, I can't be sure, they'd have to be here with us.
> JEAN-FRANÇOIS HUDON:
> Anything is possible these days, Mr. Justice.
> THE COURT:
> Yes, yes, that's, right, yes.

STEVEN ROCH:

Carol, yes, Mr. Justice.

THE COURT:

Especially now, there are more transgender and trans…and some people change their name.

STEVEN ROCH:

I would say Carol, I would go with an e, no e, I would say male and female, but Chantal I have rarely seen that for a guy.[346]

[349] Questions of gender identity and expression, as any other subject that involves people who are vulnerable to discrimination, must be handled with care in order to avoid comments that could offend or perpetuate myths and stereotypes. This type of comment is to be avoided, even though, in this case, the remarks do not meet the threshold required to constitute misconduct.

[350] That said, while the parties presented their evidence, and in particular during Mr. Gouin's testimony, Justice Dugré was unduly interventionist.

[351] At times, his interventions concerned topics that had no direct link to the case, but did not necessarily cause harm, other than to waste time. This was the case, for example, when the first witness, a sound mixer, finished his testimony, and Justice Dugré took the opportunity to ask him various questions about this field and the technology in general, including sharing his opinion on the "warmth" of vinyl versus CDs and other digital formats.[347]

[352] His interventions during the examination in chief of Mr. Gouin were much more problematic. From the start, Justice Dugré interfered in the examination, which should have been conduced by plaintiff's counsel. He intervened at every opportunity to ask his own questions, with no apparent regard for the subjects Mr. Hudon was trying to address. In addition, after asking a question, he would frequently cut off the witness, who was trying to reply, such that the witness had trouble providing complete replies, and was constantly required to repeat his explanations or to jump from one subject to another depending on

[346] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at p. 18, l. 23 to p. 20, l. 4.
[347] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at pp. 108 to 112.

the judge's intervention. In the Committee's view, Justice Dugré basically took charge of the examination in chief of the plaintiff's only witness. Instead of letting the plaintiff present its own case in its own way and asking the witness to clarify as necessary afterwards, Justice Dugré imposed his perspective, despite having an incomplete understanding of the facts. This would eventually lead counsel for the plaintiff to express his frustration at not being allowed to question his own witness:

> [TRANSLATION]
>
> THE COURT:
>
> No, that's not it, but that's not how I want to proceed.
>
> JEAN-FRANÇOIS HUDON:
>
> Okay, so go ahead Mr. Justice, it's just that he is my witness, and I can't ask any questions.
>
> THE COURT:
>
> Q So, what I want to know, please explain briefly why you were eligible for the $80 that is being claimed? I will ask counsel right now to explain to me why he doesn't want to pay it, then we'll see…just, just a little exercise, quick, quick, quick.
>
> JEAN-FRANÇOIS HUDON:
>
> Ah no, well it's because I am trying to proceed coherently with an invoice that is not problematic, from *Histoires de filles*, you can ask your questions….
>
> THE COURT:
>
> Yes, but that's it, so take the $80 there that was billed.
>
> JEAN-FRANÇOIS HUDON:
>
> Yes, yes, so go ahead with your question, Mr. Justice, it's just that I have been trying to explain it since we started...[348]

[353] This exchange took place as Justice Dugré was insisting on having [TRANSLATION] "mini trials" during Mr. Gouin's testimony, during which he asked the witness questions about the amounts the plaintiff was claiming and then asked counsel for the defendant what he had to say, such that the stages of presenting the evidence and making oral arguments were merged together to some extent.[349] Indeed, the recording indicates that

[348] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at p. 320, l. 5 to p. 321, l. 24.
[349] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at pp. 318 and following.

Justice Dugré intervened frequently during testimony to discuss the case with counsel, and even at times directly with the witness. Indeed, Mr. Hudon made a number of attempts to remind the judge that the witness was there to testify on the facts[350] and that it was inappropriate to argue the case before hearing the evidence.[351]

[354] The Committee also noted that Justice Dugré intervened constantly from beginning to end during the oral arguments of counsel for the plaintiff, such that counsel was clearly unable to follow the order of his arguments.[352]

[355] Unsurprisingly, this manner of functioning seems to have had a destabilizing effect on both the witness and counsel for the plaintiff, and it is reasonable to believe that the plaintiff's presentation of the evidence may have suffered because of it. Although the Committee did not see the documentary evidence presented at the trial, it seems from what it heard and from the Court of Appeal's reasons for decision that the plaintiff's evidence was not a model of clarity. That being said, it is obvious to the Committee that the judge's attitude (his impatience, his habit of jumping from one topic to another, his constant interruptions, etc.) greatly contributed to the confusion. The fact that many of his interventions while the evidence was presented were opportunities for him to comment on subjects of hardly any bearing on the case only amplified the problem.

[356] As the evidence was ultimately presented and counsel for the plaintiff had an opportunity to make his oral arguments despite Justice Dugré's near-constant interventions, the Committee cannot find that the *audi alteram partem* was completely violated, as it did in *A*. Similarly, although Justice Dugré's interventions were more intense during Mr. Gouin's examination in chief and during the oral arguments made by counsel for the plaintiff, the evidence at the inquiry did not establish that Justice Dugré breached his duty of impartiality. The Court of Appeal rejected this ground of appeal. However, the Committee's task is not limited to applying the test with respect to bias. In this case, the Committee is of the view that Justice Dugré's interventionism was so extreme, and

[350] Mr. Hudon tried on a few occasions to remind the judge that the witness was there to testify on the facts: see for example, Exhibit GP-13, Transcript of the November 28, 2017, hearing, at pp. 304 and 416.
[351] Exhibit GP-13, Transcript of the November 28, 2017, hearing, at p. 430.
[352] Exhibit GP-15, Transcript of the November 30, 2017, hearing, at pp. 5 to 209.

contributed to such an extent to the confusion reigning at the trial, that he breached his duty to ensure the proper and orderly conduct of the proceedings.

5. Conclusion

[357] For the above reasons, the Committee answers the following two allegations in the affirmative:

> Allegation 5A
>
> Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on November 28, 29 and 30, 2017, in *Gouin* (*Karisma Audio Post Vidéo et film inc. c. Morency* #500-17-076135-139) by his conduct or by his comments made at the hearing?
>
> Allegation 5B
>
> Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on November 28, 29 and 30, 2017, in *Gouin* (*Karisma Audio Post Vidéo et film inc. c. Morency* #500-17-076135-139) by his conduct or by his comments made at the hearing?

G. S.C.

1. Background

[358] On April 11, 12 and 13, 2018, Justice Dugré was seized with a statement of claim for custody, child support, division of property, provision for costs, child support adjustments, special expenses and damages.

[359] Mr. C. was the defendant and was representing himself. Ms. F. was represented by Pascale Vallant, and the children, by Andrée Roy.

[360] In reasons rendered orally, Justice Dugré allowed Ms. F.'s application in part. In his judgment, he withdrew some of Mr. C.'s parental rights, suspended his access rights, established his income for the purposes of determining child support, and ordered him to pay Ms. F. advanced costs and to pay the expert fees.[353]

[361] Mr. C. appealed this decision, alleging in particular Justice Dugré's bias. In its February 28, 2019, decision, the Court of Appeal wrote that [TRANSLATION] "such a ground

[353] Exhibit SCP-20.

requires a complete and meticulous review of the case. However, the appellant has only reproduced excerpts from the trial in his brief, which makes the review on appeal perilous".[354]

[362] Despite the above, the Court of Appeal added the following:

> [TRANSLATION]
>
> [A]lthough some of the judge's comments may have been surprising, they do not show any bias. The respondent noted that he behaved in the same manner towards both parties and even towards the expert, Pascale Gaudreault. Moreover, the appellant is silent on certain comments made by the judge, in particular when he expressed his desire to ensure that the appellant pay no more than his fair share.[355]

2. Complaint to the CJC

[363] On October 3, 2019, Mr. C. filed a complaint with the CJC. Specifically, he alleged that Justice Dugré had been biased and had made [TRANSLATION] "inappropriate and demeaning comments" about him at the three-day hearing. He stated he had felt such a lack of respect that he had been afraid to address the judge and to present his evidence.

[364] He alleged that Justice Dugré:

- Criticized him for representing himself and thereby not being objective or unbiased;
- Threatened to put him in a cell with starving rats;
- Insinuated that he was dishonest, that he was a thief and that he had falsified invoices;
- Threatened to report him to Revenu Québec for [translation] "unreported" sales;
- Asked Ms. F. to talk about their [translation] "terrifying" life together and had threatened to punish Mr. C. by deciding against him or by squeezing his arm as he had allegedly done to his children; and

[354] Exhibit SCP-22, at para. 4.
[355] Exhibit SCP-22, at para. 4.

- Failed to respect him and deprived him of the opportunity to argue his position.[356]

3. Evidence Before the Committee

a) Testimony of Mr. S.C. (complainant)

[365] Mr. C. wanted to present his arguments regarding child support at the hearing before Justice Dugré. At the time, he technically had custody of his children, but no longer saw them.[357]

[366] Mr. C. felt that the judge had been biased by constantly interrupting him and by stating that Mr. C. himself lacked objectivity because he was not represented by counsel.[358]

[367] He added that the judge made degrading comments by threatening to put him in a cell with starving rats. Mr. C. stated that, in light of this statement, he had felt his testimony would not be considered by the judge.[359] He also stated that Justice Dugré threatened to report him to Revenu Québec on the basis of Ms. F.'s word, and he therefore concluded that the judge would accept his former spouse's version of the facts, regardless of whether her claims were based on the evidence or not.[360]

[368] Mr. C. stated he had felt uncomfortable presenting his arguments.[361] He provided a document containing his trial preparation notes, in which he had set out his arguments,[362] and reported that he had been unable to make them. When questioned on this document, he stated:

> [TRANSLATION]
>
> Q- And what became of this document?
>
> A- Uh, I started to present certain arguments and Mr. Justice Dugré, stopped me, he said, "No…". That's it, like I explained earlier, since I

[356] Exhibit SCP-1.
[357] Testimony of S.C., April 16, 2021 (in camera), at p. 65.
[358] Testimony of S.C., April 16, 2021 (in camera), at p. 66.
[359] Testimony of S.C., April 16, 2021 (in camera), at pp. 66 to 67.
[360] Testimony of S.C., April 16, 2021 (in camera), at p. 67.
[361] Testimony of S.C., April 16, 2021 (in camera), at p. 72.
[362] Exhibit SCP-25.

> wasn't represented, well, I didn't know how to ensure that the hearing went well, properly, like in…how it should be done.
>
> Q- So, from what you are saying, I understand that you were not able to present everything that was in the document?
>
> A- Yes.[363]

[369] He also stated he had the impression Justice Dugré would not consider anything his witnesses said.[364]

[370] Mr. C. stated he filed his complaint when he found out the CJC would be inquiring into Justice Dugré's conduct. The lawyer he had retained to appeal Justice Dugré's decision had strongly encouraged him to file a complaint.[365]

[371] Under cross-examination, he admitted he had a criminal record and had filed complaints against his former lawyers and the family therapist who testified before Justice Dugré.[366]

b) Testimony of Andrée Roy (counsel for the children)

[372] Ms. Roy was admitted to the Barreau in 2002, and practices mainly in family law and youth protection.[367]

[373] Ms. Roy was representing Mr. C.'s two children at the hearing before Justice Dugré. She vaguely recalled that there was an issue of establishing the child support payments and withdrawing parental rights.[368] She remembered, however, that she had a conversation with Mr. C. in the hallway urging him to find a lawyer, because, in her opinion, he was going to lose the right to see his son. She had given him the names of lawyers who could help him.[369]

[374] In her opinion, Justice Dugré was well aware of the important issues before him and that it would have been preferable for Mr. C. to be represented by counsel. She

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[363] Testimony of S.C., April 16, 2021 (in camera), at p. 76, l. 15 to p. 77, l. 2.
[364] Testimony of S.C., April 16, 2021 (in camera), at pp. 71 to 72.
[365] Testimony of S.C., April 16, 2021 (in camera), at pp. 74 to 75.
[366] Testimony of S.C., April 16, 2021 (in camera), at pp. 79 to 82.
[367] Testimony of Andrée Roy, June 11, 2021 (in camera), at pp. 6 to 7.
[368] Testimony of Andrée Roy, June 11, 2021 (in camera), at p. 9.
[369] Testimony of Andrée Roy, June 11, 2021 (in camera), at pp. 10 to 11.

added, [TRANSLATION] “it worried the judge that Mr. C. was representing himself given the financial issues at stake”.[370] In her opinion, this is why the judge suspended the hearing and encouraged Mr. C. to speak to the lawyers and the expert. In the end, Mr. C. had insisted on going ahead.[371]

[375] She recalled that Mr. C.’s son no longer wanted any contact with him and that an expert felt that contact between Mr. C. and his son should be cut off. In short, she stated that, in such circumstances, many judges would have done as Justice Dugré did and encouraged the parties to speak to each other.[372]

[376] Ms. Roy described the hearing before Justice Dugré [TRANSLATION] “as the type of trial I do every week”. She described the judge as someone who [TRANSLATION] “talks a lot, who likes to intervene. That’s it. It’s like the little I knew about Mr. Justice Dugré, about his personality . . . there was nothing in this case that, I would say, that stood out”.[373]

[377] She added [TRANSLATION] “there are judges who intervene, there are judges who don’t. Mr. Justice Dugré, he intervenes really, really, really, really often”.[374]

c) Testimony of Pascale Vallant (counsel for Ms. F.)

[378] Ms. Vallant has been a member of the Barreau du Québec since 2002. She practices mainly in family law.[375]

[379] She stated that at the beginning of the hearing, Justice Dugré had suggested that the parties leave the room to talk. In her experience, this was the first time a judge had requested such a thing.[376]

[380] In her opinion, the hearing before Justice Dugré went well. She did not feel any tension between the parties as she had felt during other trials. She added that Justice Dugré had tried to put the parties at ease and felt that his conduct had fostered the proper

[370] Testimony of Andrée Roy, June 11, 2021 (in camera), at p. 11, l. 25 to p. 12, l. 2.
[371] Testimony of Andrée Roy, June 11, 2021 (in camera), at p. 12.
[372] Testimony of Andrée Roy, June 11, 2021 (in camera), at pp. 12 to 13.
[373] Testimony of Andrée Roy, June 11, 2021 (in camera), at p. 13, l. 14 to p. 14, l. 5.
[374] Testimony of Andrée Roy, June 11, 2021 (in camera), at p. 15, ll. 11 to 15.
[375] Testimony of Pascale Vallant, June 11, 2021 (in camera), at p. 44.
[376] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 49 to 50.

administration of justice.[377] She added that the judge had remained calm throughout the trial and that he had been very familiar with the case. According to Ms. Vallant, Justice Dugré is the most competent Superior Court judge in fiscal and financial matters.[378]

[381] She noted that Justice Dugré has a different style than other judges. When questioned on a comment by the judge related to a song by Michel Delpech, she replied that she [TRANSLATION] "[thought] he [was] the only judge who could have made that type of comment."[379]

[382] According to Ms. Vallant, Justice Dugré was not biased. Instead, she saw a judge support a self-represented party who was having trouble presenting his evidence.[380]

[383] As for the comment involving rats in a cell, Ms. Vallant considered this to be a colourful way for the judge to explain the consequences of contempt of court to Mr. C., as he had failed to comply with several orders.[381] She admitted on cross-examination that she did not have a clear memory of what was said on this subject.[382] She added that she did not note any inappropriate comments by Justice Dugré and that she had good memories of the hearing.[383]

[384] When cross-examined, Ms. Vallant admitted that Mr. C. was never disrespectful at the hearing before Justice Dugré. She also confirmed that the judge had not made any sarcastic comments towards Ms. Roy or to her.[384]

[377] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 50 to 52.
[378] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 52 to 53.
[379] Testimony of Pascale Vallant, June 11, 2021 (in camera), at p. 54.
[380] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 54 to 55.
[381] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 55 to 56.
[382] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 69 to 70.
[383] Testimony of Pascale Vallant, June 11, 2021 (in camera), at p. 62.
[384] Testimony of Pascale Vallant, June 11, 2021 (in camera), at pp. 69 to 70.

d) Other evidence

[385] In order to provide the full picture, presenting counsel submitted the complaint, minutes of hearing, recording, transcripts, the relevant procedural documents and judgments, and the court ledger related to the hearing under inquiry.[385]

4. Discussion

[386] The Committee listened to the entire recording of this three-day hearing and read the transcripts.[386]

[387] After the introductions and a few opening questions, Justice Dugré indicated that he was beginning a conciliation session pursuant to articles 9 C.C.P. and 400 C.C.Q. The hearing therefore continued informally, and Justice Dugré asked each of the parties questions in a fairly disorderly fashion, occasionally interrupting the speakers to digress at length on subjects that were not necessarily relevant to the case.[387] Occasionally, Justice Dugré was sarcastic and condescending in addressing Mr. C., who was self represented. For example, he asked him if he had known Justice Binnie well, or if the phrase *audi alteram partem* was in Russian or Spanish.[388] That said, aside from a few such digressions, the discussions during the first hour were generally respectful.

[388] As the hearing went on, however, the tone and the comments made regarding Mr. C. became more and more harsh. For example, even though the hearing was still at the "conciliation" stage and no evidence had yet been formally admitted, Justice Dugré went on at length about Mr. C.'s financial statements and insinuated that they were inaccurate and prepared for the purpose of defrauding the tax authorities:

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[385] Exhibits SCP-1 to SCP-25.

[386] According to the minutes (Exhibit SCP-4), the April 13 hearing was suspended at 3:52 p.m., resuming at 4:43 p.m. with the reading of the conclusions. The hearing ended at 6:10 p.m. The audio recording (Exhibit SCP-15) and transcripts (Exhibit SCP-18) ended at the break at 3:52 p.m..

[387] Such as when he talked about a trial he had presided over the previous day, where one of the parties was a woman, whom he thought was possibly Lebanes, with [TRANSLATION] "a funny name, and so on", and to whom he had suggested listening to the Adamo song *Inch Allah*, and then suggesting that the parties play a Michel Delpech song to their daughter (Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 140 to 143, 194 to 195.).

[388] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 55, 99. He would repeat this type of comment during the trial (see, for example, Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at p. 32, ll. 16 to 21 and p. 46, ll. 13 to 17).

[TRANSLATION]

THE COURT:

But we agree that, on the financial statements produced, **Mr. C. will not pay much in taxes**. So yeah. Audited financial statements, you don't know what that is, do you?

. . .

So you, when you hire an accountant, and you ask him what two plus two is, if he answers four, you fire him, right?

. . .

When you hire your accountant: Hello, sir, hello madam. Two plus two? Four. Out, you're fired. The good accountant that you would hire, two plus two? What do you want it to equal, sir? You, you're a good accountant, You're hired. So there are three financial statements. I saw that it's a notice to reader?

. . .

This, this isn't worth the paper it's written on.

. . .

Because you tell him what's in there. You can hide millions in income, and that's it…

. . .

Now, I've seen the financial statements, the notices to reader, they are worth absolutely nothing. **That means that someone who doesn't want to pay too much income tax, they won't use an audited financial statement**, because the accountant will examine, and then, all of that, eh. Audited financial statements, you've never had one of those done in your life, right?

. . .

And then, there is the comment of the accounting expert, you understand? That's a bit more expensive than a pack of gum. It's because the guy, he's going to do a bit of auditing, **he'll take your lies,** what am I saying, he'll take the truths you give him, and then he'll organize them into financial statements with notes.

. . .

So, that's about it. And the rest, that's it. Notice to reader, do I see another notice, a notice to reader? So that's it. How much do you want two plus two to equal? You, well, you're a good accountant, you're hired.

> Two plus two, that makes four. Well, I don't need you, sir. I know that two plus two makes four.[389]
>
> [Emphasis added]

[389] When Mr. C. responded that he had previously been audited by the tax authorities and that this had resulted in only a minor amount to repay, Justice Dugré suggested that if Mr. C. had not been found to be in default, it was because he was [TRANSLATION] "good".[390]

[390] A little later, when it was brought up that Mr. C. had still not disclosed certain documents to the opposing party despite court orders, Justice Dugré stated that this could be considered contempt of court and that he could be sent to think about things in a cell with starving rats:

> [TRANSLATION]
>
> THE COURT:
>
> ...did you, have you provided all the documents the judges ordered you to provide?
>
> S.C.:
>
> No.
>
> . . .
>
> THE COURT:
>
> Question mark, answer. Yes…
>
> S.C.:
>
> Not all.
>
> THE COURT:
>
> ...but there is a checkmark, yes or no, which one will you check?
>
> S.C.:
>
> Not all, not all the…
>
> THE COURT:
>
> No.
>
> S.C.:

[389] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 197, l. 16 to p. 209, l. 23.
[390] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 209 to 211.

Indeed.

THE COURT:

So, you check no.

S.C.:

Okay.

THE COURT:

But that's, that's very serious, very, very…

S.C.:

Uh huh.

THE COURT:

...serious. So, you could be in contempt of court.

S.C.:

Uh huh. I understand.

THE COURT:

So that means that I could send you to think about it in a cell downstairs.

S.C.:

Uh huh.

THE COURT:

Mmhh. We have two kinds, one for the women, where there are little mice we don't feed. Then there are the men's, where there are rats and we don't feed them; they're starving. So when you'll be in the cell... So now, I could maybe send you down there, to a cell, to think about things for a bit...[391]

[391] In the same vein, he indicated that, if relevant documents were missing, the Court would figuratively squeeze his arm the way he had squeezed his kids' arms:

[TRANSLATION]

THE COURT:

… if I see that there are documents we need and we don't have them, I will err in favour of Ms. F.

. . .

To punish you…

[391] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 271, l. 12 to p. 273, l. 22.

> . . .
>
> … to punish you, okay. That's it.
>
> . . .
>
> Because when people don't listen, they're punished. Right, you know that? You squeezed your children's arms a bit?
>
> S.C.:
>
> Yes.
>
> THE COURT:
>
> At some point, they weren't listening.
>
> S.C.:
>
> Yes.
>
> THE COURT:
>
> Okay. Well, that's it, so we're going to squeeze your arm today, because you aren't listening.
>
> S.C.:
>
> Okay.
>
> THE COURT:
>
> It's the same thing. The same, the same rule applies to dad as it does to the kids.[392]

[392] A little later, on the issue of the application for a partial forfeiture of parental rights, Justice Dugré suggested to Mr. C. that it might be better to settle than to have a judgment that would make him out to be [TRANSLATION] "a bad father" because there are judges [TRANSLATION] "who say a lot in their judgments" and "not always things [one] wants to see in writing".[393]

[393] Finally, after finding that Mr. C. had failed to include the land and the commercial building that he allegedly personally owned in his personal balance sheet, even though no evidence had yet been presented, Justice Dugré asked Mr. C. whether he was taking him for an [TRANSLATION] "idiot"[394] and suggested that he deserved to be smacked with a ruler for this omission:

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[392] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 278, l. 4 to p. 280, l. 6.
[393] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 298.
[394] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 313 to 314.

> [TRANSLATION]
>
> THE COURT:
>
> So, what should we do now? There used to be a big ruler, usually, the nuns had some, and they would smack.[395]

[394] Later, he evoked this exchange with Mr. C. to exemplify how to effectively cross-examine a witness to make him look like a [TRANSLATION] "downright liar":

> [TRANSLATION]
>
> THE COURT:
>
> So, there is still zero questions. So it's still zero minutes for cross-examination. And third, the third best cross-examination, eh…
>
> . . .
>
> ... it's a question to which we know the answer, but we know the witness won't be smart enough to tell the truth, but we'll make him look like a downright liar. So we ask that question. As [Mr. C.] has told us, [TRANSLATION] "Here is my personal balance sheet." And he hasn't included his building and the land in it, you know. It's just missing 1,900,000.00. So after that he tells us, [TRANSLATION] "Well, I'm sorry, Mr. Justice, you're right, it's not there, you know." We stop right there. It took 30 seconds.[396]

[395] Yet, during the trial, it was shown that the real property actually belonged to one of Mr. C.'s companies.

[396] Aside from the insensitivity of these remarks, the conciliation technique was perillous to say the least, in that Justice Dugré was already passing judgment on Mr. C.'s credibility and his evidence, all this before the trial had even began. He could, for example, have informed Mr. C. of certain pitfalls in his evidence, such as the probative value of his financial statements, without insinuating that the information contained therein constituted lies.

[397] The hearing resumed after the noon break, and the parties announced to Justice Dugré they had been unable to reach an agreement. The trial therefore began with the testimony of the expert psychologist, Mr. C.'s witness. After the witness was sworn in and

[395] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 318, ll. 3 to 6.
[396] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 337, l. 17 to p. 338, l. 11.

after a few minutes of looking for the reports in the record, Justice Dugré immediately took control of the examination. Mr. C. had the opportunity to intervene and ask his questions on three brief occasions, but otherwise, the examination, which lasted approximately 40 minutes, was led entirely by Justice Dugré, right until counsel for Ms. F. and counsel for the children were allowed to ask their questions.

[398] Several of Justice Dugré's comments suggest that the main purpose of his examination was not to establish facts for the trial, but instead, to send a message to the parents, in particular Mr. C., to make him aware of certain issues raised by the witness. Thus, after asking the witness whether he had met with the parents to explain [TRANSLATION] "the ABCs of life, how to raise children" only for the witness to answer that that was not part of his mandate, Justice Dugré asked the witness to look Mr. C. in the eye and to tell him what advice he would give him.[397] Along the same lines, he reiterated later that his questions were for the benefit of the parents, since as far as he was concerned, the findings in the report were sufficient:

> [TRANSLATION]
>
> THE COURT:
>
> Ah! Maybe, maybe. Listen, we have his findings, which are quite clear. Now, I can read the bits of the report that concern us all. For one thing, it would benefit both parents.
>
> Q. Personally, I have enough to render a judgment with your findings. Obviously, I will read your report with the assistance of counsel, and Mr. C., but I just, given that you've been paid, I imagine that, well, uh, it might be interesting to educate the dad and the mom for the future. Do you understand? Since we have a few moments, it's not just a judgment, but if they can improve their behaviour, to help the children, that would be important. Do you understand?
>
> Not for me, but to help them, with regard to their two little children.[398]

[397] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 378 to 380.
[398] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 388, l. 24 to p. 389, l. 16. Moreover, Ms. Roy, who had clearly understood the intended goal, asked a few questions herself so that [TRANSLATION] "the messages were clear to Mr. C.": Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 425.

[399] As the witness was excused, and once again afterwards, Justice Dugré expressed his hope that these messages had been properly understood by the parties:

> [TRANSLATION]
>
> Q. We will read your report carefully. And I think you did a great job. Your testimony is clear…
>
> . . .
>
> … concise, precise. I hope that the parties will, will benefit from this, for the good of their two minor children, who are important here today, and that…[399]
>
> ***
>
> . . .
>
> Okay. But it is interesting. He is interesting that man. He's good, that expert. So, I hope you will listen to him attentively[.][400]

[400] Although Justice Dugré may have had good intentions, taking control of an examination in this way from the beginning, especially to push an agenda that is not strictly tied to the presentation of evidence, can hinder the work of the parties in presenting their case. The following excerpt, in which Justice Dugré finally allowed Mr. C. to ask the witness a first question only to immediately retake control of the examination, is probably the best illustration of the difficulties such an approach can cause for a party, especially if the party is not represented by a lawyer well-versed in the rules of procedure:

> [TRANSLATION]
>
> Q. Very good. So, are there any questions?
>
> EXAMINED BY
>
> S.C.
>
> Q. Mr. De Wit, I have a, a few questions actually, regarding the first expert report.
>
> A. Yes.
>
> Q. It mentions, among others, certain things like, [TRANSLATION] "Reversal of mother daughter roles, very close mother-daughter relationship."
>
> THE COURT:

[399] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 432, ll. 15 to 22.
[400] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 436, ll. 20 to 23.

> Yes, but to help the witness…
>
> . . .
>
> ... what we do, we ask a question, okay...
>
> . .
>
> ...so, subject…
>
> . .
>
> ...verb, complement. We add a question mark. Then you ask him, you put a question mark at the end of the sentence...
>
> . .
>
> ... then you pause. Then, the witness answers the question. You listen to the answer. Then, you can redirect, but with another question, do you understand? So, it's a question from you, an answer from the witness.
>
> . .
>
> And when it is over, we'll let Ms. Vallant and Ms. Roy examine the witness. And then after that, we release the expert. So, your question, Mr. C.?
>
> S.C.
>
> Q. Okay. First question was, you talked about the reversal of the mother daughter roles, what are you referring to?
>
> A. I noted that there was a certain role reversal between M.A. and her mother, meaning that M.A. has, to some extent, taken care of her mother emotionally when there were difficulties at home.
>
> Q. Okay.
>
> EXAMINED BY
>
> THE COURT:
>
> Q. That's good, it's not good or favourable, unfavourable, or...[401]

[401] As the excerpt shows, the witness barely had time to answer Mr. C.'s opening question before Justice Dugré took over the examination and began asking follow-up questions that, need we point out, were not necessarily those Mr. C. would have asked. Justice Dugré's examination continued for a good fifteen minutes before Mr. C. could ask his second question, and even then, Justice Dugré quickly intervened:

> [TRANSLATION]

[401] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 374, l. 1 to p. 376, l. 19.

THE COURT:

We have to ask questions. Let's go.

. . .

S.C.

Yes, yes, I have a question, actually, for Mr. De Wit again.

Q. Is it possible that the children had ideas that could have been, that came from the mother, in their actions, their thinking, their beliefs?

A. It's always possible that certain ideas or attitudes, certain behaviours come from, from a maternal influence, yes, that is possible.

THE COURT:

Well yes, it's possible, anything is possible. It's possible that I become pope one day. But the question really is, is it likely?

A. I did not note a, a systematic influence on the other hand…

Q. No.

A. ... from...

Q. It's possible, but it is not very likely?

A. ... from Ms. F., who has...

Q. So am I to understand...

A. ... who wants...

Q. ... that it's possible, but not very likely?

A. That's not what, in my opinion, what explains the...

Q. No.

A. ... the children's behaviour.

S.C.

Q. Okay.

A. In part, but…

Q. And…

A. … not in …

THE COURT:

Q. Anything is possible, you understand? One day you might be pope or president of the United States, but I'm more interested in likelihood because…[402]

[402] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at p. 393, l. 6 to p. 395, l. 10.

[402] As can be seen, even the witness sometimes had trouble getting a word in with all of Justice Dugré's constant interruptions.

[403] Justice Dugré essentially proceeded in this same manner with the other witnesses. The next witness heard was Ms. F.'s forensic accounting expert. Even though this time it was the witness of a party represented by counsel, Justice Dugré again took control of the examination from the outset. He questioned the witness himself for approximately 20 minutes before finally handing things over to Ms. Vallant,[403] and even then, he continued to interject, such that the rest of the testimony essentially took the form of Ms. Vallant and the judge examining the witness in tandem.[404]

[404] The testimonies of Mr. C.'s sister[405] and accountant,[406] both called by Mr. C., essentially followed the same format. Indeed, although she was on the stand for approximately 50 minutes, Mr. C. only got to ask his sister a single question. The same can be said of the testimony of Mr. C.'s accountant, whose examination in chief was conducted entirely by Justice Dugré.

[405] Ms. F.'s testimony was also peppered with interruptions by Justice Dugré, although he listened more attentively to her.[407] During this testimony, Justice Dugré suggested, among other things, that Mr. C. was projecting when he accused others of making false invoices,[408] and that Ms. F. should read the book *Les manipulateurs sont parmi nous* [Manipulators Are Among Us].[409]

[406] Moreover, it should be noted that these "examinations" by Justice Dugré have little in common with a typical examination of a witness by a lawyer following the established rules. During the testimony of the witnesses, Justice Dugré spent as much time making comments as he did asking questions; shared his personal views on alcoholism, anger

[403] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 440 to 469.
[404] Exhibit SCP-16, Transcript of the hearing on April 11, 2018, at pp. 469 to 507.
[405] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at pp. 476 to 542.
[406] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at pp. 544 to 639.
[407] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at pp. 125 to 180 and 231 to 475; Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 5 to 20.
[408] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at p. 262.
[409] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at pp. 263 to 266 and 306.

and impulsive behaviour; made numerous side remarks that very often had little or nothing to do with the case; was mistaken about the facts; conversed with counsel; and asked the parties questions when they were not on the stand and under oath. For example, even though the expert's testimony discussed Mr. C.'s drinking and anger issues, Justice Dugré shared his opinions on these issues at length with Mr. C.'s sister:

> [TRANSLATION]
>
> Q. You were in the same family. Is it possible he is a little tempermental?
>
> A. Ah! My brother is quite the character, yes.
>
> Q. Okay. But does he sometimes get angry?
>
> A. Well, yes, there are times when it's more difficult.
>
> Q. Okay. The expert noted that. Because, is it possible he has a drinking problem?
>
> A. My brother, he drinks, he drinks more than average, yes. I couldn't tell you how much he might drink or anything.
>
> Q. No, no, but did you, as a sister, let's say, have to…
>
> A. Well...
>
> Q. ... speak out...
>
> A. Me.
>
> Q. ... do you think he's an alcoholic?
>
> A. Honestly, several times, I told him he should drink less.
>
> Q. But do you think he's an alcoholic? Because the expert told me...
>
> A. Well...
>
> Q. ... that he's an alcoholic.
>
> A. ... I can't judge, it's how much, how many bottles or...
>
> Q. No, that's, an alcoholic, it can be just an ounce. It's when your behaviour totally changes when you touch a drop of alcohol. That's an alcoholic.
>
> A. But I, I don't find that it changes...
>
> Q. You can drink...
>
> A. ... when he drinks.
>
> Q. ... a bottle of wine a day, and that can be a food, wine, with a nice piece of meat, with that. It's not a problem. But if I have one glass, and then I get totally enraged...
>
> A. No.

> Q. ... or totally, I lose all my faculties, but that, it's, you see that alcohol doesn't have the same reaction. That's why for an alcoholic, it's a disease, it's not...
>
> A. Okay. But...
>
> Q. ... it's not a flaw, it's a disease.
>
> A. I don't agree that...
>
> Q. It means that my reaction, my body doesn't react the same way as everyone. But it could be just an ounce of alcohol. And then, my behaviour will change. And I'll end up finishing the 26-ounce bottle. That's the problem with alcoholism; it's not, not because the guy drinks more than someone else.
>
> A. Okay.
>
> Q. Because a lot of people drink two bottles of wine a day, one at noon, one in the evening, are perfectly, they aren't alcoholics at all, because they like wine, and they really like it. And after all, lunch goes on for three hours, and supper goes on for three hours. So, there's five glasses, in a bottle of wine, so there's, we're two people, that makes two glasses, four glasses. Fine. They had two bottles of wine. That's nothing. But a guy who has one glass of wine, he gets totally enraged, and all that, but he has to be careful, he can't touch that, he's not allowed. Because he gets totally crazy. So, that's what alcoholism is. And after that, it's just, he has his one glass, he gets totally emotional, angry. And then, he finishes the bottle, and then, things aren't going so well. You understand? Alcoholism is a disease, it's not... But it's not at all about the quantity, not at all; that has nothing to do with it.
>
> A. But I didn't find that his behaviour changed with alcohol. But on the other hand, regarding the anger part, the Canadiens were losing, and he was furious. So, it's not...
>
> Q. No, no, no, that's it.[410]

[407] The examples of this sort of behaviour are too numerous to list in detail. Suffice it to say that when it listened to the recordings, the Committee observed that the judge's interventions frequently resulted in a disorderly hearing. More often than not, it was the judge, not the parties, who seemed to be in charge of the case. In the end, the trial bore only a passing resemblance to an adversarial process.

[408] Justice Dugré should have been more reserved and allowed the parties to conduct their own examinations and cross-examinations, subject to asking questions to clarify or

[410] Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at p. 515, l. 23 to p. 518, l. 24.

expand on certain points where necessary. There is no denying that Mr. C. was unable to make his case as he intended because of the judge's multiple interventions.

[409] In addition, throughout the trial, Justice Dugré went off on long tangents on multiple subjects, particularly regarding cases in which he had been involved as counsel or as a judge.[411]

[410] Moreover, once the parties had closed their cases, the arguments mainly took the form of exchanges between the judge and Ms. Vallant.[412] When Mr. C. tried to interject, Justice Dugré reassured him that his turn would come.[413] Eventually, Justice Dugré would go on to ask Mr. C. a few questions directly and allow him to speak a few times,[414] but he never gave him a chance to formally plead his case.

[411] Finally, the recordings also establish that Justice Dugré allowed Mr. C. to leave the courtroom to go to the washroom without ordering a recess and continued conversing with counsel for Ms. F. in his absence.[415] It is true that the conversation in question was not directly material to the case since Justice Dugré was at that time in the middle of a lengthy monologue about another of his judgments and the enforcement of judgments in general. Although the conversation was relatively innocuous, the fact remains that it is inappropriate to continue with a hearing in the absence of a self-represented party.

[412] The Committee acknowledges that the Court of Appeal of Québec rejected the argument of bias raised by Mr. C. on appeal, noting in particular that he had only reproduced excerpts from the trial in his factum, which made the review on appeal perilous.[416] While it does not question these findings, the Committee reiterates that its task is not limited to applying the test with respect to bias. In this case, after listening to the entire hearing, the Committee is of the view that in constantly interrupting during the

[411] See, for example, Exhibit SCP-17, Transcript of the hearing on April 12, 2018, at pp. 51 to 64, 117 to 120, 412 to 418 and 448 to 454; Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 336 to 352.
[412] Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 250 to 587.
[413] Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 292 to 293 and 330.
[414] Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 456 to 468, 559 to 561 and 565 to 568.
[415] Exhibit SCP-18, Transcript of the hearing on April 13, 2018, at pp. 341 to 346.
[416] Exhibit SCP-22 at para. 4.

presentation of the evidence, Justice Dugré breached his duty to ensure the orderly conduct of the hearing. The Committee is also of the view that, in making numerous disparaging remarks towards Mr. C., Justice Dugré breached his duty of civility and failed to maintain an atmosphere of dignity that is expected of judicial proceedings.

5. Conclusion

[413] For the reasons given above, the Committee answers the following two allegations in the affirmative:

> Allegation 6A
>
> Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on April 11 and 12, 2018, in *S.C.* (*D.F. c. S.C.* #540-04-013357-162) by his conduct or by his comments made at the hearing?
>
> Allegation 6B
>
> Was Justice Gérard Dugré guilty of judicial misconduct at the hearing he presided over on April 11 and 12, 2018, in *S.C.* (*D.F. c. S.C.* #540-04-013357-162) by his conduct or by his comments made at the hearing?

XII. ALLEGATIONS RELATED TO DELAYS IN RENDERING JUDGMENT

[414] In order to facilitate the analysis of the allegations and a better understanding of their context, we will first consider the allegations regarding the facts leading to Mr. S.'s complaint, that is, allegations 1A and 1B, which concern Justice Dugré's undertaking to render judgment quickly and his failure to respond to correspondence from one of the parties.

[415] Second, we will consider Allegation 1C, which deals with Justice Dugré's "chronic problem" delivering judgments in a timely manner.

A. PRELIMINARY CONSIDERATIONS

[416] When oral arguments began in December 2021, counsel for Justice Dugré stated that, it was only upon reading the written submissions of presenting counsel and of the AGQ, that he learned, for the first time, that the inquiry was not limited to the mandatory standard under article 324 C.C.P., and that it also involved the concept of due diligence referred to in the *Ethical Principles for Judges*. He therefore cautioned the Committee

against considering the issue of due diligence without amending the Notice of Allegations accordingly, failing which the Committee would risk falling into [TRANSLATION] “the abyss of procedural unfairness”.[417]

[417] The Committee rejected this argument at the hearing on the basis that the reference to due diligence does not in any way change the nature of the debate.[418] Throughout this inquiry, presenting counsel clearly stated his position that the Notice of Allegations engages not only article 324 C.C.P., but also the rules of ethics and conduct for judges. There is no breach of procedural fairness here.

[418] At every stage of the inquiry process, Justice Dugré was informed that the inquiry dealt with delays in rendering judgment, which necessarily includes his obligations of due diligence. This obligation exists independently of article 324 C.C.P. Article 324 C.C.P. therefore constitutes one of the elements to be considered by the Committee, but it is certainly not the only one. Moreover, the language of allegations 1A and 1C is broad, with one referring to the duties of the office of judge (citing article 324 C.C.P. as an example) and the other referring to a “chronic problem to render judgment”.

B. CONSTITUTIONAL CHALLENGE TO ARTICLE 324 C.C.P.

[419] In his preliminary motions, Justice Dugré argued that the issue of delays in rendering judgment in accordance with article 324 C.C.P. could not 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 the exclusive jurisdiction of the provinces. The Committee rejected this argument in its Decisions on Preliminary Motions.[419]

[420] At the hearing, Justice Dugré changed strategy and now challenges the constitutionality of article 324 C.C.P., which provides as follows:

[417] Submissions of Louis Masson, December 6, 2021, at pp. 4 to 12.
[418] Transcript, December 6, 2021, at pp. 20 to 21.
[419] Decisions on Preliminary Motions, at paras. 88 to 90.

For the benefit of the parties, the judgment on the merits in first instance **must be rendered within:**	En première instance, **le jugement au fond doit, pour le bénéfice des parties, être rendu dans un délai de:**
(1) six months after the matter is taken under advisement in contentious proceedings;	**1°six mois à compter de la prise en délibéré d'une affaire contentieuse**;
…	…
(3) two months after the matter is taken under advisement in child custody or child support matters and non-contentious cases;	3°deux mois à compter de la prise en délibéré en matière de garde d'enfants, d'aliments dus à un enfant ou dans une affaire non contentieuse;
…	…
The time limit is two months after the matter is taken under advisement in the case of a judgment in the course of a proceeding, but one month after the court is seized when it is to rule on an objection raised during a pre-trial examination and pertaining to the fact that a witness cannot be compelled, to fundamental rights or to an issue raising a substantial and legitimate interest.	**Le délai est de deux mois à compter de la prise en délibéré s'il s'agit d'un jugement rendu en cours d'instance,** mais il est d'un mois à compter du moment où le tribunal est saisi s'il s'agit de décider d'une objection à la preuve soulevée lors d'un interrogatoire préalable portant sur le fait qu'un témoin ne peut être contraint, sur les droits fondamentaux ou encore sur une question mettant en cause un intérêt légitime important.
The death of a party or its lawyer cannot operate to delay judgment in a matter taken under advisement.	La mort d'une partie ou de son avocat ne peut avoir pour effet de retarder le jugement d'une affaire en délibéré.
If the advisement period has expired, the chief justice or chief judge, on their own initiative or on a party's application, may extend it or remove the judge from the case.	**Si le délai de délibéré n'est pas respecté, le juge en chef peut, d'office ou sur demande d'une partie, prolonger le délai de délibéré ou dessaisir le juge de l'affaire.**
[Emphasis added]	[Emphasis added]

[421] The constitutional questions raised in relation to this article are as follows:

[TRANSLATION]

Question 1:

> To the extent that article 324 of the *Code of Civil Procedure* unequivocally requires a trial judge who has taken a case under advisement to render judgment within a mandatory time limit, is this article unconstitutional and invalid, in particular because it is inconsistent with the constitutional principle of judicial independence and with section 23 of the Québec *Charter*?
>
> Question 2:
>
> Can the fourth [last] paragraph of article 324 of the *Code of Civil Procedure*, which is an administrative measure, still be valid despite the unconstitutionality of the first two paragraphs?

[422] Regarding the first question, Justice Dugré submits that article 324 C.C.P. addresses a task that is at the heart of the office of judge, namely, rendering judgment. He argues that this provision is inconsistent with the constitutional principle of judicial independence.

[423] Regarding the second question, the judge is of the view that the fourth paragraph could not stand if the first two paragraphs were declared to be unconstitutional, since the time limits on deliberations mentioned in these paragraphs are inextricably linked.

[424] Finally, Justice Dugré notes that this question is raised subject to the issue of whether the Committee has the jurisdiction and the power to decide a constitutional question.

[425] First, as mentioned in the Decisions on Preliminary Motions, the Inquiry Committee has jurisdiction to rule on constitutional arguments.[420]

[426] As a general rule, federal boards, commissions or other tribunals may exercise this jurisdiction where the constitutional challenge concerns a statutory provision on which the board, commission or tribunal must rule in order to render its decision.[421]

[427] This therefore raises the issue of whether the Committee must decide a question of law relating to article 324 C.C.P. in order to make its ultimate findings. It should be

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[420] Decisions on Preliminary Motions, at footnote 72. See also *Girouard v. Inquiry Committee Constituted Under the Procedures for Dealing With Complaints Made to the Canadian Judicial Council About Federally Appointed Judges*, 2014 FC 1175 at paras. 27, 28 and 47.
[421] *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504 at para. 41.

noted that the Committee's role is, rather, to review Justice Dugré's conduct and determine whether he breached the duties of his office within the meaning of the *Judges Act*.

[428] As for article 324 C.C.P., the only effect of a delay in rendering judgment is to give the chief justice or chief judge discretion to extend the time limit or to remove the judge from a case and reassign it to another. As was mentioned above, this provision sets out the context in which problems with tardiness were managed by chief justices during the period under review. The day a particular judgment is rendered, article 324 C.C.P. ceases to have effect.

[429] Article 324 C.C.P. is nonetheless the Québec legislature's expression of the diligence with which it expects court judgments to be delivered. Although the Committee is not bound by it in its assessment of the duty of diligence, this provision can have a certain influence for the sole reason that judges have a duty to comply with laws that apply to them when exercising their functions.

[430] The Committee therefore finds it necessary to rule on the constitutional argument raised by Justice Dugré.

1. Interference with Principle of Judicial Independence Under Canadian Constitution

[431] Justice Dugré's argument is based on the separation of powers between the three branches of government—the legislature, the executive and the judiciary.

[432] The relevant jurisdiction of the provinces is set out under subsection 92(14) of the *Constitution Act, 1867*, which gives legislative assemblies the power to make laws in respect of the following:

> **14.** The **Administration of Justice** in the Province, including the Constitution, Maintenance, and **Organization of Provincial Courts**, both of Civil and of Criminal Jurisdiction, and including **Procedure in Civil Matters** in those Courts.
>
> [Emphasis added]

[433] Article 324 C.C.P. is clearly a procedural provision, in that it establishes time limits for rendering judgment, the last step in a proceeding at first instance. It is also a provision relating to the administration of justice and the organization of courts, since it gives a chief justice or chief judge discretion to manage these time limits by extending them or by removing a judge from a case and reassigning it to another.

[434] The provinces' legislative interest in seeing that civil justice is rendered in a reasonably timely fashion is obvious. Litigants who call upon the courts to resolve disputes they may have with other private citizens or with the State are entitled to expect justice to be served in a diligent manner. Legislative assemblies must meet such expectations to the extent that their powers permit.

[435] That being said, Justice Dugré is correct in noting that the imperatives of judicial independence may limit the power of the legislative branch to act.[422]

[436] Justice Dugré proposes a two-step process for determining whether article 324 C.C.P. is unconstitutional on the basis that it encroaches on judicial independence.

[437] First, he examines in isolation the language of the first paragraph of article 324 C.C.P., which establishes advisement periods according to subject matter, with a general six-month time limit being applicable to ordinary cases. In his view, this paragraph imposes a strict, unambiguous duty on judges to render their judgments within the set time, whatever the circumstances.

[438] Second, he argues that the last paragraph, which gives the chief justice or chief judge discretion to extend the time or to reassign a case for tardiness, is indissociable from the first paragraph and should therefore be declared of no force or effect.

[439] In the Committee's view, this is not the correct approach. The two paragraphs in question are not distinct provisions regarding which it must be considered whether one can survive without the other, or whether, one has no reason to exist without the other. Pursuant to article 324 C.C.P., the time limits set out in the first paragraph have no legal

[422] *R. v. Beauregard*, 1986 CanLII 24 (SCC), [1986] 2 S.C.R. 56.

effect in and of themselves. Exceeding the time limit does not invalidate the judgment, nor does it result in sanctions against the judge concerned. The provision only comes into play by effect of the last paragraph, which gives the chief justice or chief judge administrative discretion to extend the time limit or remove the judge in case of tardiness.

[440] The real issue is whether article 324 C.C.P. interferes with the independence of courts and judges.

[441] As we have seen, the most fundamental characteristic of article 324 C.C.P. is that it leaves the management of advisement periods entirely up to the chief justice or chief judge of the court. The final paragraph reads as follows: *If the advisement period has expired, the chief justice or chief judge, on their own initiative or on a party's application, may extend it or remove the judge from the case*. The intended goal of the provision seems clear enough. The chief justice or chief judge is asked to follow up on the advisement period and, if it is exceeded, to collect the relevant information, in particular from the judge concerned, to determine the time in which the judgment can reasonably be rendered, so as to minimize the delay.

[442] As regards the alternative, namely, removing the judge from the case, there is every reason to suspect that it will rarely be used. Indeed, Chief Justice Fournier confirmed in his testimony that he has never done so.[423]

[443] In any event, chief justices and chief judges, like any other judge, enjoy all the usual conditions of judicial independence. They also know that, by virtue of their specific functions, all administrative decisions on their part must take into account the imperatives of the institutional independence of the Court and the personal independence of its members. A reasonable, well-informed person would have no reason to believe that the chief justice or chief judge would use the administrative discretion afforded by article 324 C.C.P. any differently.

[423] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 238.

[444] Justice Dugré submits, however, that the advisement period cannot be interfered with in any way whatsoever, not even by the chief justice or chief judge. On this point, he cites a book by professors Brun and Tremblay:

> [TRANSLATION]
>
> Deliberations are the essential element of autonomous decision making. It is the thinking process that leads judges to their decisions. The principle of autonomous decision making therefore implies that, in general, a judge must be free of any constraints or pressure when the time comes to engage in this process. The judge must be able to do so with peace of mind and freedom of thought. **Therefore, for example, a judge cannot be subject to pressure regarding the duration of deliberations in progress—not from a government official, and not from the chief justice or chief judge either: *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391)** . . . .[424]
>
> [Emphasis added]

[445] Justice Dugré did not elaborate on the Supreme Court's judgment in *Tobiass* on which the authors rely. That case dealt with an application for revocation of citizenship brought by the federal government against people who had acquired citizenship fraudulently by failing to divulge their involvement in atrocities committed under the Nazi regime during the Second World War. The Associate Chief Justice was exceedingly slow in moving forward with the case. Counsel for the government met with the Chief Justice of the Federal Court in private to discuss the situation, which the government found very concerning. The Chief Justice decided to intervene with his Associate Chief Justice. When this was brought to light, a new judge was assigned to the case and considered an application for a stay of proceedings.

[446] That case did not involve the advisement period, but rather the speed of the proceedings which the Associate Chief Justice had delayed by not scheduling preliminary motions for hearing. On the issue of the Chief Justice intervening with the Associate Chief Justice assigned to the case, the Supreme Court concluded as follows:

> [74] First, and as a general rule of conduct, counsel for one party should not discuss a particular case with a judge except with the knowledge and

[424] Henri Brun and Guy Tremblay, *Droit constitutionnel*, 6th. ed. (Cowansville: Les Éditions Yvon Blais, 2014) at p. 869.

> preferably with the participation of counsel for the other parties to the case. See the Honourable J. O. Wilson, *A Book for Judges* (1980), at p. 52. The meeting between Mr. Thompson and the Chief Justice, at which counsel for the appellants were not present, violated this rule and was clearly inappropriate, and this despite the fact that the occasion for the meeting was a highly legitimate concern about the exceedingly slow progress of the cases.
>
> 75. Second, and again as a general rule, a judge should not accede to the demands of one party without giving counsel for the other parties a chance to present their views. It was therefore clearly wrong, and seriously so, for the Chief Justice to speak to the Associate Chief Justice at the instance of Mr. Thompson. **We agree with Pratte J.A. that a chief justice is responsible for the expeditious progress of cases through his or her court and may under certain circumstances be obligated to take steps to correct tardiness**. Yet, the actions of Isaac C.J. were more in the nature of a response to a party rather than to a problem. **Thus, an action that might have been innocuous and even obligatory under other circumstances acquired an air of impropriety as a result of the events that preceded it.** Quite simply, it was inappropriate.[425]
>
> [Emphasis added]

[447] With respect, the academic commentary Justice Dugré cites does not reflect the state of the law. We would add that while a chief justice or chief judge is responsible for the expeditious progress of cases through their court, it seems essential that this responsibility should extend to the very end of the trial and therefore to the advisement period. Of what value is expeditious progress of cases if judgments do not follow within a reasonable time?

[448] In his argument, Justice Dugré relies on case law holding that advisement periods are presumed to be reasonable. However, the case law he cites does not say that this presumption is absolute. The presumption gives court judgments a degree of security when they are subjected to a collateral attack on the undue length of deliberations by a litigant disappointed with the outcome. The case law does not suggest that the imperatives of judicial independence require that judges be exempt from any duty of diligence in respect of the advisement period.

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[425] *Canada (Minister of Citizenship and Immigration) v. Tobiass*, 1997 CanLII 322 (SCC), [1997] 3 S.C.R. 391 at paras. 74 to 75.

[449] The Supreme Court even confirmed the contrary in *R. v. K.G.K.*, when it decided that the accused's right to be tried within a reasonable time under paragraph 11(b) of the *Canadian Charter of Rights and Freedoms* applies to advisement periods.

[450] In that case, the judge had rendered judgment nine months after taking the case under advisement. The case was, according to the Court, one of minimal to modest complexity. Writing on behalf of eight judges, Justice Moldaver made the following comments:

> [77] Notwithstanding the high bar that the presumption of integrity necessitates, this case comes close — even perilously close — to the line. However, when all of the circumstances are considered, I am not satisfied that K.G.K. has met his onus of establishing that the verdict deliberation time markedly exceeded what it reasonably should have been.[426]

[451] He added that the most important factor in his decision was that the judge had begun his deliberations five months before the judgment in *Jordan* came out:

> [81] As I see it, the most important feature of this case is that K.G.K.'s trial and a substantial portion of the trial judge's verdict deliberation time occurred before the release of this Court's decision in *Jordan*. This context matters. *Jordan* was a call to action which no one in this case could have foreseen. Indeed, until *Jordan* was released, the parties appear to have conducted themselves in the complacent manner that defined the pre-*Jordan* era. . . . Most significantly, the trial judge's pre-*Jordan* assessment of the requisite balance between the need for timeliness, trial fairness considerations, and the practical constraints he faced was reasonable at the time. Although the end of evidence and argument occurred close to the 30-month ceiling, the proximity of a transitional case (like this one) to the *Jordan* ceilings cannot inform whether the verdict deliberation time taken was reasonable. **That said, had *Jordan* been available to the trial judge when he took K.G.K.'s case under reserve, the case's proximity to the ceiling would no doubt have been a factor that he would have considered in assessing how much time he reasonably needed to render his verdict. How long he would have taken to deliberate and release his verdict and reasons cannot be known with certainty, though it can be expected that he would have released his verdict and**

[426] *R. v. K.G.K.*, 2020 SCC 7 at para. 77.

> **reasons sooner than he did**. The impossibility of taking this consideration into account pre-*Jordan* should not be held against him.
>
> [82] That said, had this case been heard entirely post-*Jordan*, I would in all likelihood have decided the s. 11(*b*) issue differently. As such, I must respectfully disagree with my colleague that the test I have proposed "raises the accused's burden to a threshold that is both conceptually unhelpful and unreachable" and "could have the unintended consequence of sheltering trial judges' deliberative delay from [*Charter*] scrutiny" (Abella J.'s reasons, at para. 94). That is simply not so.[427]
>
> [Emphasis added]

[452] To sum up, the Supreme Court has held that the *Charter* itself, through paragraph 11(b), requires judges to render their judgments in a timely manner. It is true that the right in question applies only to criminal cases. But the fact remains that the imperatives of judicial independence are the same whether the judge is presiding over a civil case or a criminal one. It must be concluded that the mere fact that the advisement period is limited by certain constraints does not in and of itself constitute interference with judicial independence.

[453] Article 324 C.C.P. establishes a general period of six months for rendering judgment. There is a broad consensus on this time frame across Canada. Other provinces have adopted diligence rules using this same time frame.[428] We have also cited above the CJC's *Ethical Principles for Judges*, which also reference a six-month time frame.

[454] Again according to article 324 C.C.P., the only possible consequence of exceeding the advisement period is to give the chief justice or chief judge discretion to extend the period so that the judge can render judgment without any more delay than necessary. In extreme cases, the chief justice or chief judge may remove the judge concerned and assign the case to another judge. The evidence shows that this measure is never used in practice. In any event, this is just another way of extending the time for rendering judgment, one that becomes available when the judge concerned appears to be unable

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[427] *Ibid.* at paras. 81 to 82.

[428] See for example the *Judicature Act*, RSNB 1973, c. J-2, s. 7.2; *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 123(5)(a); *Judicature Act*, RSPEI 1988, c. J-2.1, s. 26(6). It should also be noted that, in Québec, the first paragraph of section 146 of the *Act respecting administrative justice*, chapter J-3, provides that, "[i]n any matter of whatever nature, the decision must be given within three months after being taken under advisement, unless, for a valid reason, the president of the Tribunal has granted an extension".

to do so within a foreseeable period. In either case, the judgment will ultimately be rendered by a judge, which offers all the guarantees of independence.

[455] We therefore conclude that article 324 C.C.P. in no way interferes with the judicial independence of the Superior Court and its judges.

2. Violation of Section 23 of Charter of Human Rights and Freedoms

[456] Justice Dugré raises a quasi-constitutional question based on section 23 of Québec's *Charter of Human Rights and Freedoms*, which reads as follows:

> 23. Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.
>
> The tribunal may decide to sit *in camera*, however, in the interests of morality or public order.[429]

[457] This question was not, however, the subject of any specific arguments by Justice Dugré.

[458] Pursuant to s. 52 of the Québec *Charter*, a statutory provision such as article 324 C.C.P. could be declared of no force or effect if it is inconsistent with the requirements of the Québec *Charter*.

[459] That said, given that we have already concluded that the impugned provision did not interfere with the independence of the courts, the answer must be exactly the same when regarded from the standpoint of the Québec *Charter*.

C. K.S.

1. Background

[460] On December 19, 20 and 21, 2017, Justice Dugré heard a divorce petition on the merits. Ms. B. was represented by Stewart Litvack, and Mr. K.S. was represented by Ivan

[429] *Charter of human rights and freedoms*, CQLR c. C-12, s. 23.

Caireac. Since not everything could be completed within the scheduled time, the hearing was adjourned to January 4, 2018.[430]

[461] On January 4, 2018, the parties agreed to give themselves more time in hopes of coming to an agreement on the conditions for selling the family residence.[431]

[462] After discussions broke down, on January 12, 2018, Mr. S. filed a motion for the immediate sale of the family residence.[432]

[463] February 16, 2018, was therefore set as the date for finishing the December hearing and ruling on Mr. S.'s motion regarding the family residence.[433] At the close of the hearing, Justice Dugré decided not to rule on the motion because it was moot, given his intention to render a decision promptly. He stated, [TRANSLATION] "[U]nder advisement, [ENGLISH] hopefully next week you'll get something off my desk".[434]

[464] On March 19, 2018, Ms. Dumont wrote to the parties to inform them that the judge could not render judgment as planned, being stricken with a persistent toothache. She ended her email by stating, [TRANSLATION] "Your case is still a priority".[435]

[465] On March 27, 2018, counsel for Mr. S., Mr. Caireac, sent an email to Justice Dugré to inform him that he had just learned that Ms. B had not paid the municipal taxes on the family residence for two years and that the city was threatening to put the house up for judicial sale.[436] He reminded him that at the hearing on February 16, both parties had agreed that there was an urgent need to render judgment and asked Justice Dugré to do so.[437]

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[430] Exhibit KSP-5 at p. 11.
[431] Exhibit KSP-6.
[432] Exhibit KSP-32.
[433] Exhibit KSP-24 and Testimony of Ivan Caireac, June 4, 2021, at pp. 22 to 23.
[434] Exhibit KSP-38, Transcription of the hearing on February 16, 2018, at p. 290, ll. 11 to 13.
[435] Exhibit KSP-25.
[436] Exhibits KSP-26.
[437] Mr. Caireac failed to copy Mr. Litvack in his initial email to the judge. He resent this same email a few minutes later, this time copying Mr. Litvack (Testimony of Mr. Caireac, June 4, 2021, at pp. 36 to 37 and 66).

[466] On April 5, 2018, Mr. Litvack, counsel for Ms. B., wrote to Justice Dugré to tell him that he would not be responding to the allegations made in Mr. Caireac's email since the case was closed and had been taken under advisement.[438]

[467] The judge did not respond to Mr. Caireac's email dated March 27, 2018.

[468] On August 21, 2018, Mr. Caireac wrote to Justice Dugré again, asking the judge how long he thought it would be before he could render judgment.[439] He reminded him of his undertaking to render judgment and asked him to do so within the next few days so that his client could rebuild his life and start the immigration process for his new spouse. He ended his email as follows:

> Taking into account all the foregoing, our client would like to avoid additional costs related to a presentation of the motion for reopening of the hearing and hopes to receive a positive information regarding the rendering of the final judgment in the present file.[440]

[469] Having received no word from Justice Dugré relating to his August 21 email, on September 11, Mr. Caireac wrote to Ms. Dumont to remind her of the urgency of the situation and to ask if and when he should expect a response from the judge.[441]

[470] On September 18, 2018, Ms. Dumont replied to Mr. Caireac that she had forwarded his August 21 email to Justice Dugré. She added, [TRANSLATION] "For the moment, that's all I can allow myself to say".[442]

[471] On November 14, 2018, Mr. Litvack and Mr. Caireac wrote a joint letter to Associate Chief Justice Petras to seek her assistance in obtaining judgment.[443]

[472] On November 20, 2018, Associate Chief Justice Petras wrote to Messrs. Litvack and Caireac to tell them that judgment would be rendered on November 27, 2018.[444]

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[438] Exhibit KSP-72.
[439] Exhibit KSP-27.
[440] Exhibit KSP-27.
[441] Exhibit KSP-28.
[442] Exhibit KSP-28.
[443] Exhibit KSP-29.
[444] Exhibit KSP-30.

[473] On November 27, 2018, nine months and 11 days after the case was taken under advisement, Justice Dugré granted the divorce and ruled on all the ancillary measures, as well as on the sale of the family residence.

[474] Mr. S. appealed Justice Dugré's judgment, and the appeal was allowed in part.[445]

[475] The family residence was finally sold in November 2019 for $30,000 over the asking price recorded in Justice Dugré's judgment.[446]

2. Complaint to CJC

[476] On August 31, 2018, Mr. S. sent the CJC an email in which he complained that Justice Dugré was late in rendering judgment despite the urgent need to sell the family residence. He alleged that the judge had acknowledged the urgency of the situation during the trial and had undertaken to render judgment no later than two weeks after the trial's end. More than six months later, judgment had still not been rendered, which was a violation of the C.C.P.'s requirement that judgment be rendered within six months.[447]

[477] He added that this had caused him significant harm. He wanted to remarry and to bring his new spouse and child to Canada, but he could not start the process without proof of divorce. He also stated that the two emails sent by his counsel to Justice Dugré had gone unanswered. He wrote the following in conclusion:

> I am [losing] confidence in legal system when the Judge who must protect it – violate the law and do not feel accountable to respect it.[448]

[478] On September 10, 2018, the CJC's registry and communications support officer[449] sent K.S. an email informing him that the CJC aimed to complete its review of complaints within three to six months of receiving them.[450]

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[445] Exhibit KSP-8.
[446] Exhibit KSP-7, at para. 78.
[447] Exhibit KSP-1.
[448] Exhibit KSP-1, at para. 12.
[449] Exhibit KSP-3.
[450] Exhibit KPS-3.

[479] Finding this unsatisfactory, Mr. S. wrote back to the CJC twice to reiterate how urgent it was to obtain a decision and to complain that he had received no answer from Justice Dugré regarding when judgment would be rendered.[451]

3. Evidence Before the Committee

a) Testimony of Mr. S. (complainant)

[480] Mr. S. testified before our Committee. He explained that the consequences of the delay in rendering judgment had had real impacts on his life in both personal and financial terms.

[481] In his opinion, everyone had agreed that a decision was urgently needed and the judge had undertaken to render judgment before February 28. In the beginning, he had felt frustrated, but with time, he had lost all confidence in the justice system.[452]

[482] On cross-examination, Mr. S. said he had filed his complaint with the CJC without the assistance of his counsel, Mr. Caireac[453]. He also said that he disagreed with the suggestion that the goal of his letter to the CJC was to obtain judgment. At that point, for him, the problem had become a systemic one. He explained as follows:

> Maybe judgment is one thing but I truly believe that at that point, I was very disappointed with the situation, with the system. And I was very upset that people who represent the law in this country can find a way of not doing their job. If one of my customers would come to my place and I will make a commitment and if I don't deliver it, the customer has a right to, you know, to take his mind back and bring it to a different business. And unfortunately I never had that choice and I was... I was under the revision with Judge Dugré and he took longer than he's supposed to take. And I was very furious, I was very disappointed with what happened.[454]

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[451] Exhibits KSP-2 and KSP-3.
[452] Testimony of K.S., June 2, 2021 (in camera), at p. 18.
[453] Testimony of K.S., June 2, 2021 (in camera), at pp. 58 to 89.
[454] Testimony of K.S., June 2, 2021 (in camera), at p. 59, l. 26 to p. 60, l. 14. Justice Dugré argues that the letter from Mr. S. to the CJC was not a complaint, but a request for help in obtaining said judgment (Amended Written Submission of the Honourable Justice Dugré, at para. 337). The Committee is of the opinion that this argument is unfounded and, in any event, contradicted by the complainant's testimony.

b) Testimony of Mr. Ivan Caireac (counsel for Mr. S.)

[483] Counsel for Mr. S., Mr. Caireac, also testified before the Committee. He explained that the sale of the family residence had been important because the home equity line of credit was costing his client $1,300 a month in interest alone. Mr. S. had therefore wanted to go ahead with selling the house so he could pay back the line of credit and take the equity.[455]

[484] When questioned about what had happened with the motion for immediate sale of the family residence, Mr. Caireac recalled that Justice Dugré had said at the hearing on February 16, 2018, [TRANSLATION] "I will render judgment rather quickly. If the overall judgment can't be delivered within, say, two weeks, well, at least, I'll settle the issue of the sale of the residence because that's an urgent matter".[456] He added that this was how he had understood things, as did Mr. Litvack, since they had discussed it.[457]

[485] Mr. Caireac explained that he had emailed Justice Dugré on March 27, 2018, after learning from his client that there was a municipal tax debt of $17,000 and that the residence could be put up for auction. He said that he had raised this new fact as an additional argument to further show the urgency of rendering judgment on the family residence.[458]

[486] Mr. Caireac recalled that, after sending this email, he contacted Justice Dugré's assistant perhaps two or three times. He had left the following message: [TRANSLATION] "The hearing took place on December 16 and February 16. Is there any information you can give us about the judgment?" [459] or [TRANSLATION] "Do you have an estimate of around when?".[460] While it is possible that Mr. Litvack was not on these calls, he stated that both lawyers had been on the same page: they were waiting for the judgment and wanted to move on.[461]

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[455] Testimony of Yvan Caireac, June 4, 2021 (in camera), at pp. 31 to 32.
[456] Testimony of Yvan Caireac, June 4, 2021 (in camera), at p. 24, ll. 1 to 6.
[457] Testimony of Yvan Caireac, June 4, 2021 (in camera), at p. 24.
[458] Testimony of Yvan Caireac, June 4, 2021 (in camera), at pp. 32 to 35.
[459] Testimony of Yvan Caireac, June 4, 2021 (in camera), at pp. 59 to 60.
[460] Testimony of Yvan Caireac, June 4, 2021 (in camera), at p. 65, ll. 1 to 5.
[461] Testimony of Yvan Caireac, June 4, 2021 (in camera), at pp. 39 to 41.

[487] Regarding the joint letter sent to Associate Chief Justice Petras on November 14, 2019, he explained letting two months go by after his August 21 email to the judge. When cross-examined on whether he could have sent the letter earlier, he answered yes.[462]

c) Testimony of Associate Chief Justice Petras

[488] Associate Chief Justice Petras testified that she read the joint letter addressed to her from Messrs. Caireac and Litvack on November 14 or 15, 2018. She then discussed that letter with Chief Justice Fournier, who asked her to reach out to Justice Dugré to find out when he would be delivering his judgment.[463] She therefore contacted Justice Dugré to inform him of the joint letter that had been sent to her. He told her he was working on it and would render judgment as soon as possible. She believed Justice Dugré probably told her he would be rendering judgment on November 27, which is why she mentioned that date in her letter of response to counsel.[464] She could not remember the details of her conversation, but she was certain that she had told him, [TRANSLATION] "It's a judgment that's long overdue. It's embarrassing. It's embarrassing for us, for the Court".[465]

[489] Finally, Associate Chief Justice Petras did not believe having knowledge of Mr. S.'s complaint to the CJC when she discussed the outstanding judgment with Justice Dugré. She explained that it was likely Chief Justice Fournier who had informed her of the complaint, and stated that no one from the CJC had contacted her.[466]

d) Testimony of Chief Justice Fournier

[490] The Committee also heard the testimony of Chief Justice Fournier. When questioned regarding Mr. S.'s complaint to the CJC, he believed having been notified of it by Norman Sabourin, the CJC's executive director at the time, when he had asked him to comment on Mr. S.'s complaint in accordance with the CJC's standard procedure.

[462] Testimony of Yvan Caireac, June 4, 2021 (in camera), at pp. 76 to 77.
[463] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at pp. 7 to 16.
[464] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at p. 12.
[465] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at p. 12, ll. 20 to 22.
[466] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at p. 18.

However, he was unable to give an exact date.[467] He stated he may have spoken to Associate Chief Justice Petras about it.[468]

[491] When he sent an advisement follow-up letter (discussed further below) to Justice Dugré in November 2018, he did not know that a complaint had been filed with regard to the case.[469]

e) Testimony of Marie Dumont (clerk and Justice Dugré's assistant)

[492] Ms. Dumont clearly recalled that Justice Dugré had intended to render judgment shortly after the hearing on February 16, 2018. She said she had been [TRANSLATION] "involved" in drafting the judgment in the days that followed. Justice Dugré wanted to render judgment quickly, and they had therefore started [TRANSLATION] "working on the template" and working on the judgment's various conclusions.[470]

[493] She then added the following:

> [TRANSLATION]
>
> And then, something happened. I don't know what, but something happened there. And as soon as the trial, the record came to his office, I put it there, we had begun. Something happened; I don't know what. What did he see? That's a question for the judge.[471]

[494] Ms. Dumont also confirmed that the judge had intended to deliver the judgment on March 6. He was going to take advantage of his week of vacation to do so.[472] Counsel had been told by telephone that the decision would be rendered on March 9. She testified as follows:

> [TRANSLATION]
>
> But I... it's a date we had given them over the phone.
>
> Q- Okay. There was... by phone, counsel were told, "The decision will be rendered on the 9th?"

[467] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 265 to 266.
[468] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 266.
[469] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 272.
[470] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 5.
[471] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 5, ll. 17 to 23.
[472] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 6.

> A- Yes, because it fell... The judgment was almost finished, and Mr. Dugré had told me to tell them, “By the 9th, we should be able”.[473]

[495] The judge then would have had health issues, which cleared up rather quickly, and [TRANSLATION] “after that, when he came back, he started sitting again. And after that, the... it started up again”.[474]

[496] She explained that she had sent her email dated March 19, 2018, to counsel in response to Mr. Caireac’s numerous calls asking when judgment would be rendered.[475] In addition, since Justice Dugré had had some health issues the previous week, she had wanted to keep counsel informed.

[497] Despite the fact that her email stated that she would keep the parties abreast of any developments and that their case was still a priority, she was critical of Mr. Caireac for having emailed the judge on March 27, 2018.[476]

[498] She added that it was unusual for her not to acknowledge receipt of correspondence from counsel. However, since Mr. Litvack had apparently objected to Mr. Caireac’s way of doing things, the email to Justice Dugré dated March 27, 2018, went unanswered.[477]

[499] According to Ms. Dumont, Mr. Caireac often phoned to ask when the judgment was going to be delivered. She claimed that his conduct bordered on harassment.[478] She noted that she did not break off communications on her own initiative. She had gone to see Justice Dugré and asked him, [TRANSLATION] “What do I do? Do I do nothing?”, to which the judge reportedly replied as follows:

> [TRANSLATION]

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[473] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 145, ll. 11 to 19.
[474] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 6, and testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 146.
[475] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 6.
[476] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 7.
[477] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at pp. 6 to 9.
[478] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at pp. 9 to 10.

> We wait. If they apply to reopen the hearing, we'll wait for that. If they want to do it, we won't show them how to do it, and we won't tell them what to do.[479]

[500] When questioned about her reply dated September 18, 2018, to Mr. Caireac's email dated August 21, 2018, she stated that the judge had not undertaken to render judgment by a specific date. She explained as follows:

> [TRANSLATION]
>
> Q- Okay. And at that time, there was no undertaking regarding a date for the upcoming judgment?
>
> A- There wasn't... the judge wasn't able to guarantee that, because of what was coming. We didn't want... I think he didn't want to get caught twice. Because we really hoped it could be rendered on March 9th; the judge hoped to do so. And you'll ask him why...
>
> Q- Okay.
>
> A- ... it took... [ENGLISH] it took more time than expected.
>
> Q- [TRANSLATION] Are you aware of it?
>
> A- [ENGLISH] The reason?
>
> Q- [TRANSLATION] Yes.
>
> A- [ENGLISH] It's not my place to tell.
>
> Q- [TRANSLATION] Okay. You think...
>
> A- It's not my... it's not my place to tell you...
>
> Q- Okay. Do you think it's the judge himself who should say it?
>
> A- He's the one you should ask about his own motivations. That's up to him.
>
> Q- Okay.
>
> A- [ENGLISH] I'm just an executive.
>
> Q- [TRANSLATION] Okay.
>
> THE CHAIRPERSON:
>
> But, in any case, we'll see if the question...
>
> Mr. GIUSEPPE BATTISTA:
>
> Q- I won't insist. You're not comfortable talking about this?
>
> Ms. MAGALI FOURNIER:

[479] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 11, ll. 1 to 5.

> But I think she already said that. She already said she didn't want to answer that, that it was up to the judge to answer.[480]

[501] Ms. Dumont added that, when the judge received the letter from Associate Chief Justice Petras, he had to render a decision in the matter of an injunction he rendered on November 20, 2018. Ms. Dumont and the judge then worked several days on the K.S. judgment, although at that time the conclusions were [TRANSLATION] "practically" written,[481] and [TRANSLATION] "all that was left was to make decisions for the judge and to… and to consider the record as it was constituted".[482]

f) Other evidence

[502] In order to present a full picture, presenting counsel submitted the complaint, recordings, minutes of hearing, transcripts, relevant procedural documents and judgments, and the court ledger related to the hearing under inquiry.[483]

[503] This evidence shows the following:

- The file was opened in August 2015.[484]
- In December 2016, Mr. S. filed a defence in which he sought the sale of the family residence.[485]
- The parties could not agree on the conditions for selling the family residence and therefore went to trial.[486] An appeal followed.
- Once the appeal proceedings had been initiated, Mr. S. again filed a motion for the immediate sale of the family residence, but this application was made to the wrong court, thus causing additional delays.[487]
- A new application was then made to the Court of Appeal on July 30, 2019.

[480] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p.147, l. 16 to p. 148, l. 25.
[481] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 153 to 155.
[482] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 155, ll. 2 to 4.
[483] Exhibits KSP-1 to KSP-38 and KSP-71 to KSP-74.
[484] Exhibit KSP-14.
[485] Exhibit KSP-14.
[486] Exhibits D-68, KSP-5 and KSP-21.
[487] Exhibit D-71.

- During that time, the real estate market grew substantially, such that the value of the family residence increased to the parties' benefit.[488]

[504] Finally, the evidence reveals that Mr. S.'s case was the subject of correspondence from Chief Justice Fournier, sent on November 13, 2018, that is, nearly two months after the advisement period under article 324 C.C.P. had run out, a day before counsel complained to Associate Chief Justice Petras, and 14 days before judgment was finally rendered.[489]

4. Position of Justice Dugré

[505] In his written submission, Justice Dugré acknowledges having implied, at the hearing on February 16, 2018, that it was urgent to render a decision. Although he did not testify, he argues he had not actually decided there was an urgency. He claims having found during his deliberations that the case was not urgent and argues this finding is reflected in the fact that the judgment was rendered nine months after the case was taken under advisement.[490]

[506] Justice Dugré adds that Mr. S. did not conduct his case in a manner that demonstrated urgency.[491] He argues that the same is true with respect to what occurred after judgment was rendered. In support of this argument, Justice Dugré criticizes Mr. S. for:

- Not applying to reopen the trial [in order to reactivate his motion for the immediate sale of the family residence] while the case was under advisement;
- Deciding to appeal Justice Dugré's judgment; and
- Filing a new motion for the immediate sale of the family residence in Superior Court despite the appeal proceedings in progress, such that this motion was not validly filed in the Court of Appeal until June 2019. It is thus alleged that Mr. S. was at fault for delaying the proceedings by several months.[492]

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[488] Exhibit KSP-70, at paras. 5 and 9.
[489] Exhibit JC-66.
[490] Amended Written Submission of the Honourable Gérard Dugré, at para. 351-352.
[491] Amended Written Submission of the Honourable Gérard Dugré, at para. 354.
[492] Amended Written Submission of the Honourable Gérard Dugré, at para. 349.

[507] He also denies promising to render judgment quickly. He claims, rather, that he stated that he *hoped* to render judgment quickly. In his opinion, the use of the word "hopefully" demonstrates this.[493] The written submission states that [TRANSLATION] "it is incorrect to claim that Justice Dugré had 'undertaken' to render judgment quickly, given that this was his first bitterly contested divorce, and considering the contradictory evidence and the number and scope of the parties' applications".[494] In his view, [TRANSLATION] "it is unthinkable that a judge could be removed because he took 9 months and 11 days to render a judgment on a bitterly contested divorce and its ancillary measures".[495] He also identifies four Superior Court decisions that purportedly ordered the sale of a family residence after deliberations varying in length from 188 to 309 days.[496]

[508] Justice Dugré also stresses that the notation [TRANSLATION] "under advisement" in the minutes of the hearing on February 16, 2018, is clear and unequivocal.[497] He claims that, therefore, the motion decision was to be incorporated into the divorce judgment, and he simply could not respond to the requests from Mr. Caireac because the matter was taken under advisement.[498]

[509] In the judge's view, no one could communicate with him during his deliberations. The only options were a formal application to reopen the trial or an application under article 324 C.C.P. to have the file transferred to another judge. This is why he did not respond to Mr. Caireac's correspondence dated March 27 and August 21, 2018. In his written submission, Justice Dugré writes:

> [TRANSLATION]
>
> It is precisely the duty of the office of judge not to communicate with and not to be influenced by one of the parties during deliberations (a

[493] Amended Written Submission of the Honourable Gérard Dugré, at paras. 344 and 352.
[494] Amended Written Submission of the Honourable Gérard Dugré, at para. 430. This argument is raised despite the fact that Justice Dugré stated on February 16, 2018, that "[the] divorce is not contested" (Exhibit KSP-38, Transcription of the hearing on February 16, 2018, at p. 181, l. 2). It should be noted that this fact was not entered in evidence; it is merely alleged in Justice Dugré's written submission.
[495] Amended Written Submission of the Honourable Gérard Dugré, at para. 409.
[496] Exhibit D-66 (working document).
[497] Amended Written Submission of the Honourable Gérard Dugré, at para. 430.
[498] Amended Written Submission of the Honourable Gérard Dugré, at par. 430.

> sacrosanct principle), and therefore to ignore informal emails. A duly filed motion would have elicited a different response.[499]

[510] He adds that the evidence does not show that Ms. Dumont received calls from Mr. Litvack and notes that the latter was upset because Mr. Caireac had tried to interfere with Justice Dugré's deliberations by sending his correspondence dated March 27, 2018.[500] The Committee should therefore not give any weight to the statement made in the joint letter to Associate Chief Justice Petras to the effect that **both** lawyers had contacted Ms. Dumont to ask when judgment would be rendered. This is, in his view, inadmissible hearsay.[501]

[511] In addition, Justice Dugré is of the opinion that he complied with article 324 C.C.P. at all times because he was not removed from the case,[502] and that Mr. S. did not suffer any harm from the delay in rendering judgment because, in the end, he sold the family residence for a higher price than what the judgment provided.[503] Finally, Justice Dugré explains that, after Associate Chief Justice Petras intervened, he rendered judgment quickly and on the date he had undertaken to do so.[504]

5. Discussion

[512] The Committee finds that it has clear and convincing evidence that on February 16, 2018, Justice Dugré gave an undertaking to render judgment quickly, given the urgency of the situation.

[513] Specifically, the judge stated that it was not necessary to deal with the motion for the immediate sale of the family residence separately, *given* that he was going to render judgment on the merits very soon. In so doing, he recognized the urgency. Here are the discussions on this point in detail:

> THE COURT:

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[499] Amended Written Submission of the Honourable Gérard Dugré, at para. 430.
[500] Amended Written Submission of the Honourable Gérard Dugré, at paras. 362 to 363.
[501] Amended Written Submission of the Honourable Gérard Dugré, at para. 364.
[502] Amended Written Submission of the Honourable Gérard Dugré, at para. 415.
[503] Amended Written Submission of the Honourable Gérard Dugré, at paras. 349 to 350.
[504] Amended Written Submission of the Honourable Gérard Dugré, at para. 425.

. . . and also what do we do with your defendant motion for immediate sale? Now it's claim on the merit. What do I do with this?

Me IVAN CAIREAC :

The, the same conclusions are on the merits also.

THE COURT:

Oh. So, but is it with academic, [TRANSLATION] moot...

. . .

THE COURT:

[ENGLISH] So is the motion still live or should I dismiss it without, being without object?

Me IVAN CAIREAC:

My Lord, it depends on your schedule, actually. I had judgments rendered eight month after...

THE COURT:

No, I know, I know, I know, but what I will do it...

Me IVAN CAIREAC:

... so, so, **it's urgent.**

THE COURT:

... very short. I will do it very short, a couple of considering with respect to each conclusion and if you don't happy go in appeal and have fun. **But this, this judgment should be rendered very quickly, okay. I understand that. So it should be all (inaudible) next week, okay?**

. . .

Me IVAN CAIREAC:

If not we can deal with it right now.

THE COURT:

No, no, no. I understand that. So...

Me IVAN CAIREAC:

[TRANSLATION] My Lord...

THE COURT:

[ENGLISH] ... divorce is not contested, the divorce, so I will sit, I will look at both pleadings and I will try to do my best to do, to be fair to both, both, with respect to the evidence and the law and that's it.[505]

[505] Exhibit KSP-38, Transcription of the hearing on February 16, 2018, at p. 178, l. 6 to p. 181, l. 5.

[Emphasis added]

[514] It was therefore the urgency of the situation that in all likelihood motivated Justice Dugré to undertake to render judgment quickly. If not, why would he refuse to hear the motion for the immediate sale of the family residence that was before him? It was he who, on his own initiative, asked himself whether he had to hear the motion. Mr. Caireac's answer was clear: if deliberations on the merits were to be long (he gave an example of eight months), the motion should be decided. Justice Dugré reassured him at the time, telling him that he would render judgment quickly.

[515] It is true that at the end of the hearing, Justice Dugré stated, "[H]opefully next week you'll get something off my desk".[506] However, in context, the Committee is of the view that the use of the word "hopefully" simply specified the time frame in which he would quickly render judgment.

[516] This undertaking is also corroborated by Ms. Dumont's testimony, according to which Justice Dugré had undertaken to render judgment on March 9:

> [TRANSLATION]
>
> Q- Okay. There was... by phone, counsel were told, "The decision will be rendered on the 9th?"
>
> A- Yes . . .[507]

[517] The undertaking is confirmed by the correspondence of March 19, 2018, from Ms. Dumont to counsel:

> [TRANSLATION]
>
> Dear sirs:
>
> Regarding **the order that Justice Dugré was to render last Friday** in the above-referenced case, I am writing to you to bring you up to date.
>
> Justice Dugré had a terrible toothache starting last Thursday and had to urgently see a dentist Friday. The infection spread. He has to see the dentist again this morning. I may have to cancel his hearings scheduled for this week in Laval.

[506] Exhibit KSP-38, Transcription of the hearing on February 16, 2018, at p. 290, ll. 11 to 13.
[507] Testimony of Marie-Josée Houde Dumont, June 29, 2021, at p. 145, ll. 13 to 16.

> We therefore apologize for the inconvenience, and I will keep you abreast of any developments. Your case is still a priority.[508]
>
> [Emphasis added]

[518] What is more, Ms. Dumont related that the judgment had almost been completed at that time.[509]

[519] The correspondence sent by the parties to Justice Dugré, as well as the testimonies of Mr. S. and Mr. Caireac, also support this finding. For example, on August 21, 2018, Mr. Caireac wrote to Justice Dugré to ask when the judge thought he would be able to render judgment.[510] He also reminded him of his undertaking to render judgment within two weeks of taking the case under advisement:

> On January 12th, 2018, we submitted to You (sic) a *Motion for immediate sale of the family residence*, which was left without any attention of the Court.
>
> At the end of the hearing of February 16th, 2018, **You (sic) stated that either a final judgment or at least an order with regard to the sale of the family residence will be rendered within the two (2) weeks following the hearing**, the whole to appease the financial tension of the parties related to the existence of the Home Equity Line of Credit in the amount of $485,000.00, where only the amount of monthly interest to be paid constitutes more than $1,300.[511]
>
> [Emphasis added]

[520] The Committee cannot accept the argument that Justice Dugré concluded in his deliberations that, in the end, there was no urgency. First, Justice Dugré declared that it was not necessary to hear the motion alleging an urgent need to sell the property. The urgency is evident from the fact that the judge indicated he would render judgment on the merits quickly instead of deciding the motion.

[521] Second, there is no direct evidence of what Justice Dugré argues in his pleadings. Ms. Dumont suggested that there was a reason for not rendering the judgment within the promised time, but she was either unwilling or unable to testify on the issue, claiming that

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[508] Exhibit KSP-25.
[509] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 145.
[510] Exhibit KSP-27.
[511] Exhibit KSP-27, at p. 1.

it was up to Justice Dugré to do so. It is impossible to infer anything at all from this testimony. As for Justice Dugré, he ultimately chose not to testify.

[522] Third, assuming that the presumption of judicial integrity discussed in *K.G.K.* applies in the context of judicial misconduct, the Committee is of the opinion that this presumption is rebutted by the facts in evidence. Indeed, the judge himself told the parties at the end of the hearing that he should be able to render judgment very quickly, possibly the following week. In subsequent correspondence with the parties, Ms. Dumont reiterated that the judgment would be rendered quickly and that the case was still a priority. In addition, according to her testimony, the judgment had almost been completed by March. All these facts rebut any presumption that it was not reasonably possible to render the judgment long before the month of November.

[523] Furthermore, even if he had concluded in his deliberations that there was no urgency, the judge still had to inform the parties of this. Yet it appears that Justice Dugré deliberately chose not to do so, instead deciding to remain silent and leave the parties in the dark for several months.

[524] It should be recalled that on March 19, Ms. Dumont wrote to the parties to inform them that their case was still a priority and that she would keep them abreast of any developments.

[525] Nine days later, on March 27, judgment still had not been rendered, and Mr. Caireac sent another message to Justice Dugré, at which point things changed dramatically.

[526] In his message dated March 27, Mr. Caireac reminded the judge of the urgent motion concerning the sale of the former family residence, which he had filed at the hearing:

> We are writing to you with respect to the above-cited file, following our Court attendances . . . on February 16th last, on which the undersigned and his client raised an urgent issue concerning the sale of the former family residence of the parties. . . .

> During the foregoing Court attendances both parties agreed that there is no other option but to put the said residence for sale.[512]
>
> [Emphasis in original]

[527] Mr. Caireac went on to set out some facts that had arisen since the end of the hearing, apparently in hopes of persuading Justice Dugré that the matter had become even more urgent. He concluded as follows:

> Given the foregoing, we have no other choice but to submit to you, My Lord, our client's Motion requesting the immediate sale of the said residence and we ask you to render a judgment in this regard as our client cannot possibly keep up with the legal fees related to the present file.[513]

[528] On April 5, 2018, Mr. Litvack responded to this request, claiming that the new allegations were inappropriate and stating that he would therefore not be responding to them.[514]

[529] As for Justice Dugré, he chose not to respond. He gave Ms. Dumont the following instructions:

> [TRANSLATION]
>
> We wait. If they apply to reopen the hearing, we'll wait for that. If they want to do it, we won't show them how to do it, and we won't tell them what to do.[515]

[530] Justice Dugré seemed to be satisfied to see the parties apparently bogged down in what he perceived to be a procedural error on the part of Mr. Caireac. If his subsequent conduct is any indication, he viewed this as a release from his undertaking to render judgment quickly and to keep the parties informed. And he would not render judgment until the Associate Chief Justice Petras intervened several months later, even though the draft judgment on which he had been working was almost complete in March, according to Ms. Dumont's testimony.

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[512] Exhibit KSP-26.
[513] Exhibit KSP-26.
[514] Pièce KSP-72.
[515] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 11, ll. 1 to 5.

[531] This insistence on reopening the hearing is not supported by the content of the correpondance from Mr. Caireac. In that correspondance, he does not allude to needing to present additional evidence on the merits of the case, which would have been done by filing a motion to reopen the hearing. On the contrary, he was merely trying to reactivate his existing motion for the sale of the family residence and was asking the judge to render judgment on that motion.

[532] The Committee acknowledges that the way in which Mr. Caireac went about trying to revive his motion in his letter dated March 27 is inappropriate, in particular because he disclosed new facts in that email. Justice Dugré nonetheless knew full well that he had undertaken to render judgment promptly precisely because of the defendant's pressing need to sell the family residence, and that he had already had to extend the promised deadlines twice. He could not simply ignore the request Mr. Caireac was making on behalf of his client. He could disagree with Mr. Caireac's methods, but he had to tell him so. Justice Dugré nonetheless chose to remain silent and did not deliver his judgment until several months later.

[533] Justice Dugré makes several arguments justifying his silence:

> [TRANSLATION]
>
> Indeed, since the case was under advisement, it is clear that the judge could not respond to the requests made by counsel for KS unless (1) a formal proceeding to reopen the trial or to lift the advisement was duly made; or (2) an application was made by the Chief Justice in accordance with article 324 C.C.P., subject of course to its unconstitutionality. Failing this, the parties or their counsel cannot communicate with the judge who is deliberating on a matter.[516]

[534] Justice Dugré does not cite any authorities supporting this surprising position. The Committee recognizes that, in the vast majority of cases, the parties do not communicate with the judge, and have no reason to do so. This does not negate the fact that, in certain circumstances, a party may be required to contact the judge during their deliberations, provided they do so properly. Such would be the case, for example, if Mr. Caireac had

[516] Amended Written Submission of the Honourable Gérard Dugré, at para. 430.

written to Justice Dugré to inform him that the sale of the family residence had become moot because it had been completely destroyed in a fire.

[535] The Committee is of the view that informing the parties that the judgment would in the end be rendered much later than anticipated, or specifying that they had to apply to reopen the trial if they wanted to address the Court, does not in any way violate deliberative secrecy. In acting as he did, Justice Dugré tarnished the integrity of the justice system and the judiciary. His silence cannot be justified in the name of deliberative secrecy.

[536] In addition, this position is inconsistent with the fact that Justice Dugré contacted the parties at least three times during his deliberations precisely because he wanted to keep them informed of the delays in rendering judgment—first, in a conference call in March 2018, and then through Ms. Dumont's correspondence dated March 19, 2018, and September 18, 2018. On the subject of the latter correspondence, Ms. Dumont explained that, in her opinion, the judge did not want to undertake to render judgment by a precise date, for fear of not being able to honour this undertaking once again:

> [TRANSLATION]
>
> Q- Okay. And at that time, there was no undertaking for a date for the upcoming judgment?
>
> A- There wasn't... the judge wasn't able to guarantee that, because of what was coming. **We didn't want... I think he didn't want to get caught twice.** Because it was really hoped that it could be rendered on March 9th; the judge hoped to do so. And you'll ask him why...[517]
>
> [Emphasis added]

[537] In all likelihood, Justice Dugré's silence had nothing to do with deliberative secrecy.

[538] On November 14, 2018, Mr. Caireac and Mr. Litvack had to resign themselves to writing to Associate Chief Justice Petras to seek her assistance in having judgment

[517] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 147, ll.16 to 24.

rendered. They mentioned in their correspondence that both of them had contacted Ms. Dumont to find out when judgment would be rendered, without success:

> Over the course of the past several months, **both attorneys have corresponded with Justice Dugré's assistant**, Madame Marie-Josée Houde-Dumont, either in writing or by telephone, **on a number of occasions** in order to request updates on when a final Judgment would be rendered, the whole to no avail and without any explanation.[518]
>
> [Emphasis added]

[539] The Committee also rejects Justice Dugré's argument that, without Mr. Litvack's testimony, such a statement constitutes inadmissible hearsay.[519] Once again, such an objection ignores the inquisitorial nature of a process such as ours, marked by the active search for truth. The letter is co-signed by Mr. Litvack and printed on the letterhead of his firm, and counsel for Justice Dugré never asked Ms. Dumont whether Mr. Litvack had contacted her. In the circumstances, the Committee concludes that both lawyers tried to contact the judge to find out when judgment would be rendered.

[540] As was mentioned, Justice Dugré argues that the analysis of the Court record shows that there was in fact no urgent need to render judgment. He bases his argument on, among other things, the fact that the case had been before the courts for several years already, and that Mr. S. was responsible for certain delays incurred in the appeal proceedings. The Committee finds that this is not relevant to the case at hand. And even if such were the case (which was not established), Justice Dugré should not have fuelled the confusion. He had a responsibility to inform counsel that, in the end, the judgment would not be rendered as per his undertaking.

[541] Justice Dugré adds that, in any event, Mr. S. did not suffer any harm because of the delay since this additional time allowed Mr. S. to profit from a very favourable real estate market and sell the family residence at a higher price. Once again, even if we assume that the evidence could support such a claim, this after-the-fact justification is not relevant.

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[518] Exhibit KSP-29.
[519] Amended Written Submission of the Honourable Gérard Dugré, at paras. 363 and 364.

[542] Finally, the Committee finds that the case's complexity (which, moreover, has not been proven) does not justify the more than nine months of deliberations in the circumstances.

6. Conclusion

[543] For the above reasons, the Committee answers the following two allegations in the affirmative:

> Allegation 1A
>
> Did Justice Gérard Dugré fail in the due execution of his office by delivering judgment in *K.S.* more than nine months after taking the case under advisement given that the *Code of Civil Procedure* stipulates a six-month time limit, except for an exemption from the Chief Justice?
>
> Allegation 1B
>
> Did Justice Gérard Dugré fail in the due execution of his office by not replying to the letter from a party in *K.S.* reminding him of the urgency of delivering judgment in light of his undertaking to do so quickly?

D. CHRONIC NATURE OF THE PROBLEM

1. Background

[544] In connection with Mr. S.'s complaint to the CJC, Chief Justice Fournier made the following observation: Tardiness in delivering judgment is a [TRANSLATION] "chronic problem" for Justice Dugré.[520]

[545] In fact, Chief Justice Fournier's predecessor, Chief Justice François Rolland ("**Chief Justice Rolland**"), twice filed a complaint with the CJC because of Justice Dugré's delays in rendering judgment. In November 2010, Chief Justice Rolland filed his first complaint regarding excessive delays less than two years after Justice Dugré was appointed to the Superior Court.[521] At the time, it was resolved that Justice Dugré would be offered assistance in the form of mentoring, and former Chief Justice Guy Richard of the Court of Queen's Bench of New Brunswick helped Justice Dugré catch up on his late judgments.

[520] Exhibit JC-1.
[521] Exhibit JC-2.

[546] In January 2014, Chief Justice Rolland filed a new complaint regarding Justice Dugré, expressing the view that, despite the help he had been given and even though he had made progress, Justice Dugré still had not adopted good work habits allowing him to render judgments in a timely manner.[522]

2. Evidence Before the Committee

a) Testimony of Chief Justice Fournier and table of Justice Dugré's delays

[547] The Committee heard the testimony of Chief Justice Fournier, who has held the office of Chief Justice since June 2015. From December 2013 to June 2015, he the was associate chief justice.[523]

[548] Chief Justice Fournier explained that his role includes developing general policies for the Court, coordinating with various governmental organizations, assigning judges to cases, receiving complaints from litigants, and following up when judges have matters under advisement (deliberations).[524]

[549] On the issue of following up on deliberations, he stated that in civil cases, article 324 C.C.P. provides for several advisement periods, depending on the type of application made to the Court. For the purposes of the present inquiry, it is sufficient to focus on two of these periods, namely, the two-month period for certain family law matters or for judgments on interlocutory applications (the "**short period**"), and the six-month period for cases on the merits taken under advisement (the "**long period**"). He added, however, that he generally pays little attention to the short period, finding the long period to be more important.[525]

[550] He explained that he periodically receives two lists of cases under advisement: one that identifies cases that have been under advisement for more than 30 days for short periods, and another that identifies cases that have been under advisement for more than

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[522] Exhibit JC-3.
[523] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at p. 66.
[524] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at p. 66.
[525] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 66 to 69, and June 15, 2021, at p. 37.

150 days for long periods.[526] These lists are generated by Chief Justice Fournier's assistant from the court ledger. They are then corrected to weed out any errors there might be.[527] Chief Justice Fournier gave the example of judgments already rendered but not yet recorded (entered) in the court ledger, and of incorrect starting dates for deliberations. These corrected lists give a more realistic portrait of deliberations that may have exceeded the advisement period.[528]

[551] Chief Justice Fournier then writes to the judge to notify them that the deadline for rendering judgment is about to expire or has already expired ("**advisement follow-up letter"**). Chief Justice Fournier also asks the judge concerned to confirm whether the judgment was in fact late.[529] This check is done because the court ledger is not infallible. For example, the start of deliberations may be delayed to allow the parties to provide additional written submissions or authorities ("**advisement after notes**"), and such a delay might not be recorded in the court ledger, thus invalidating the calculation of the advisement period.[530] By asking judges to confirm whether the judgment is really late, Chief Justice Fournier is therefore able to ascertain his lists are reliable.[531]

[552] Chief Justice Fournier also explained in what circumstances he would exercise his power to extend the periods set out in article 324 C.C.P. In general, such requests are made to him by a judge in a particular situation, or because of a case's complexity.[532] He would then agree to extend the period but ask the judge to write to the parties to notify them of the situation. In his view, the parties have a right to know approximately how long it will be before they receive a judgment.[533]

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[526] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 173 to 174. The evidence shows that the information related to the short period was published in January 2016 (Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 175 to 176).
[527] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at pp. 11 to 12.
[528] Exhibit JC-90, admissions 1 and 2.
[529] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 215.
[530] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 97 to 98, and June 7, 2021, at p. 179. The Chief Justice added that, in his opinion, the technology used for the court ledgers is outmoded, and that the ledgers are often full of errors (June 7, 2021, at pp. 179 to 181 and 208 to 209).
[531] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at pp. 12 to 13.
[532] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 237 to 238.
[533] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 71 to 73.

[553] Chief Justice Fournier said that if he receives a complaint from counsel related to delays in rendering judgment, he writes to the judge directly, being careful not to specify which of the two parties complained. The purpose of such a precaution is to avoid a situation where one party would get the impression that they lost their case because of their complaint. Accordingly, Chief Justice Fournier encourages the judge in question to keep the parties informed.[534]

[554] He testified he has never removed a judge from a case under advisement and reassigned it to another judge, as article 324 C.C.P. allows. He explained as follows:

> [TRANSLATION]
>
> I have held this office for six years, we've been experiencing a staffing crisis, a shortage of judges, for six years, and I don't resort to taking one judge's work and giving it to someone else, because the overworked judges end up being even more overworked, and then they too end up breaking down. So, that's how I manage things.[535]

[555] Chief Justice Fournier also testified about the assignment of civil cases and Superior Court judges' workload. He explained that the judicial year lasts 10 months. It begins on Labour Day and ends on Canada Day. Each Superior Court judge is required to sit a minimum of 10 days per month during that period, for a total of 110 days. (They are also required to sit 6 days during the summer.)[536]

[556] If a judge sits more than the minimum days required in a given month, the additional days are not credited to them for the following month. A judge may also be called upon to sit in multiple judicial districts in Québec, depending on the Court's needs.[537] Finally, if cases assigned to a judge are settled, the judge must notify the coordinating judge so that they can be reassigned and help out their colleagues.[538]

[557] Chief Justice Fournier added that he tries, to the extent possible, to assign cases to judges on the basis of their respective talents or affinities for a given subject-matter, or

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[534] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 72 to 73 and June 15, 2021, at pp. 16 to 21.
[535] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at p. 73, ll. 11 to 19.
[536] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 239 to 240.
[537] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 246 to 248.
[538] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 241, 248.

to follow up on specific requests they have made.[539] He also noted that the number of cases, their complexity and the number of judgments that a judge must render can vary from year to year. Even with the same number of sitting days, the workload can nonetheless vary over a given year. That being said, the Chief Justice was of the opinion that things evened out over the course of a judge's career.[540]

[558] Finally, it appears that the number of cases that a given judge has under advisement does not generally have an impact on their assignments, although it would be possible to grant a struggling judge a temporary break from hearing cases upon the judge's request. He added, however, that such breaks cannot be the norm, given the limited number of judges and the fact that another judge will necessarily have to take on the workload of a judge who is not sitting.[541]

[559] Chief Justice Fournier was also of the view that Superior Court judges are overworked. He added that the Superior Court offers assistance and organizes seminars to help judges who experience difficulties, including complying with advisement periods.[542] He also explained that, for part of the period during which Justice Dugré sat, there was a subcommittee on deliberations, consisting of the Honourable Carole Hallée and the Honourable André Prévost, to help judges experiencing this sort of problem.[543]

[560] Chief Justice Fournier explained why, in his letter to the CJC, he characterized Justice Dugré's difficulty rendering judgment within the prescribed periods as a [TRANSLATION] "chronic problem".[544] He explained that this problem surfaced soon after Justice Dugré's appointment to the Superior Court and that it persisted throughout his judicial carreer. He also noted that the delays continued despite the fact that Justice Dugré has not been sitting since September 2019, except for cases of which he was already seized. He explained as follows:

> [TRANSLATION]

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[539] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 242, 245.
[540] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 254 to 255.
[541] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 254 to 255.
[542] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 259.
[543] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at pp. 8 to 10.
[544] Exhibit JC-1.

Q- I'd like you to explain to me or to the members of the Committee what, in your opinion, the problem is.

A- Judges have six months or they're given up to six months, even when the time limit is lower, to render judgment. **Justice Dugré was appointed at the end of 2009, and in 2010, he was already running behind. It's a situation that persisted, except maybe with a few exceptions, it's a situation that persisted until just recently, until the month of January [2021]. That's what I call a chronic problem.**[545]

. . .

Q- So, the periods set out in 324 [of the *Code of Civil Procedure*], formerly in 465?

A- That's not having... that's it, yes, in terms of the *Code of Civil Procedure*, and I'm required to take care of it. But it's also in terms of the due diligence that judges must have. The decisions that are rendered, especially in family matters, change people's lives. A decision must be made. A decision must be made. One way or another, but a decision must be made. And correctly, to the extent possible.

And that, since the beginning... I wasn't there, at the start, I was in Laval when Justice Dugré was appointed. I wasn't intimately involved in the management of the Court. I came back in 2013, we met with Justice Dugré, François Rolland and I, Justice Rolland and I, we met with Justice Dugré. There were 12 at that time that were past due, there were others that were coming.

Moreover, you'll see what happened next; we asked him what he was doing, and some more were added. There were at least 2, and it went up to 12. All the time. That's it. That's why I said "chronic".[546]

. . .

Q- You already talked a little bit about the word "chronic". For you, the adjective "chronic", what do you mean?

A- Well, it's all the time, since he became a judge.

Q- So, an ongoing situation?

A- It's a situation that's been going on from the start. So, when I sent that letter, in 2019, he had been a judge for nine years and a few months; and he's been late for nine years.[547]

. . .

A. Well, that's what I just said a minute ago. He was appointed... the only time he wasn't... at the time I wrote my letter, and **the only time he**

[545] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 275, ll. 10 to 22.
[546] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 276, l. 9 to p. 277, l. 11.
[547] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at p. 278, ll. 7 to 18.

> **wasn't late, it was the first six months, because the six months were not up yet, okay? And from then on, he's... he was late, despite everything, despite the fact that he had nothing else to do. Except that he finished some pending cases, for example. It's not true that he was doing nothing, finished a few pending cases, but he was running late up to December 30 [2020]**.[548]
>
> [Emphasis added]

[561] He added that Justice Dugré's situation stood out from those of the other judges:

> [TRANSLATION]
>
> Q- Could you tell us, on average, overall, how many notices you sent per month?
>
> . . .
>
> A- The ones in default... over the four or five pages, I could send maybe six or seven notices.
>
> . . .
>
> A- I'd send six, seven notices. There were some that got two. There was one that got four. Justice Dugré, it was more striking with him. I certainly had my eye more on him.
>
> Q- Pardon?
>
> A- I certainly had to keep my eye more closely on him because the list was too long. But I sent notices to others too. . . .[549]
>
> . . .
>
> Q- **Would you consider that there are other judges under your jurisdiction who have the same problem?**
>
> A- **No. Never to that extent.**[550]
>
> [Emphasis added]

[562] He stated that he had personally offered to help Justice Dugré only once, in January 2014, after assuming the office of associate chief justice.[551] He said he met with Justice Dugré and Chief Justice Rolland for approximately two or three hours to discuss

[548] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 71, l. 19 to p. 72, l. 6.
[549] Testimony of the Honourable Jacques Fournier, J.C.S., June 7, 2021, at p. 214, l. 11 to p. 215, l. 3.
[550] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 72, ll. 13 to 16.
[551] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 24.

the 12 judgments that were late at that time. He explained that he offered to help him with the procedural matters, but Justice Dugré refused.[552]

[563] He added that he noticed an improvement in the time Justice Dugré took to render judgments, but this proved to be short lived, unfortunately:

> [TRANSLATION]
>
> And at one point, he was almost back up to date, and it's in this... a few times, I tried to encourage him, even, by saying, "It's going well, keep it up, it's going well". But immediately after that, we ended up right back where we started.[553]

[564] Finally, Chief Justice Fournier provided a table collating all the delays and the length of deliberations for Justice Dugré for the period from June 2014 to January 2020 ("**table of delays**"). This table was created by his assistant for the purposes of this inquiry.[554]

b) Testimony of Associate Chief Justice Petras

[565] Associate Chief Justice Petras explained she exercises the same powers as Chief Justice Fournier in his absence.[555] She must therefore intervene when Superior Court judges are late in rendering judgment.

[566] She stated she frequently had to follow up with Justice Dugré to make sure he rendered judgment promptly. She also confirmed the problem persisted after September 2019, after which point, for all intents and purposes, he was no longer sitting:

> [TRANSLATION]
>
> We spurred him along all the time, we pushed him all the time, we... [ENGLISH] you know, [TRANSLATION] we checked all the time, asking when the judgments were going to come out. "Do your job. Get the judgments out". . . .
>
> Q- There was never any resolution of that problem?

[552] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at pp. 58 to 59.
[553] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 59, ll. 8 to 12.
[554] Exhibit JC-79.
[555] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at p. 21.

A- No. No. Not as far as I know, no. But no, because there were always delays.

Q- Okay.

A- Even after he was no longer sitting, it took some time before the judgments came out.[556]

[567] She explained that the list of cases under advisement was generated from the court ledgers, and that sometimes it would contain errors.[557] That is why the chief justices ask judges who seem to be falling behind in their deliberations to confirm whether such is indeed the case.[558]

[568] She also confirmed that the minutes must be sent to the court office so that they can be entered in the court ledger at the end of every hearing day, but that some judges tended to hold on to the minutes of hearings under advisement for several days or even until judgment was rendered. She noted that it was a problem that grew worse during the Covid-19 pandemic, particularly because of a lack of staff. This is why, in March 2021, she wrote to the judges of the Superior Court to remind them that minutes must be entered the same day as the hearing or as soon as possible thereafter.[559]

[569] Associate Chief Justice Petras confirmed that she never offered to help Justice Dugré, as he never asked her for any help.[560] In addition, she did not doubt that Justice Dugré often accommodated his colleagues by replacing them in cases they were less interested in.[561]

c) Testimony of Marie Dumont and table of Justice Dugré's deliberations

[570] Ms. Dumont has been Justice Dugré's assistant since 2010. Ms. Dumont related that, when she began working with Justice Dugré, she had the impression he was drowning in work.[562] She stated as follows:

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[556] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at p. 16, ll. 1 to 15.
[557] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at pp. 26 to 27.
[558] Testimony of the Honourable Eva Petras, J.S.C., June 28, 2021 (in camera), at p. 24.
[559] Testimony of the Honourable Eva Petras, J.S.C., June 7, 2021, at pp. 27 to 30.
[560] Testimony of the Honourable Eva Petras, J.S.C., June 28, 2021, at p. 28.
[561] Testimony of the Honourable Eva Petras, J.S.C., June 28, 2021, at pp. 31 and 35.
[562] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 128 to 129.

[TRANSLATION]

Q- Now, for Justice Dugré, more specifically, how long have you been working with him?

A- It's been 10 years.

Q- It's been 10 years. And in... when you started, what were you able to observe in terms of his situation? How was he in terms of organization or work?

A- The image that I, that comes to my mind, it's the word "drowning". I'll tell you, I had the impression of watching a man drowning, and no one could help him, no one was helping him. That's the image I had when I started.

Q- Why did you have that impression?

A- He was overwhelmed. He was drowning in work.[563]

[571] She confirmed that Justice Dugré kept his own table for following up on cases under advisement ("**table of deliberations**").[564] According to Ms. Dumont, that table of deliberations covers all the judgments Justice Dugré took under advisement since his appointment to the Superior Court in 2009. It was initially created by Justice Dugré's first assistant, and Ms. Dumont continued to update it frequently after she started working with him. She entered information in it as judgments were rendered or taken under advisement. She added that the date a case was taken under advisement was adjusted if additional submissions were received, for example.[565] Once the table was updated, she would give it to the judge, who was free to do with it as he wished.[566]

[572] Ms. Dumont confirmed being responsible for typing Justice Dugré's replies to Chief Justice Fournier's advisement follow-up letters. She also stated that she checked whether the information in them (date taken under advisement and number of days under advisement) was correct. To do so, Ms. Dumont referred to the table of deliberations and corrected any inaccurate information.[567]

[563] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at p. 128, l. 11 to p. 129, l.1.
[564] Exhibit JC-87.
[565] Testimony of Marie-Josée Houde-Dumont, June 29, 2021, at pp. 156 to 158 and 163 to 164.
[566] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at pp. 31 to 33.
[567] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at pp. 32 to 33.

[573] In support of her testimony, Ms. Dumont produced a document she had collated and annotated, which consists of the following:

- A copy of Justice Dugré's agenda for the period from December 2017 to December 2018, inclusively. Ms. Dumont's annotations identify the number of days sat and the number of decisions rendered (51) for this period.
- Tables of Justice Dugré's Superior Court assignments for the periods from September 2017 to June 2018 (110 days) and from September 2018 to June 2019 (110 days).[568]

[574] When questioned about the table of Justice Dugré's Superior Court assignments for the period from September 2017 to June 2018, she noted that the figure shown for the total number of days sat, 110 days, is inaccurate. Justice Dugré was actually assigned to a very long trial, the *Krantz* case, as of September 2017. But the trial did not proced and, from September to November 2017, the judge did not sit the expected 30 days. Instead, he remained available for the parties as they negotiated a settlement.[569]

[575] Ms. Dumont also said she had witnessed Justice Dugré asking for help with these time limits for rendering judgment, although she could not say precisely who had been asked for this help. In any event, she added he had received no such help.[570]

[576] Finally, she stated that Justice Dugré was accommodating and helpful to his colleagues, agreeing to switch cases with those who contacted him.[571]

d) Testimony of Leslye Picard and statistics concerning nine Superior Court judges

[577] Justice Dugré called Leslye Picard, a paralegal who works with one of the lawyers in this case. He also provided documents Ms. Picard collated or prepared using information from SOQUIJ and court ledgers, in which she attempted to set out the history

[568] Exhibit D-42.
[569] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at pp. 21 and 24 to 29. This is confirmed by Exhibit JC-88.
[570] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 33.
[571] Testimony of Marie-Josée Houde-Dumont, June 29, 2021 (in camera), at p. 33.

of nine Superior Court judges' delays in rendering judgment over periods ranging from 7 to 12 years.[572]

[578] In her testimony, Ms. Picard acknowledged that she had not done any additional checks for this exercise. For example, she did not review the judgments.[573]

[579] The statistics collated by Ms. Picard with regard to the nine Supreme Court judges are as follows:

	Percentage of judgments rendered after more than 6 months under advisement	Number of judgments rendered
Judge 1	0.5%	217
Judge 2	2.4%	165
Judge 3	0.4%	239
Judge 4	0%	273
Judge 5	4%	186
Judge 6	27%	105
Judge 7	18%	154
Judge 8	12%	203
Judge 9	19%	151

e) Expert opinion on nine Superior Court judges' delays in rendering judgment

[580] The parties filed a joint expert opinion prepared by a lawyer, Patrick Ouellet. Mr. Ouellet carried out an exercise similar to what Ms. Picard had done, with nine Superior Court judges, but using the lists of cases under advisement.[574] Mr. Ouellet also catalogued all correspondence related to the delays of each judge.[575]

[572] Exhibit D-28.
[573] Testimony of Leslye Picard, June 23, 2021, at pp. 132 to 134.
[574] Exhibits JC-89 and JC-90.
[575] Namely, advisement follow-up letters, letters from the tardy judge to the parties' counsel or to the Chief Justice explaining the delay, and the parties' correspondence with the Chief Justice asking the tardy judge to render judgment.

[581] The following table summarizes his observations for the period from July 1, 2015, to September 13, 2019:

	More than 6 months under advisement	More than 12 months under advisement
Judge A	2	0
Judge B	2	0
Judge C	8	4
Judge D	28	3
Judge E	2	0
Judge F	5	1
Judge G	1	2
Judge H	15	4
Judge I	0	0

[582] Finally, certain admissions related to the expert opinion were also made. These admissions deal with, among other things, the steps taken by Chief Justice Fournier's office before sending an advisement follow-up letter.[576] Accordingly, an advisement follow-up letter would only be sent once one of the following steps had been taken:

- Chief Justice Fournier's assistant sends a reminder to the assistant of the judge concerned.
- At the request of Chief Justice Fournier, Associate Chief Justice Petras gives the judge concerned a verbal reminder.
- Chief Justice Fournier himself gives a verbal reminder.[577]

[583] Chief Justice Fournier could also decide not to send a follow-up letter if one of these conditions is met:

- He is aware of mitigating circumstances, such as the judge concerned having health problems, family issues, especially difficult and sensitive cases, or any other personal reasons considered reasonable in the circumstances.

[576] Exhibit JC-90, at para. 3.
[577] Exhibit JC-90, at para. 3.

- The judge concerned has taken the initiative to write to the parties to notify them of the delay in rendering judgment and given them an estimated date the judgment will be delivered.

- The judge concerned has taken the initiative to write to the Chief Justice to notify him of the delay in rendering judgment and given him an estimated date the judgment will be delivered.[578]

f) Testimonies of counsel in cases presided by Justice Dugré

[584] Regarding the issue of delays in rendering judgment, Justice Dugré called as witnesses 28 lawyers in cases over which he had presided. The evidence shows that 20 of these lawyers acted in one or more cases where, according to the table of deliberations, Justice Dugré took more than six months to render judgment.[579] These deliberations exceeded the six-month advisement period by a range of 20 days to more than 620 days (20 months).

[585] These witnesses stated that, in their opinion, the delay in rendering judgment had not caused their clients any harm. For example, when asked about the impact of the approximately 26 months of deliberations in his case,[580] Patrick Henry stated the following:

> [TRANSLATION]
>
> Apart from the fact that, during that time, the interest and the additional indemnity continued to rise, it became moot, given that we won our case. The action was dismissed.[581]

[586] And when questioned about the impact of more than 24 months of deliberations,[582] Frédéric Dupont stated the following:

> [TRANSLATION]
>
> Q- What impact did this have on your case?
>
> A- Listen, the judgment was certainly in favour of my clients. Maybe the fact that it took longer meant the judgment rendered was better, I don't know. But one thing is certain: it's that we got a favourable judgment.

[578] Exhibit JC-90, at para. 3.
[579] Two others testified to delays in files where the short period applied.
[580] Exhibit JC-87, at l. 124.
[581] Testimony of Patrick Henry, June 18, 2021, at p. 89, ll. 19 to 23.
[582] Exhibit JC-87, at l. 127.

> And the Court of Appeal, in February, confirmed that the judgment was impeccable, so… in terms of both the facts and the law.
>
> Q- If I ask you the question, as a lawyer or as a member of the public: What do you think of imposing a rule making advisement periods for a judge rendering judgment in a case mandatory or imperative, without nuance and without regard for the particular circumstances or the wishes of the parties, what…
>
> A- Well, for what my opinion as a legal professional is worth, I can understand that it would be important, in our justice system, to have a time limit in that regard, because litigants expect to have a… rightly, to have access to justice. Except that, on the other hand, I've never pestered Justice Dugré during the two years, because I respected, out of deference, how he performed his duties.
>
> What I mean is, if he himself thought that the issues at stake or the assessment of the evidence required more study or analysis, or if there were other cases to be taken under advisement or dealt with at the same time, I don't know. But, indeed, I never sent an email, I never called his office even once to ask because I… out of deference, I respected what...
> . . .
>
> But, in any case, that wouldn't have been in my clients' interests, or in the interests of the litigants in general, except that it's a bit hypothetical, because I don't really know what happened, so…
>
> Q- I have no further questions.
>
> A- Take it for what it's worth.[583]

g) Other evidence

[587] Presenting counsel filed the voluminous correspondence between Justice Dugré and the Superior Court related to delays in rendering judgment. In particular, that correspondence included the following:

- Two complaints made by Chief Justice Rolland to the CJC;[584]
- The Superior Court's correspondence with Justice Dugré related to the advisement follow-up letters;[585]

[583] Testimony of Frédéric Dupont, June 16, 2021, at p. 87, l. 5 to p. 89, l. 4.
[584] Exhibits JC-2 and JC-3.
[585] Exhibits JC-5 to JC-38 and JC-41, JC-44, JC-45, JC-48 to JC-57, JC-59 to JC-61, JC-65 to JC-73, JC-77, JC-78 and JC-80.

- Correspondence related to four complaints or follow-ups from counsel to Chief Justice Fournier, asking that judgment be rendered;[586] and

- Correspondence related to Justice Dugré's removal from future assignments, except for cases already undertaken, effective September 13, 2019.[587]

[588] The parties also agreed on an admission to the effect that Chief Justice Rolland intervened with Justice Dugré on or about December 2, 2014, even though the hearing had been held on November 12, 2014, and therefore even before the expiration of the period provided in the *Code of Civil Procedure*. This was at the request of at least one party. Justice Dugré rendered judgment as soon as possible after this intervention, that is, on December 10, 2014.[588]

[589] Finally, Justice Dugré filed several judgments or other documents in an attempt to establish the complexity of certain decisions he had to render, the fact that some of these decisions were upheld on appeal,[589] and certain errors in the advisement follow-up letters, or to demonstrate his ability to render judgment promptly in urgent, important cases,[590] for example, in an application to authorize the amputation of a limb.[591] He also filed evidence to establish that, in *Loyola c. Québec (P.G.)*, the Court of Appeal took the case under advisement for seven months, and the Supreme Court of Canada for almost a year, Justice Dugré having himself taken it under advisement for one year.[592]

3. Position of Justice Dugré

[590] In his written submission, Justice Dugré stated that he deems it necessary to render a large number of written judgments, and that his decision to do so is part of his independence as a judge. He notes that, if that decision is up to him, then the time given to judges to render judgment is also part of judicial independence, whether a judgment is rendered orally or in writing.[593]

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[586] Exhibits JC-39, JC-40, JC-43, JC-46 and JC-47, JC-58 and JC-62 to JC-63.
[587] Exhibits JC-74 to JC-76.
[588] Admission in lieu of Exhibit D-74.
[589] See, for example, Exhibit D-88.
[590] Exhibits D-81 to D-83, D-85 and D-85A.
[591] Exhibit D-84.
[592] Exhibits D-78 and D-79.
[593] Amended Written Submission of the Honourable Gérard Dugré, at paras. 378 to 381.

[591] He submits he is not a [TRANSLATION] “lazy person who, for lack of interest, shows no concern for the cases they take under advisement, or for the duration of their deliberations”. In his view, he renders just as many judgments within the prescribed periods as his colleagues, delivering even more written judgments than they do. He adds that, despite his choice to render many judgments in writing, he does not have more late judgments than many of his colleagues.[594] According to Justice Dugré, his office follows up to some extent on cases under advisement, as appears from the advisement follow-up table.[595]

[592] In his written submission, Justice Dugré argues that the problem with delays in rendering judgment stems from the case assignment process, which creates delays and does not foster efficient management of judges’ work time. He offers the example of the judges’ obligation to sit 10 days a month. If these 10 days were concentrated over two weeks, deliberations would not be interrupted; which would ensure their efficiency. In this sense, the problem is systemic since, in practice, no judge is able to comply with the C.C.P.’s advisement periods all the time.[596]

[593] Justice Dugré adds that this systemic problem is exacerbated not only by the Superior Court’s shortage of judges, but also of staff in general, such as assistants and clerks.[597] In addition, he states it is impossible for judges to follow up on advisement periods adequately, owing to the archaic technology dating back to the 1970s that is used to keep the court ledger.[598]

[594] Justice Dugré is of the view that he has been treated differently from other judges throughout his career. According to his written submission, he did not have a secretary in his first six months after being appointed to the bench. He criticizes Chief Justice Rolland for filing a complaint against him with the CJC instead of offering him help. At that time, Justice Dugré had been a judge for less than two years.[599] He also notes that he was

[594] Amended Written Submission of the Honourable Gérard Dugré, at paras. 382 to 385.
[595] Amended Written Submission of the Honourable Gérard Dugré, at para. 386.
[596] Amended Written Submission of the Honourable Gérard Dugré, at paras. 388 to 390.
[597] Amended Written Submission of the Honourable Gérard Dugré, at para. 391.
[598] Amended Written Submission of the Honourable Gérard Dugré, at para. 392.
[599] Amended Written Submission of the Honourable Gérard Dugré, at para. 393.

never given any [TRANSLATION] “sitting day break”, even though this was given to other judges.[600]

[595] Justice Dugré acknowledges that, following Chief Justice Rolland’s first complaint to the CJC, he was given a mentor. However, he adds that he was unable to limit the number of written judgments he renders because he thinks they are essential to handling his cases properly. This choice to render so many judgments in writing necessarily causes delays, which are made even worse by the Superior Court’s systemic problems.[601]

[596] Justice Dugré acknowledges having received 14 advisement follow-up letters in approximately five years. He notes that this represents 3 advisement follow-up letters a year, or less than 2 if the notices received in 2017 are excluded.[602] However, he insists that these follow-up letters are not proof that he was late in rendering judgment, since Chief Justice Fournier has acknowledged that these lists may contain errors; this is why the Chief Justice asks the judges to whom he sent these notices to verify their accuracy.[603] Justice Dugré claims to have identified two errors in one of these advisement follow-up letters.[604] He adds that some of these notices concern judgments subject to a short advisement period, which as Chief Justice Fournier himself admits, does not raise the same degree of concern as the judgments subject to a long period. In addition, the short periods are difficult to identify.[605]

[597] Justice Dugré adds that the 14 advisement follow-up letters are not proof that these letters were sent systematically, and that [TRANSLATION] “it would appear that for some quite long periods of time, on several occasions, Justice Dugré did not have any delays in deliberations”.[606] As for the periods when the judge did have delays in his deliberations, Justice Dugré invoked the domino effect to argue that it then became [TRANSLATION] “inevitable that other judgments would come after the advisement periods

[600] Amended Written Submission of the Honourable Gérard Dugré, at para. 396.
[601] Amended Written Submission of the Honourable Gérard Dugré, at paras. 394 and 395.
[602] Amended Written Submission of the Honourable Gérard Dugré, at paras. 367-369.
[603] Amended Written Submission of the Honourable Gérard Dugré, at para. 370.
[604] Exhibit JC-57.
[605] Amended Written Submission of the Honourable Gérard Dugré, at para. 372.
[606] Amended Written Submission of the Honourable Gérard Dugré, at paras. 374 and 375.

provided for in article 324 CCP, and one can well imagine that this happened not only in 2017, but also in other years".[607]

[598] Justice Dugré makes some comments regarding the correspondence related to the advisement follow-up letters. Although he acknowledges that some advisement follow-up letters went unanswered, he notes that the letters [TRANSLATION] "did not necessarily call for a response" or "did not request a response".[608]

[599] Justice Dugré also draws the Committee's attention to certain responses to these follow-up letters in which he apologized for the delay, explained the reasons for his delay or even informed the Chief Justice of the date judgment would be rendered.[609] He refers in particular to a letter dated December 11, 2019, in which he asks Chief Justice Fournier to extend the six-month advisement period for two of the six judgments mentioned in the advisement follow-up letter.[610] The Chief Justice replied as follows:

> [TRANSLATION]
>
> I will consider your requests for an extension of time once you have rendered the judgments promised for the month of December, which according to the information in the court ledger does not appear to have been done in court files 500-17-093330-168 and 500-17-096084-168.
>
> In addition, you will have to explain to me the grounds for an extension of time.[611]

[600] In his written submission, Justice Dugré states:

> [TRANSLATION]
>
> Given this refusal to extend the advisement periods, Justice Dugré was unable to render judgment within the times prescribed by the Code, but he did render them on the earliest date possible.
>
> Moreover, as Justice Dugré mentions in one of his emails, the pandemic had created an atmosphere that was not conducive to writing judgments, and the time limits had been suspended.[612]

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[607] Amended Written Submission of the Honourable Gérard Dugré, at para. 376.
[608] Amended Written Submission of the Honourable Gérard Dugré, at para. 377.
[609] Amended Written Submission of the Honourable Gérard Dugré, at para. 377.
[610] Exhibit JC-80, at pp. 4 to 5.
[611] Exhibit JC-80 at p. 6.
[612] Amended Written Submission of the Honourable Gérard Dugré, at para. 377.

[601] Justice Dugré engages in a similar exercise with regard to the four complaints or requests for intervention made to Chief Justice Fournier by the parties or their counsel concerning the length of the deliberations in their cases, although he does not acknowledge them as complaints.[613]

[602] Justice Dugré also argues that he has always complied with article 324 C.C.P., since he has never been removed from a case under advisement since his appointment in 2009.[614]

[603] Finally, Justice Dugré notes that the Court of Appeal has dealt with the Morin case, in which he dismissed a motion to dismiss after seven months of deliberations. At the hearing, one of the judges of the Court of Appeal addressed the complainant, who was self-represented, stating as follows:

> [TRANSLATION]
>
> So, Mr. Morin, we think that the case will wrap up today. The judge heard you, and, perhaps took some time to respond to you, seven months. Which proves that he spent a long time reflecting upon it, but his response, it is well founded. So, for the purposes of the minutes, here is the rule that will be recorded.[615]

[604] This allegedly demonstrates just how complex the decision to be rendered was.

4. Discussion

a) Objections to evidence

[605] In the Decisions on Preliminary Motions, the Committee rejected Justice Dugré's argument that Chief Justice Joyal and the Review Panel could not consider Chief Justice Fournier's statements in the early screening process triggered by Mr. S.'s complaint.[616]

[613] Amended Written Submission of the Honourable Gérard Dugré, at paras. 398 to 399.
[614] Amended Written Submission of the Honourable Gérard Dugré, at para. 415.
[615] Amended Written Submission of the Honourable Gérard Dugré, at para. 331 and Exhibit D-88.
[616] Decisions on Preliminary Motions, at para. 96.

[606] In addition, the Committee rejected Justice Dugré's argument that the CJC could not consider Chief Justice Fournier's comments because the Chief Justice had not filed a formal complaint.

[607] It also rejected Justice Dugré's argument that a chronic problem of delay could not, under any circumstances, be investigated by the CJC, since each delay must be viewed in its context and the CJC would only have jurisdiction if each of the alleged delays could on its own lead to the removal of the judge from office.[617] In the Committee's view, a chronic problem in rendering judgment in a timely manner can be investigated and may lead to a recommendation that the judge be removed from office if the problem is severe enough that it renders them unable to duly execute the function of their office.[618]

[608] Finally, the Committee did not accept the argument that it would be inappropriate to consider Chief Justice Rolland's prior complaints to the CJC since they had not been proven, nor did it accept the argument that the doctrine of cause of action estoppel prohibits consideration of those complaints in the course of the investigation or inquiry.[619]

[609] These arguments were raised again during the inquiry; however, the Committee is of the view that nothing transpired in the course of the inquiry that would justify us revisiting our earlier decisions.

[610] We would add that, although the existence of prior complaints is not in and of itself proof that they were founded, it does show at minimum that Justice Dugré had been aware of the concerns of the chief justices and the CJC regarding delays since 2010. This evidence also shows that Justice Dugré had resources to help him follow up on deliberations and that what Chief Justice Fournier is now complaining of aligns with what Chief Justice Rolland complained of in 2010 and 2014.

[611] At the hearing, Justice Dugré raised a new objection concerning all the correspondence between him and Chief Justice Rolland related to his delays in rendering

[617] Decisions on Preliminary Motions, at para. 97.
[618] See, for example, *Proulx et Gagnon*, 2019 CanLII 52897 (QC CJA) and 2020 CanLII 35821 (QC CJA), judicial review dismissed 2021 QCCS 59, leave to appeal granted 2021 QCCA 677.
[619] Decisions on Preliminary Motions, at para. 98-100.

judgment. In his view, this correspondence is hearsay and therefore not relevant, since Chief Justice Rolland was not called to testify.[620]

[612] The Committee rejects this objection. Such an objection disregards the inquisitorial nature of a process such as ours characterized by an active search for the truth. Moreover, Chief Justice Fournier confirmed that this correspondence came from Justice Dugré's Superior Court file. It was collated by Chief Justice Fournier's assistant to get [TRANSLATION] "a full picture of the evolution of Justice Dugré's situation".[621]

[613] This correspondence is therefore admissible and relevant, in that it sheds significant light on the allegedly chronic nature of the problem. It should be noted that it is addressed to Justice Dugré and that it provides background suggesting that Chief Justice Rolland did indeed identify a problem with tardiness on Justice Dugré's part very soon after he was appointed to the bench. It also puts Chief Justice Fournier's interventions in their proper context.

[614] Justice Dugré also objected to two documents from his Superior Court file.[622] The first is a letter from the master of the roles to Chief Justice Fournier reporting on two cases that Justice Dugré had taken under advisement for more than 372 days. The second is a letter from Chief Justice Fournier advising Justice Dugré that counsel had complained to Associate Chief Justice Petras regarding delays in two of his cases.

[615] Once again, this correspondence is admissible and relevant. It comes from Justice Dugré's Superior Court file. Moreover, Chief Justice Fournier was questioned on the first letter.[623] As for the second, counsel for Justice Dugré did not ask any questions regarding this letter to chief justices Fournier or Petras during their testimonies.

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[620] Objections 5 to 10 and 12 to 34 made in connection with the Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 106, 111 and 113. See also Submissions, Transcript, June 15, 2021, at p. 76.
[621] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 103 and 105. In addition, Justice Dugré could have testified if he thought it necessary to correct the information in this correspondence.
[622] Submissions of Magali Fournier, June 3, 2021, at pp. 21 to 24, regarding exhibits JC-42 and JC-58.
[623] Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 121 to 122.

[616] Justice Dugré also objects to the filing of a table of his delays, collated by Chief Justice Fournier's assistant.[624] Having checked this table, the Committee finds discrepancies between some of the evidence and the information the table contains. Moreover, it does not reflect the fact that certain judgments were rendered, and it lists more late cases than the ones in the advisement follow-up letters. Since no other explanation was provided in this regard, the Committee allows Justice Dugré's objection and will not rely on the table.

[617] Finally, Justice Dugré objects to the table of deliberations prepared by Ms. Dumont.[625] This table (Annex B), which was obtained as an undertaking in connection with Ms. Dumont's examination, records the deliberation time of 185 judgments taken under advisement by Justice Dugré since he was sworn in as a judge in 2009.

[618] Justice Dugré's objection is based on the fact that the table of deliberations was not compiled for the purposes of this inquiry and may contain errors. That being said, he refers to it to establish that, to some extent, his office did follow up on deliberations.

[619] The Committee concludes that this table is not only relevant, but is also the most reliable evidence of Justice Dugré's history of delays. First, the fact that it was compiled in the normal course of Justice Dugré's work gives it a higher degree of reliability. Furthermore, the evidence suggests that this table is frequently updated by Ms. Dumont and returned to Justice Dugré. This table is therefore what Justice Dugré uses to manage his deliberations.

[620] The evidence also suggests that Ms. Dumont uses the table of deliberations to confirm or correct the delays indicated in the advisement follow-up letters. The ample correspondence between the Superior Court and Justice Dugré also corroborates the information recorded in these letters. The Committee was also able to confirm the reliability of certain entries in light of the evidence on record. Such is the case, for example, for the deliberations in the cases of Morin, Gouin and Mr. S., as well as in cases

[624] Exhibit JC-79.
[625] Exhibit JC-87.

that were the subject of complaints made by the parties or their counsel to Chief Justice Fournier.

[621] Finally, 22 of the witnesses called by Justice Dugré himself testified regarding the delays in their cases. These delays are recorded in the table of deliberations. Here is a summary:

Witness	Judgment	Exhibit	Number in table of deliberations	Number of days beyond 6 months[626]
Fadi Amine	Morin	D-25	76	43
Yves Archambault	Lang	D-03	85	56
Robert Astell	Gestion Immobilia	D-18, D-19	125	243
Elaine Bissonnette	Échafaudages Fast	D-10	88	44
	Petosa	D-14	180	145
Josiane Brault	PWC	D-20	81	135
Daniel Brook	Dorion	D-24	183	0 (short period)
Haytoug Léon Chamlian	Tawil	D-05	73	41
Sophie Cloutier	Commission des lésions professionnelles	D-21	80	91
Frédéric Dupont	I-D Foods	KSP-46	127	520
John Steven Foldiak	Fakhri	D-12	109	259
Patrick Henry	Sogevem	KSP-43, KSP-44	124	621
Luc Lachance	Syndicat des copropriétaires 4950 boul. l'Assomption	D-09	133	0 (short period)
Félix Lalonde	Potvin-Roy	D-04	171	170
Hébert Madar	Lambda general contractors	KSP-58, KSP-59	161	118
Marie-Andrée Mallette	Baril	D-11	140	254
Érik Paul Masse	Gervais	D-13	126	165
Miriam Morissette	Ville de Montréal	D-17	136	51
James Nazem	Montvest Immobilier	D-22	163	104
Danielle Oiknine	Casimir	D-23	167	142

[626] This is an approximate delay calculated on the basis of the table of Justice Dugré's deliberations. It is possible that, in reality, the number of days late may vary slightly, but this still gives an excellent overall idea of the situation.

Witness	Judgment	Exhibit	Number in table of deliberations	Number of days beyond 6 months[626]
Jonathan Pierre-Étienne	9213 Québec inc. (Plotnik)	KSP-54, KSP-55	139	209
Jean Roberge	SAAQ	D-06	94	230
Bruno Verdon	Urbacon	D-02	79	124

[622] Justice Dugré's objection is therefore rejected.

b) Delays in rendering judgment and workloads at the Superior Court of Québec

[623] In his defence, Justice Dugré argues that the issue of delays in rendering judgment is not a problem specific to him alone. It is, rather, a systemic problem, common to all Superior Court judges.[627]

[624] In support of this argument, Justice Dugré filed documents collated or prepared by Ms. Picard, from information taken from SOQUIJ and the court ledgers, in which she purports to trace the history of nine Superior Court judges' delays in rendering judgment over periods ranging from 7 to 12 years, depending on the judge.[628]

[625] The Committee reviewed these documents and finds that they are not reliable, particularly because of problems with the methodology. First, the Committee has no idea how the nine judges in question were selected. Further, according to Justice Dugré's own evidence, the information in the court ledgers may be incorrect.[629] This is why other checks are required to establish the actual delays in deliberations.[630] Finally, none of the judges had the opportunity to explain and it is entirely possible there could be explanations for these apparent delays.

[626] In the circumstances, the Committee will not give any weight to this evidence. That being said, we should mention that the results of Ms. Picard's efforts do not reveal any

[627] Submissions of Magali Fournier in connection with the Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 235 to 236.
[628] Exhibit D-28.
[629] See for example exhibits D-23 and JC-83.
[630] See for example Exhibit JC-82. Submissions of Magali Fournier in connection with the Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 215 to 232.

systemic problems with delays, as the percentage of the nine judges' judgments rendered after more than six months of deliberations ranges from 0% to 27%.[631]

[627] The Committee also examined the expert opinion prepared by Patrick Ouellet. This expert opinion has the advantage of using a more reliable methodology than the one employed by Ms. Picard. But once again, the Committee still cannot tell how the nine judges in question were selected, and none of the judges concerned had any opportunity to provide an explanation.

[628] It should also be noted that Mr. Ouellet's expert opinion does not reveal any systemic problems with delays, as the number of judgments rendered more than six months after having taken the matter under advisement ranges from 0 to 31. Therefore, the average number of overdue judgments for these judges is approximately nine per judge over a period of a little more than four years, or approximately two per year.

[629] Finally, we would point out that Chief Justice Fournier acknowledged that there were other judges of his Court who were late in rendering judgment, but he claims that Justice Dugré's case clearly stands out from those of the other judges:

> [TRANSLATION]
>
> A- There's no comparison with the others; he's an outlier, a total outlier. But there are others who have some… some very long judgments, years, years and a half. But never, never like this.
>
> Q- How can you say that if you haven't done a comparative exercise and if you haven't checked how many judgments he rendered after the deadlines?
>
> A- Well, it's because I look at the sum of all the delays, and I know that he sits 110 days like the other judges. If he takes everything under advisement, he'll render a lot more written judgments than if he doesn't take them under advisement. The workload is equal. The ability to render it in a timely manner is unequal. Well, I'll tell you, because you asked me the question, he's a total outlier.[632]
>
> . . .

[631] Exhibit D-28.
[632] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 42, l. 14 to p. 43, l. 7.

> Q- Do you think there are other judges under your jurisdiction who have the same problem?
>
> A- No. Never to that extent.[633]

[630] Furthermore, Chief Justice Fournier denied that there is a systemic problem, estimating that each year, only [TRANSLATION] "a small percentage" of the 4,000 to 5,000 judgments written by Superior Court judges exceeds the delay.[634] We have no reason to doubt this testimony.

[631] For all these reasons, the Committee is of the opinion that Justice Dugré's defence to the effect that there is a systemic problem with delays at the Superior Court, and that he therefore cannot be held responsible for the delays, must be rejected.

[632] Moreover, the Committee finds that, even if Justice Dugré had proven that there is a systemic problem, for this to be helpful to his case, he would have had to establish that it is these "systemic" constraints that explain his delays in rendering judgment, as opposed to facrors within his control.

c) Justice Dugré's delays in rendering judgment and his workload

[633] The Committee concludes that a [TRANSLATION] "chronic problem" with delays in rendering judgment has been established by clear and convincing evidence.

[634] First, the testimonies of chief justices Fournier and Petras are clear: throughout his career, Justice Dugré has been significantly late in his deliberations.

[635] The table of deliberations is overwhelming.[635] It shows that 60% of the judgments, that is, 110 of the 185 judgments appearing in the table of deliberations, were rendered more than six months after being taken under advisement, and 18% of these judgments were rendered more than a year after the date they were taken under advisement, that is 33 out of 185.[636]

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[633] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at p. 72, ll. 13 to 16.
[634] Testimony of the Honourable Jacques Fournier, J.S.C., June 7, 2021, at pp. 84 to 85.
[635] The table is reproduced in Annex B to this report.
[636] Exhibit JC-87.

[636] For the period after January 1, 2014, 60% of the judgments, that is, 73 of the 120 judgments in the table of deliberations, were rendered more than six months after the date taken under advisement, and 18% of them were rendered more than a year after the date they were taken under advisement, that is 22 out of 120.[637]

[637] It should be noted that, for the purposes of this inquiry, the Committee chose to consider all the judgments taken under advisement as being subject to the six-month advisement period. This means that the statistics presented above are a conservative estimate of Justice Dugré's overdue deliberations.

[638] It should also be noted that Ms. Dumont testified that this table contains all the cases taken under advisement by Justice Dugré, that she updated it after every hearing, and that she used it to confirm or contradict the delays mentioned in the advisement follow-up letters. The Committee therefore has difficulty understanding how Justice Dugré can argue that the delays recorded in the advisement follow-up letters are unproven. As noted by Justice Dugré himself in his written submission, he frequently answered these letters, giving the approximate date he would be rendering judgment, and, if applicable, he would attach any judgment he had rendered.

[639] Similarly, Justice Dugré's argument that it is impossible to do adequate follow-up on delays because of the archaic technology dating back to the 1970s that is used to keep the court ledger is surprising. The Committee cannot accept as serious Justice Dugré's argument that he is unable to follow up on his own deliberations.

[640] In view of such significant delays, the presumption of judicial integrity cannot overcome a finding of misconduct. It is likely that, among the numerous reported decisions rendered beyond the advisement period, there are some that were justified because of the complexity of the case or other circumstances. However, the Committee simply cannot conclude that a judge who has rendered most of his reserved judgments late throughout his entire career has no problem rendering judgments in a timely manner.

[637] Exhibit JC-87.

[641] The evidence does not support a finding that the judge was treated any differently from other Superior Court judges. First, with regard to the workload, Chief Justice Fournier testified that it was divided up equally and that he tried to assign cases according to the judges' interests and skills. While he acknowledged that the judges were overworked, he also noted that they are still capable of carrying out their duties, with Justice Dugré being a "total outlier".[638] Furthermore, the evidence filed by Justice Dugré shows that he sat 30 days less than is required of a Superior Court judge in the 2017–2018 judicial year because of settlement negotiations in *Krantz*, and that he sat the required number of days in 2018–2019.

[642] As for the 2019–2020 judicial year, the evidence shows that Justice Dugré was removed from his future assignments on September 13, 2019. Nonetheless, he received follow-up letters into November 2020 because his delays continued for another 14 months. Indeed, according to the follow-up letter dated November 11, 2020, Justice Dugré still had two cases under advisement. The first was rendered on November 20, 2020, after more than 17 months of deliberations, and the second, on December 30, 2020, after 14 months of deliberations.[639]

[643] The Committee also notes that even once he had been relieved of his future assignments, Justice Dugré failed to meet the deadlines for rendering judgment that he himself had promised to the Chief Justice.[640]

[644] The Committee does not accept that assistance was not made available to Justice Dugré. Recall, a mentor was provided following the first complaint to the CJC in 2010. In addition, between October 2013 and October 2015, the advisement follow-up letters sent to Justice Dugré by chief justices Rolland and Fournier stated the following:

> [TRANSLATION]
>
> If your judgment has not been rendered, I ask that you contact one of our colleagues on the deliberations subcommittee, Carole Hallée or André Prévost, to inform them of the situation and to explore possible

[638] Testimony of the Honourable Jacques Fournier, J.S.C., June 15, 2021, at pp. 42 to 43.
[639] Exhibits JC-80 and JC-87.
[640] Exhibit JC-80 and JC-87.

> solutions with them. After that meeting, please give me the date on which you expect to render judgment.[641]

[645] After receiving the first letter inviting him to contact one of the members of the deliberations subcommittee, Justice Dugré responded, [TRANSLATION] "I will make arrangements to meet with one of the two members of the committee and get back to you promptly".[642] The evidence does not show whether any such communication took place.

[646] In addition, Chief Justice Fournier personally offered him assistance in January 2014. As for Associate Chief Justice Petras, she testified that she had not offered Justice Dugré any assistance because he had not asked for any. Ms. Dumont's statement to the effect that the judge had asked for help and had been denied this help therefore does not appear to be supported by the evidence.

[647] On the contrary, it seems that Justice Dugré is wedded to his way of doing things and does not recognize the seriousness of the situation. For example, on November 13, 2018, Chief Justice Fournier sent Justice Dugré an advisement follow-up letter in which he identified 10 late judgments (6 short periods and 4 long periods). Chief Justice Fournier then wrote, [TRANSLATION] "I'm worried" and asked him to correct the information in his letter if it was inaccurate. Justice Dugré replied as follows:

> [TRANSLATION]
>
> Hello,
>
> My list of deliberations has grown faster than expected. I'm out of town this week. I'll get back to you Monday with a timetable. It's nonetheless odd that after nine years, I've rendered more written judgments than many of my colleagues with more than 15 years' experience…
>
> Gérard[643]

[648] This position is surprising, especially since, following the second complaint by Chief Justice Rolland in 2014, a review panel warned Justice Dugré in 2014, he should take every measure necessary to henceforth meet his obligations of due diligence.[644]

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[641] Exhibits JC-17, JC-25 to JC-27, JC-29 to JC-31 and JC-33 to JC-35.
[642] Exhibit JC-18.
[643] Exhibit JC-67.
[644] Amended Written Submission of the Honourable Justice Gérard Dugré, at p. 84.

[649] Moreover, there is no evidence that Justice Dugré [TRANSLATION] "renders more written judgments than his colleagues". It should also be noted that there are more than 150 judges on the Superior Court of Québec and that the evidence filed by Justice Dugré is limited to the list of judgments taken from SOQUIJ for six of these judges.[645] As for his claim that he renders just as many judgments on time as his colleagues, it is simply not grounded in the evidence.

[650] Finally, the Committee cannot accept Justice Dugré's argument that he renders judgment promptly once a party asks him to do so. Such an argument demonstrates a flagrant misunderstanding of the duties and powers of judges who are entrusted with the responsibility to render judgments. It also disregards the difficult situation in which the parties find themselves when they have to ask for judgment. As the Supreme Court of Canada has noted:

> Counsel often find themselves in a difficult position when significant time has passed since the trial judge took the matter under reserve and they have not received any updates on its status. The Crown may be reluctant to probe for information on the status of the case, insofar as it could risk the appearance of inappropriate interference with the judicial process. For their part, the accused may understandably not wish to be seen as applying pressure to the person in whose hands their fate lies.[646]

[651] Finally, such an argument is likely to undermine public confidence in the judicial system.

[652] In light of the foregoing, the Committee concludes that there is clear and convincing proof of the following:

- One of the first tasks of Chief Justice Fournier as an associate chief justice was to meet with Justice Dugré and Chief Justice Rolland in January 2014 in connection with the 12 cases in which deliberations had exceeded the advisement periods in the C.C.P.

[645] Exhibit D-59.
[646] *R. v. K.G.K.*, 2020 SCC 7, at para. 74.

- Since 2014, Justice Dugré has failed to respond to correspondence from Chief Justice Fournier on multiple occasions, and reminders have at times been necessary.

- Justice Dugré often gave undertakings to render judgment on a given date but then failed to honour them. Chief Justice Fournier would then have to do a new follow-up, as Justice Dugré would not proactively inform him if he could not meet the deadline or ask for additional time.

- The advisement follow-up letters, the testimonies of Chief Justices Fournier and Petras, and Justice Dugré's own table of deliberations show that deliberations were constantly late and took a very long time, even if we assume all the judgments were subject to long advisement periods.

- On at least four occasions, Chief Justice Fournier or Associate Chief Justice Petras drew Justice Dugré's attention to steps taken or complaints filed by counsel or parties in relation to delays in rendering judgment.

- Even when Justice Dugré was not sitting for 30 days in the autumn of 2017 while awaiting a settlement in *Krantz*, the delays continued to mount.

- Even after Mr. S.'s complaint, the third to the CJC, the delays continued to mount. Justice Dugré did not respond to correspondence from his chief justice, gave undertakings that he did not honour, and did not inform parties of the time it would take to render judgment.

- Even after Justice Dugré's assignments were taken away from him in September 2019, Chief Justice Fournier had to send him advisement follow-up letters for late deliberations. Justice Dugré continued to incur delays and did not honour his undertakings.

- The problem is similar to the one cited in Chief Justice Rolland's complaints to the CJC, complaints that led to the appointment of a mentor in 2010 and an expression of serious concern by a review panel in 2014.

5. Conclusion

[653] For the reasons given above, the Committee answers the following allegation in the affirmative:

> Allegation 1C
>
> Does Justice Gérard Dugré's conduct reveal a chronic problem to deliver judgment, and, if so, has Justice Dugré become incapacitated or disabled from the execution of the office of judge?

XIII. RECOMMENDATION

[654] To sum up, the Committee finds that allegations 1A, 1B, 1C, 2A, 2B, 3A, 3B, 5A, 5B, 6A and 6B are founded, while allegations 4A and 4B are not. The Committee must now determine whether, because of these findings of misconduct, Justice Dugré has become "incapacitated or disabled from the due execution of the office of judge" within the meaning of subsection 65(2) of the *Judges Act*.

A. CUMULATIVE EFFECT OF MISCONDUCT

[655] Justice Dugré submits that the Committee cannot consider the cumulative effect of any instances of misconduct.[647] In his view, the Committee must assess each instance of misconduct in isolation and decide whether that instance is, in and of itself, sufficiently serious to justify removing him from office.

[656] In the Decisions on Preliminary Motions, the Committee decided that, for the purposes of its recommendation, an inquiry committee of the CJC may consider the cumulative effective of separate acts of misconduct committed by the same judge.[648] However, it refrained from deciding in advance whether it would be appropriate to do so in the case at hand, before knowing which allegations, if any, are founded.[649]

[657] In the end, the Committee is of the opinion that it is appropriate to analyze all the allegations pertaining to Justice Dugré's conduct in the courtroom (allegations 2A, 2B, 3A, 3B, 5A, 5B, 6A and 6B) and make a common recommendation in this regard, and to then do the same for the allegations related to the delays in rendering judgment (allegations 1A, 1B and 1C).

[658] Indeed, the role of the CJC is not to punish acts of misconduct taken in isolation, but to maintain public confidence in the judiciary and, to this end, to assess whether the judge under investigation is able to properly perform their duties. The Court of Appeal of Québec noted as follows in *Ruffo*:

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[647] Amended Written Submission of the Honourable Gérard Dugré, at paras. 438 to 442.
[648] Decisions on Preliminary Motions, at paras. 186 to 188.
[649] *Ibid.* at para. 185.

> [TRANSLATION]
>
> 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 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, to reach the objective defined by the Supreme Court, the severity of the sanction, if one is deemed appropriate, must be determined in light of the whole context.**[650]
>
> [Emphasis added]

[659] As was mentioned above, the test for removing a judge from office, laid down in *Marshall*, expressly refers to public confidence. It is by its nature a forward-looking test, in the sense that it must be determined whether public confidence in the judge would be sufficiently undermined to render them incapable of executing judicial office in the future in light of their conduct to date.[651] The test is also objective in nature, in that the issue must be considered from the point of view of a reasonable, well-informed person.[652] This test requires that we make an overall assessment of Justice Dugré's ability to execute his judicial office in the future, in light of all the facts established at the inquiry, including the cumulative acts of misconduct.

B. MISCONDUCT IN THE COURTROOM

[660] At the inquiry, Justice Dugré called as witnesses several lawyers who appeared in hearings before him other than those at issue in the misconduct allegations. Generally speaking, these witnesses, almost all of whom either won their case or reached a

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[650] *Ruffo (Re)*, 2005 QCCA 1197, at para. 244.
[651] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Theodore Matlow*, December 3, 2008, at para. 166.
[652] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Robin Camp*, March 8, 2017, at para. 45.

favourable settlement in the matters they had before Justice Dugré, said that they appreciated his unique personality and style. As there are no allegations of misconduct concerning these other hearings, the Committee must presume that he conducted himself in accordance with his ethical obligations in those hearings.

[661] But the fact remains that the evidence establishes that Justice Dugré committed serious acts of misconduct in four of the hearings at issue in this inquiry.

[662] In the case of *S.S.*, the Committee found that, throughout the hearing, Justice Dugré adopted an aggressive and disagreeable attitude towards counsel for Ms. S. and, by extension, towards Ms. S. herself, and that he made judgmental and sanctimonious remarks suggesting, in a completely unjustified manner, that Ms. S. did not have her child's best interests at heart. The evidence established that Ms. S. was so upset by Justice Dugré's conduct that her counsel had to ask for a recess, and that the parties agreed to a settlement because Ms. S. did not want to have to go back before Justice Dugré. The evidence also established that Ms. S.'s confidence in the justice system remains shaken to this day.

[663] In the case of *A.*, the Committee found that Justice Dugré flagrantly violated the *audi alteram partem* rule by denying Mr. A. any opportunity to challenge the motion brought by the opposing party, that he made numerous comments that could give the impression of bias in favour of the opposing party, and that he made several condescending, contemptuous remarks towards Mr. A and his counsel.

[664] In the case of *Gouin*, the Committee found that Justice Dugré made inappropriate jokes related to a high-profile case involving allegations of sexual assault. The Committee also found that, throughout the trial, Justice Dugré was extremely interventionist, showed little regard for the principle that the parties control their own cases, and frequently went off on tangents on irrelevant subjects.

[665] Finally, in the case of *S.C.*, the Committee found that Justice Dugré was condescending and impolite towards Mr. C. on several occasions and, even before hearing the evidence, made several remarks suggesting that Mr. C. was dishonest and a

liar. The Committee also found that Justice Dugré took over the examinations of both parties' witnesses to a large extent, questioned the parties even though they were not under oath, frequently went off on tangents on irrelevant subjects, and presided over the trial in an extremely informal and disorderly manner, sometimes treating the parties like children.

[666] Several individuals (parties and lawyers) who were involved in these cases, other than the complainants and their counsel, testified before the Committee. Generally speaking, they testified that they had no recollection of the facts alleged against Justice Dugré or that they saw nothing abnormal or reprehensible in his conduct. For example, Ms. Miele, who was counsel for one of the children in the *A.* case, did not remember Justice Dugré being discourteous or impolite at the hearing, lecturing anyone or making comments bordering on bullying, or, more generally, saying anything inappropriate.[653] When questioned by presenting counsel regarding what Justice Dugré could be heard saying in the recording, Ms. Miele said she had no recollection of that.[654] The impression that this testimony gives of a run-of-the-mill, forgettable hearing is completely out of step with the reality observed by the Committee in listening to the recording. Conversely, listening to the hearing recordings also revealed that some of the complainants' allegations were not entirely founded.

[667] In addition to the normal effect of time on memory, these discrepancies show that, despite everyone's good faith, witnesses' perceptions are necessarily subjective and are likely to vary depending on their points of view. This is why the Committee relied primarily on the recordings to arrive at its own conclusions as to whether there were any acts of misconduct. We now have to gauge their impact on public confidence against an equally objective standard, that is, the point of view of a "thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values".[655] Like the CJC in *Camp*, the Committee adopts as a guiding principle for this analysis this observation of the Supreme

[653] Testimony of Annie Miele, June 14, 2021 (in camera), at pp. 10 to 13.
[654] Testimony of Annie Miele, June 14, 2021 (in camera), at pp. 16 to 21.
[655] *Report of the Canadian Judicial Council to the Minister of Justice in the Matter of the Honourable Robin Camp* at para. 45, citing *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at para. 80.

Court of Canada in *Therrien (Re)*, according to which "the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it".[656]

[668] In its publication *Commentaries on Judicial Conduct*, the CJC notes why courtesy, patience, reserve and composure are essential qualities for a judge:

> We first observe that the hallmark of a great judge is courtesy to all who appear in court—the court staff, the litigants, witnesses and counsel. The Honourable J.O. Wilson said in *A Book for Judges* that the bench is no place for "rough diamonds". Those whom a judge addresses roughly are unable to reply in kind. Moreover, the judge must realize that the power and prestige of the office gives great weight to statements from the bench. A remark that the judge may regard as relatively innocuous achieves much greater significance than what is said by other people in the courtroom, especially to those unfamiliar with the legal process.
>
> . . . Ill-considered or facetious remarks, often given on the spur of the moment, may mar what is otherwise a highly professional process. Or the judge may be guilty of what many experienced counsel regard as the greatest and most besetting judicial sin—IMPATIENCE. . . .
>
> Each judge must make a personal decision about ventures into the world of courtroom humour. Collections of witty remarks, both old and modern, seem to encourage judges to attempt enshrinement in them. There are undoubtedly times when interjections of this kind may serve a useful purpose in relieving stress and tension. But we must also add that those times are extremely rare. Few civil litigants and no accused persons regard the trial as a situation in which there is much humour to exploit and they resent the actions of a judge who tries to do so. The judge who constantly interrupts with some witticism, often seemingly merely to obtain sycophantic applause, does little, in our opinion, to enhance public respect for the judiciary.
>
> It is also clear, as one reviews public complaints about judges, that a frequent source of them is the offhand or flippant remark which the judge tossed out with little thought before doing so. They express the judge's view of life or philosophy or of some group of people in our society. They often have little to do with the case at hand. When a judge feels the temptation to speak in his fashion, our advice is to reflect instantly on the virtues of silence.
>
> At the other extreme, but equally to be avoided, is the use of intemperate language in times of tension. All persons in the courtroom are under some stress and passionate statements are to be expected. But

[656] *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at para. 110.

whoever else loses control, it must never be the judge. The Honourable J.O. Wilson said in *A Book for Judges*:

> Example remains the best teacher and a judge who is moderate, disciplined and courteous in his intercourse with advocates, litigants and witnesses is far less likely to be exposed to immoderate conduct on their part.

The Right Honourable Gérald Fauteaux also commented on this aspect of judicial decorum in *Le Livre du magistrat*. He said:

> [TRANSLATION] Judges who do not favour ceremonial constraints and are not fond of pomp and circumstance must, nevertheless, maintain dignity and decorum in court and accept the silk and ermine. By showing moderation, discipline and courtesy in their relationship with lawyers, parties and witnesses alike, judges must create a climate favourable to the course of justice. Parties who for the first, and perhaps the only, time in their lives, are before the courts and entrust them with the resolution of their disputes, may be apprehensive and bewildered by the unfamiliar atmosphere of the courtroom. Judges, by example, should do everything possible to make them feel comfortable. The judicial process is an adversarial process and a competition between opposing parties. It is often difficult for person involved in such a confrontation to remain calm even if the adversary observes the rules of civility. Judges must set the example by retaining their composure whatever the provocation.[657]

[669] As was mentioned, several witnesses called by Justice Dugré, including Ms. Dumont, painted him as a judge with a unique style and a reputation for being humane, down to earth and interventionist. In his written submission, Justice Dugré also emphasized that the way he runs his hearings [TRANSLATION] “is not random, subject to his moods, or improvised” but “constitutes, on the contrary, a genuine method that has been forged by his vast experience”.[658] According to him, the fact that counsel testified positively about their experiences appearing before him demonstrates that this method is not universally reviled and is even appreciated.

[657] Canadian Judicial Council, *Commentaries on Judicial Conduct* (Cowansville:, Éditions Yvon Blais, 1991) at pp. 75 to 78.
[658] Amended Written Submission of the Honourable Gérard Dugré, at para. 66.

[670] The evidence before the Committee is that Justice Durgé's method can lead to cases spiralling out of control. This is precisely what happened in the cases of *S.S.*, *A.*, *Gouin* and *S.C.*

[671] The Committee was particularly shocked by the lack of respect and courtesy Justice Dugré showed to litigants and counsel in the cases of *S.S.*, *A.* and *S.C.*, especially since these were family law cases, an area of the law that requires particular pause and restraint. Justice Dugré used his courtroom as a platform to teach lessons to litigants and counsel; in these hearings, he was argumentative, even aggressive, and could be condescending and at times mean. Whether consciously or not, Justice Dugré used his position of authority to intimidate and even humiliate others.

[672] The Committee finds that Justice Dugré's conduct in those cases was such that it undermines public confidence in the judiciary. No litigant wants or deserves to be treated the way Ms. S., Mr. A. and Mr. C. were.

[673] The Committee also found serious breaches stemming from the [TRANSLATION] "interventionist" style adopted by Justice Dugré in managing hearings. The Committee was particularly struck by the unwillingness to listen demonstrated by Justice Dugré, who has an alarming tendency to monopolize speaking time and even meddle in the production of the evidence. And yet, if there is one essential quality to being a judge, it is the ability to listen.

[674] In the case of *A.*, the Committee concluded that Justice Dugré quite simply refused to hear Mr. A.'s challenge, ostensibly because his decision could be reviewed by the trial judge. In the case of *S.S.*, even if we were to accept that this was a conciliation session, counsel for Ms. S. had serious difficulties explaining her client's position in the face of the judge's constant interruptions. In the cases of *Gouin* and *S.C.*, in which he was presiding over trials, Justice Dugré intervened inappropriately in the production of the evidence, taking over control of the examination of witnesses for large portions of the hearings without even waiting for the parties to ask their questions. In addition to interfering with the parties' right to control how they present their cases, Justice Dugré displayed the same unwillingness to listen in dealings with witnesses, frequently cutting

them off when they spoke or using their testimony as a pretext for sending messages or pontificating on subjects that, most of the time, had little to do with the case at hand.

[675] Justice Dugré defended how he manages hearings, arguing that the sphinx-like passivity of judges is an outmoded concept.[659] It is true that the role of judges has changed, and that the rules of law and procedure give judges a more proactive role in family law matters.[660] However, judges must still respect certain limits and [TRANSLATION] "demonstrate balance, prudence and sensitivity in their interventions".[661] In the Committee's opinion, Justice Dugré's behaviour in the cases cited above goes far beyond these limits and betrays such a fundamental misunderstanding of his role and ethical obligations that it compromises his ability to carry out his duties.

[676] Given the forward-looking nature of the test for removing a judge, it is relevant to consider whether the judge is willing and able to change their behaviour to meet their ethical obligations.[662] In this case, Justice Dugré chose not to testify at the hearing, such that the Committee has no direct evidence of any acknowledgment on his part that some of his words and deeds or ways of managing certain hearings were inappropriate. On the contrary, the defence he presented at the hearing is a wholesale rejection of the allegations against him, with Justice Dugré arguing he had not committed any acts of misconduct.[663] His right to present the defence he deems appropriate is not being called into question. However, in these circumstances, there is no evidence that would allay the serious concerns raised by his past conduct.

[677] Ultimately, the Committee concludes that, when viewed in context and considered as a whole, Justice Dugré's conduct in the courtroom would cause a reasonable member of the public to have serious doubts about his ability to ensure a respectful climate conducive to the proper conduct of judicial matters. Therefore, the Committee concludes that his conduct undermines public confidence to such an extent that he has become

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[659] Amended Written Submission of the Honourable Gérard Dugré, at para. 133.
[660] See *F.A. c. M.S.*, 2006 QCCA 216 at para. 4.
[661] *Droit de la famille – 17396*, 2017 QCCA 353, at para. 32.
[662] See *Proulx et Gagnon*, 2020 CanLII 35821 (QC CJA), at paras. 111 to 117, judicial review dismissed 2021 QCCS 59, leave to appeal allowed 2021 QCCA 677; *Ruffo (Re)*, 2005 QCCA 1197, at paras. 227 and 421.
[663] Amended Written Submission of the Honourable Gérard Dugré, at paras. 131, 181, 243 and 287.

incapacitated or disabled from the due execution of the office of judge within the meaning of subsection 65(2) of the *Judges Act*.

C. MISCONDUCT RELATED TO DELAYS IN RENDERING JUDGMENT

[678] In the case of *K.S.*, the evidence shows that, on at least two occasions (first at the hearing, then through Ms. Dumont), Justice Dugré gave the parties an undertaking to render his judgment within a short timeframe, but then stopped responding to their enquiries for months on end. It would take the intervention of Associate Chief Justice Petras to ensure that judgment was finally rendered more than nine months after the case was taken under advisement.

[679] In the Committee's view, in failing to meet the legitimate expectations he had himself created, Justice Dugré demonstrated a serious indifference to litigants, which is in itself objectionable.

[680] In addition, clear and convincing evidence established that, since shortly after having been sworn in as judge in 2009, Justice Dugré has incurred delays in rendering judgments. Evidence was lead that certain systemic challenges have resulted in judges in the Superior Court of Québec's district of Montréal having heavy workloads in general, and that the advisement periods set out in article 324 C.C.P. are not always met, but the evidence also showed that Justice Dugré's generalized and persistent delays make him an outlier, even though his working conditions are not substantially different from those of his colleagues.

[681] Despite the two complaints from his chief justice to the CJC in 2010 and 2014,[664] the first leading to the appointment of a mentor to help him better manage his deliberations and the second prompting a review panel to voice its concerns regarding his delays and to ask him to take measures to avoid repeating this conduct in future,[665] Justice Dugré never corrected his chronic failure to render reserved judgments promptly.

[664] Exhibits JC-1 and JC-2.
[665] Amended Written Submission of the Honourable Gérard Dugré, at para. 402; Testimony of the Honourable Jacques Fournier, J.S.C., June 3, 2021, at pp. 84 to 85.

Even though he had not been given any new assignments since September 2019,[666] he continued to incur delays into December 2020.[667] Moreover, in the defence he presented to the Committee, Justice Dugré denies any problem, arguing that he is no further behind in his judgments than many of his colleagues and attributing his delays to causes beyond his control, such as a deficient judge assignment system and a lack of staff.[668]

[682] In these circumstances, it is unrealistic to think that Justice Dugré will change his behaviour and rectify the situation in a lasting way. Whatever the underlying causes might be, the fact remains that, throughout his entire career, he has failed to fulfil his obligation to perform his duties in a timely manner, the evidence having shown that he exceeded the six-month advisement period in approximately 60% of the cases taken under advisement.

[683] Knowing that, in all likelihood, if Justice Dugré were to remain in office, he would continue to incur delays at a comparable rate, the Committee must consider the consequences this would have on public confidence.

[684] The speed at which justice is done is an important issue for litigants and for society in general. In this regard, author Luc Huppé noted:

> [TRANSLATION]
>
> [U]ntil judgment is rendered, the parties are left in a state of uncertainty as to the scope of their rights and obligations. They continue to be deprived of their rights under the law or to be exempt from fulfilling the obligations the law places on them, as the case may be. True access to justice depends on, among other things, the time taken by judges to render judgment.[669]

[685] The impact of tardiness in rendering judgment is therefore directly felt by the parties, who in many cases are waiting for a decision that will have significant repercussions on their lives. In a case where the delays are chronic and generalized, as is the case here, this impact will reverberate through the lives of multiple litigants. More

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[666] Exhibit JC-74.
[667] Exhibit JC-80.
[668] Amended Written Submission of the Honourable Gérard Dugré, at paras. 378 to 395.
[669] Luc Huppé, *La déontologie de la magistrature : droit canadien : perspective international* (Montréal: Wilson & Lafleur, 2018) at No. 191.

generally speaking, such conduct brings the administration of justice into disrepute by conveying the image of a judiciary that does not recognize the importance of ensuring that the matters entrusted to it are dealt with in timely manner. In the Committee's opinion, allowing such conduct to continue any longer would significantly undermine public confidence in the judiciary.

[686] No one denies Justice Dugré's legal skills and his positive contribution to Canadian jurisprudence. In spite of all this, the Committee must regrettably conclude that his chronic failure to render judgment in a reasonable time threatens the integrity of the institution and makes him incapacitated or disabled from the due execution of the office of judge within the meaning of subsection 65(2) of the *Judges Act*.

XIV. CONCLUSION

[687] In conclusion, and for the reasons set out above, the Committee unanimously finds that the Honourable Gérard Dugré, J.S.C., committed acts of misconduct and recommends that he be removed from office.

And we have signed:

This 9th day of June, 2022

The Honorable J.C. Marc Richard

This 9th day of June, 2022

The Honorable Louise A.M. Charbonneau

This 9th day of June, 2022

Audrey Boctor

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:
>
> 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]
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> (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.
>
> [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.)
>
> *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

ANNEX B
Table of Justice Dugré's Deliberations, Exhibit JC-87

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
1	500-17-029845-065	2849-4367 Québec Inc. c. Les Services de promotion et de publicité Effix Inc.		23–27/02/09	15.12	27/02/09	27/08/09	**October 5, 2009**
2	500-17-044648-080	Association de l'enseignement du Nouveau Québec c. Paul Charlebois	Motion for judicial review	16/03/09	15.08	16/03/09	16/09/09	**August 19, 2009**
3	500-17-028374-059	Manon Robillard c. Les actuaires conseils Bergeron & Associés	Action regarding contract of service	30/03 to 03/04/09	15.12	03/04/09	03/10/09	**March 2, 2010**
4	500-17-029571-067	Yves Sasseville c. Lucille Legault	Action in nullity of a legacy	15–17/04/09	15.02	17/04/09		**September 9, 2009**
5	550-05-001751-935	Clinique Médico-dentaire de la Gatineau et Kinahan c. Anne Boisvert	Action in damages	23–30/04/09	3	30/04/09	30/10/09	**February 11, 2010**
6	500-17-044194-085 500-17-044168-089	Hôtel R.C.M. Inc. c. Commission des relations du travail et al 9172-0904 Québec Inc. c. Commission des relations du travail	Motions for judicial review	26–27/05/09	15.01	26/05/09	26/11/09	**July 30, 2010**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
7	500-17-031730-065	Imports/Export Vinacan Inc. c. Geospatial/Salasan Consulting Inc.	Action on account	01/06/09	15.12	01/06/09	01/12/09	**September 17, 2009**
8	500-17-045278-085 AZ-50918665 2012 QCCA 2139 2012EXP-4373 J.E. 2012-2316	Loyola High School et John Zookie c. Michèle Courchesne	Motion for judicial review	08–12/06/09	15.12	17/06/09	17/12/09	**June 18, 2010**
9	500-17-048604-097	Edmon Kabbabe et Elham Azar c. Joseph Elfassy, Vincent Rose et Barreau du Québec	Motion to dismiss action	04/08/09	2.08	04/08/09	04/02/10	**February 9, 2010**
10	500-17-042756-083	Fraternité Nationale des charpentiers-menuisiers, section locale 9 c. Me Sophie Mireault et Ass. Int. Des travailleurs	Motion for judicial review	25/05/09	15.01	19/10/09	19/04/10	**January 24, 2011**
11	700-17-004354-071 (district de Terrebonne)	Louise Gauthier c. Gilles Deguire		26/10/09 to	1.06	27/10/09		**March 25, 2010**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
12	500-17-052102-095	Jean-Roch Poulin c. Pascale Assouad et al	Motion by applicant for leave to re-amend and particularize the motion to institute proceedings	19/11/09	15.12	19/11/09	19/05/10	**February 8, 2010**
13	500-17-050297-095	Claudette Tabib c. C.R.T. et Cégep Édouard-Montpetit	Motion for judicial review	10/11/09	15.12	18/11/09	18/05/10	**December 15, 2010**
14	705-04-013515-099	L B c. S D et , Sous-ministre du revenu du Québec	Motion to institute proceedings to amend a judgment seeking cancellation of support payments for children and safeguard order	01/12/09	1.05	01/12/09	01/06/10	**February 18, 2010**
15	500-17-052501-098	Rawas c. Sous-ministre du revenu du Québec	Motion for declaratory judgment	21/01/10	15.12	21/01/10	21/07/10	**November 29, 2010**
16	500-06-000008-926	Françoise Nadon c. Ville de Montréal et al	Motion to review taxation of bill of costs	20/01/10	15.12	20/01/10	20/07/10	**November 24, 2010**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
17	500-17-051011-099 AZ-50905960 2012 QCCA 1904 2012E3CP-3955	Complex Jean-Talon West Inc. v. 2974100 Canada Inc.	Motion for declaratory judgment to terminate a lease	25/01/10	16.01	25/01/10	25/07/10	**January 11, 2011**
18	500-17-035055-071 AZ-50737487 2011 QCCS 1461 2011EXP-1376 J.E. 2011-749	Bourkas et al c. Gidal Construction Inc. et al Radiation d'hypothèque	Motion for damages and legal registration	08–26/03/10	15.02	26/03/10	26/09/10	**March 31, 2011**
19	505-04-015447-063	L c. L	Motion for change of custody, cancellation of child support, etc.	08/04/10	Longueuil	08/04/10	08/10/10	**April 14, 2011**
20	765-17-000766-081	Beauchemin c. Varennes (Ville de)	Motion for damages	28/04/10	1.34	28/04/10	28/10/10	**May 31, 2011**
21	550-17-002031-050 Motion to dismiss dismissed	Les Billards Dooly's Inc. c. Entreprises Prébour Ltée	Contracts	13–31/05/10	8	31/05/10	01/12/10	**August 8, 2011**
22	500-17-025228-050 500-17-025229-058	Banque CIBC c. 3984583 Canada Inc. et Banque CIBC c. 3984583 Canada Inc. et	Motion by intervener to contest scheme of collocation	27/08/10	15.02	27/08/10		**February 28, 2011**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
23	500-24-000218-106	M C et al.	Notice of appeal (*Youth Protection Act*, s. 103)	09/09/10	15.02	09/09/10	09/03/11	**16 September 2010**
24	500-12-270518-046	T c. K	Amended motion by defendant to amend ancillary measures and for…	08/09/10	15.02	08/09/10	08/03/11	**8 November 2010**
25	505-05-009656-098	Abbes c. C.S.S.T.	Judicial review	09/12/10		09/12/10		**18 May 2011**
26	500-17-057863-105 AZ-50784058 2011 QCCS 4622 2011EXP-2793 J.E. 2011-1561 [2011] R.J.Q. 1829	Attorney General of Québec c. Académie Yeshiva Toras Moshe de Mtl. et al.	Motion for interlocutory injunction	25–27/10/10	15.01	17/01/11	17/07/11	**7 September 2011**
27	705-17-002596-086	François Drolet et Manon Deslauriers c. Les Excavations Lambert Inc.	Merits – Contract	01/03/11 to 01/03/11	1.10	11/03/11	11/09/11	**27 September 2011**
28	500-17-016663-034	Construction Aldo Inc. et al. c. France Héroux et al.	Merits – Contract	01/06/11	15.02	01/06/11	01/12/11	**30 November 2011**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
29	500-17-045938-084 AZ-50830827 2012 QCCS 411 2012EXP-872 J.E. 2012-486	Céleb Construction c. Valko Élect. et al. Appeal abandoned (C.A., 2012-07-17), 500-09-022518-120	Contract	23/06/11	15.02	12/08/11	12/02/12	**14 February 2021**
30	500-17-066381-115	Dr. Liu c. University McGill	Damages	14–15/09/11	15.02	15/09/11	15/03/12	**21 October 2011**
31	500-17-057061-106 AZ-50801347 2011 QCCS 5770 2011E3P-3795 J.E. 2011-2082 [2011] R.J.Q. 2057	Intact Cie d'Ass. c. Mapp et al. Requête pour permission d'appeler, 2011-11-30 (C.A.), 500-09-022192-116	Damages	13/09/11	15.02	13/09/11	13/03/12	**1 November 2011**
32	500-17-044190-083 AZ-50847336 2012 QCCS 1477 2012EXP-1742 J.E. 2012-932 [2012] R.J.Q. 805	Dupervil c. Fabrique de la Paroisse	Damages	13–14/Ju/11	15.02	11/10/11	11/04/12	**11 April 2012**
33	500-17-062120-103 AZ-50846087 2012 QCCS 1432 2012EXP-1809	Laniel c. Tribunal Administratif et SAAQ	Evocation	18/10/11	15.02	18/10/11	18/04/12	**5 April 2012**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
34	500-17-065562-111 AZ-50872658 2012 QCCS 3184	Letendre c. Québec	Injunction	21/10/11	15.02	21/10/11/	21/04/12	**20 April 2012**
35	500-17-049318-093 (C.S., 2012-05-28) 2012 QCCS 2409 SOQUIJ AZ-50860782 2012EXP-2312 J.E. 2012-1214	Adjenad c. Coriolan	Latent defects	02/12/11	15.10	02/12/11	02/06/12	**28 May 2012**
36	500-24-000234-111	D c. Z et al.	DPJ — judicial review, Court of Québec	15/12/11	15.09	15/12/11	29/03/12	**21 March 2012**
37	500-14-038125-118	L c. C	Incapacity and protective supervision	24/01/12	15.02	24/02/12	24/08/12	**29 June 2012**
38	500-17-054807-097 2012 QCCS 4709 SOQUIJ AZ-50900583	276 Canada Inc. et al. c. McLarnon	Contract	29/02/12	15.02	30/03/12	30/09/12	**3 October 2012**
39	500-17-052753-095 2012 QCCS 4318 SOQUIJ AZ-50894522	Fondation Jono c. Solono	Contract	16/02/12	15.02	09/03/12	09/09/12	**14 September 2012**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
40	500-14-038201-117	N et al. c. N et al.	Curatorship	16–18/04/12	15.08	18/04/12	18/10/12	**24 October 2012**
41	405-17-001138-101	Béton St-Pierre c. Lampron	Damages (asphalt)	02/05/12	St-H	14/05/12	14/11/12	**15 March 2013**
42	500-17-066253-116	Simard c. Viau et al. Régie Énergie	Evocation (Westmount)	19/04/12	15.08	17/05/12	17/11/12	**30 November 2012**
43	705-17-002614-087	Bourgeois c. Société immobilière	Contract (land in L'Assomption)	24/25–04–12	2.00	25/05/12	25/11/12	**14 February 2013**
44	500-17-069536-111 AZ-50909081 2012 QCCS 5518	Valenta	Judicial review (police)	28/06/12	15.02	28/06/12/	28/12/12	**2 November 2012**
45	500-12-304361-102 AZ-50892748 2012 QCCS 5328	D c. P	Divorce	22/06/12	15.02	22/06/12	12/06/12	**7 September 2012**
46	500-17-067931-116	Béton Brunet c. Vignola	CRT [labour relations board] review	31/08/12	15.02	31/08/12	28/02/13	**15 May 2013**
47	700-04-022128-125	F c. S	Shared custody	18/09/12	B1.05	18.09.12	--	**23 October 2012**
48	700-17-008383-118	Cabana c. Valiquette	Boundaries	18–19/09/12	B1.05	18/09/12	18/03/13	**3 October 2013**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
49	500-12-306738-109	A c. S	Motion for writs of seizure	28/09/12	15.02	28/09/12	Urgent	**21 January 2013**
50	500-17-056748-109	Ghaho c. Germain	Damages (sewing machine)	04–05/10/12	15.12	05/10/12	05/04/13	**12 June 2013**
51	500-17-047994-093	Filtrum c. Raymond Bouchard	Damages (BSDQ)	15–16/10/12	15.02	16/10/12	16/04/13	**29 November 2013**
52	500-17-061713-106	Karimi c. Wolman	Damages (defects) — costs for the day	29/10/12	15.02	29/10/12	Urgent	**10 May 2013**
53	700-04-018108-099	H c. L	Child custody	05 and 06/11/12	B1.01	06/11/12	Urgent	**3 January 2013**
54	500-17-073068-127	Jovicic c. Mafhoum	Forced surrender	15/11/12	15.02	21/11/12	Urgent	**21 January 2013**
55	500-17-067851-116	Asmar c. Comité déontologie polici	Review — (profiling)	12/11/12	15.02	12/11/12	12/02/13	**10 January 2014**
56	500-17-073515-127	The Boulevard c. Senza	Injunction (extra-judicial costs)	16/11/12	15.02	16/11/12	Urgent	**17 January 2014**
57	700-17-007874-117	Nordmec Const. c. La Conception (M)	Declaratory judgment	19/11/12		19/11/12	19/05/13	**23 January 2014**
58	700-17-008808-122	Entreprise TGC c. Val Morin	Tendering	22/11/12		22/11/12	22/05/13	**27 January 2014**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
59	500-17-053349-091	D'Ermo c. D'Ermo	Succession	29/11/12	15.02	29/11/12	29/05/13	**13 January 2014**
60	500-17-063939-113	Syndicat copropriété Bromont	Damages — Forced impleading	11/12/12	15.02	11/12/12	11/06/13	**26 July 2013**
61	700-17-009239-129	Compte c. Perron	Damages (road rage)	09/11/12	B1.04	20/12/12	20/06/13	**8 April 2013**
62	500-17-069821-125	Durocher c. CRT	Judicial review (youth centre nurse)	05/02/13	15.02	05/02/13	05/05/13	**27 January 2014**
63	500-17-072262-127	UAP c. Clément	Judicial review (Dismissal – evidence)	28/02/13 note June 20	15.02	28/02/13 June 13	28/05/13	**27 January 2014**
64	705-04-012749-087	L c. L	Custody (Qc - Berthierville)	01/03/13	Joliette	Arg. to come	Urgent	**24 July 2013**
65	500-17-058670-103	Investissement Rainbow	Emphyteutic lease	11/03/13	15.02	11/03/13	11/08/13	**20 January 2014**
66	500-17-066790-117	Massicap c. Sun Life	Motion to dismiss $5M	31/01/13	15.02	22/03/13	Urgent	**14 January 2014**
67	500-17-056637-104	APECQ c. ACQ	Injunction	25–28/03/13	15.02	28/03/13	28/09/13	**7 February2014**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
68	540-12-016349-102	N c. B	Marriage annulment	02/04/13	Laval	02/04/13	Urgent	**4 October 2013**
69	705-04-010970-065	B c. S	Youth Court	04/04/13		04/04/13	Urgent	**22 May 2013**
70	500-17-074984-124	Gestion Gosselin c. Uniprix	Injunction	22–23/04/13	15.02	23/04/13	Urgent	**13 December 2013**
71	500-17-063099-116	7700300 Canada c. Narrainen	Contract (downtown building)	7–8/05/13	15.02	08/05/13	08/11/13	**31 January 2014**
72	500-17-065604-111	Veeragandham c. Collège de Montréal	Injunction (Diploma – India)	13–15/05/13	15.02	15/05/13	15/11/13	**11 October 2013**
73	500-17-067236-110	Tawil c. Kautch I Kian	Damages (Defects)	23,24,27–29/05/13	15.02	25/06/13	25/12/13	**4 February 2014**
74	500-17-074443-121	Orenstein c. Orenstein	Damages (Dismissal)	28/06/13	15.02	28/06/13	28/12/13	**4 July 2013**
75	500-17-025865-059	Conseillers de Placements TI P	Contract ($98M)	26–27/06/13	15.02	27/06/13	27/12/13	**9 August 2013**
76	705-17-004530-125	François Morin	Damages (religion)	11/06/13	?	11/06/13	11/12/13	**23 January 2014**
77	500-17-077402-132	Conseil Mohawk c. Kanesatake	Declinatory exception	27/08/13	15.02	27/08/13	27/02/14	**31 October 2013**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
78	700-17-009967-133	Pelletier c. PGC (chats)	Evocation	06/09/13	Terre-bonne	06/09/13	06/12/13	**24 October 2013**
79	500-17-075541-139	Urbacon c. Urbacon	Legal hypothec	28/08/13	15.02	28/08/13 (notes)	28/02/14	**2 July 2014**
80	700-17-009155-127	Caron c. Commission Lésions	Judicial review	04/09/13	Terre-bonne	04/09/13	06/03/14	**5 June 2014**
81	500-17-074186-126	Ellingsen c. PWC Management	Work contract	22/10/13	15.02	22/10/13	22/04/14	**4 September 2014**
82	540-04-012356-132	P c. L	Nullity of marriage	13/12/13	2.04	13/12/13		**21 January 2014**
83	500-04-050685-099	C c. S	Custody	18/12/13	15.02	18/12/13		**20 January 2014**
84	500-12-290217-078	R c. G	Jurisdiction of Sup. Ct.	20/12/13	15.02	20/12/13		**16 January 2014**
85	540-17-004626-114	Lang c. Groupe Lelys (Flexo)	Damages	09/10/13	2.03	05/12/13	05/06/14	**31 July 2014**
86	500-17-071654-126	Curateur Public c. B	Testament	09/12/13	15.02	09/12/13	09/06/14	**21 February 2014**
87	500-17-078934-133	165149 Canada Inc. (Oiknine)	Tenant–landlord	29/1/14	15.02	29/1/14	29/07/14	**10 March 2014**
88	500-17-065823-117	Échafaudage c. 2699222 Canada	Contract	5/2/14	15.02	5/2/14	5/8/14	**18 September 2014**
89	500-17-072234-126	Salter c. Wei	Transfer of title	25–27/2/14	15.02	27/2/14	27/8/14	**30 October 2014**

	COURT RECORD NUMBER	NAMES OF PARTIES	NATURE OF CASE	HEARING DATE(S) [dd/mm/yy]	ROOM	DATE TAKEN UNDER ADVISEMENT [dd/mm/yy]	END OF DELIBERATIONS [dd/mm/yy]	**DATE OF JUDGMENT**
90	500-17-079916-139	Jule Brossard et al.	De bene esse (civ. pract.)	27/03/14	15.02	27/3/14	27/9/14	**12 June 2014**
91	500-17-059059-108	Mclntyre c. Rabb	Damages – Offer to purchase	8–10/4/14	15.06	10/4/14	10/10/14	**12 May 2014**
92	500-17-075317-126	Holcim Canada c. Lauzon	Judicial review (labour law)	23/10/13	15.02	23/10/13	23/04/14	**6 November 2014**
93	500-17-069590-118	Consultants S.M. c. PGC	Taxation rev.	24/10/13	15.02	24/10/13	24/04/14	**7 November 2014**
94	500-17-074327-126	Joanette c. TAQ / SAAQ	Judicial review	29/10/13	15.02	29/10/13	29/03/14	**15 December 2014**
95	500-17-073240-122 500-17-061143-106	Demisse c. Banker	Title transfer	29/11/13	15.02	Note to come Feb. 2014	Hearing – May 12	**17 December 2014**
96	500-17-078422-139	Syndicat canadien de la fonction public c. CRT	Judicial review (Casino)	06/05/14	15.02	06/05/14	06/11/14	**19 December 2014**
97	500-17-076307-134	Tessier c. Patenaude	Judicial review (denturist)	02/09/14	15.02	02/09/14	02/03/15	**6 November 2015**
98	500-17-077972-134	Pidgeon c. CRT	Judicial review (teacher)	10/09/14	15.02	10/09/14	10/03/15	**6 May 2015**
99	505-14-008464-134	Jarry c. Succession Blandine Ouellet	Probate of will	25/09/14	1.11	25/09/14		**24 October 2014**

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100	505-12-037903-138	D c. C	Divorce and measures	26/09/14		26/09/14		**30 October 2014**
101	500-06-000509-105	Tétreault c. STM (class action)	Definition of common issues	30/10/14	15.11	30/10/14	30/04/15	**30 November 2015**
102	505-17-006849-139	(Québec) Agence Revenu c. Suc, Bulka	Motion for surrender, prescription	24/09/14	1.11	Notes 31/10/14	31/04/15	**Hold on delib. 15 June 2015**
103	500-17-085250-143	Goldman c. Houle et PGQ	Motion to dismiss	19/12/14	15.02	19/12/14	19/06/15	**12 May 2015**
104	540-04-001089-967	G c. D	Family law (cancl. support for major child)					**14 April 2015**
105	705-17-005695-141	Riopel c. Desrosiers	Inadmissibility and cancellation of advance registration	08/01/15	1.35	08/01/15	08/07/15	**9 October 2015**
106	500-17-085766-148	Ressources Strateco c. PGQ	Declinatory	30/01/15	15.02	30/01/15		**3 June 2015**
107	500-17-082528-145	Guo c. PGQ	Judicial review (Immigration – China)	26/03/15	15.02	26/03/15	23/06/15	**22 October 2015**
108	500-07-080397-139	Tcheng c. Coop Chung Hua	Injunction (eviction)	23–24/03/15	15.02	24/03/15	24/09/15	**14 December 2015**

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109	500-17-066780-118	Fakhri c. DiPaolo	Damages (defamation – invention)	30/03 to 02/04/15	15.04	02/04/15	02/10/15	**17 June 2016**
110	500-17-074689-129	Grignon c. Major	Damages (8% guarantee)	05/03/15	15.02	10/04/15	10/10/15	**30 March 2016**
111	540-17-009652-149	Lamothe c. Macc Construction	Damages (contractor)	20–23/04/15	15.02	23/04/15	Urgent	**5 June 2015**
112	500-17-0844343-147	Plomberie Jenaco c. Hab. Solano II	Declaratory motion – disqualified counsel	21/05/15	15.09	21/05/15	Urgent	**7 January 2016**
113	500-17-075959-133	Crustacés c. Samuel Son	Declaratory motion – disqualified counsel	10/06/15	15.02	15/06/15	Urgent	**31 May 2016**
114	500-17-056661-104	Domtar c. Chubb Insurance	Objections	22/09/15	15.04	22/09/15		**13 July 2016**
115	700-17-011836-151	Paquin c. Collège médecins	Judicial review	29/10/15		29/10/15	29/04/16	**27 May 2016**
116	540-04-011925-127	T c. D	Contempt / Custody	26/11/16	15.02	26/11/15	Urgent	**1 September 2016**

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117	700-11-015229-141	Gestion Sablière Charlebois c. Blumer Lapointe c. Banque Royale	Sequestration	28/01/16		28/01/16	28/06/16	**Stayed**
118	700-12-045665-148	L c. D	Divorce – custody	18/03/16	Written	submissions	30/03/16	**20 April 2016**
119	500-17-080988-143	Lotsman c. Tarasenko	Motion for revocation	17/06/16	15.02	17/06/16		**30 September 2016**
120	500-17-095289-164	Collège Jade	Injunction	26/08/16	15.02	26/08/16	Urgent	**9 September 2016**
121	500-17-088476-158	Jeffrey Post c. MédiaQMl	Motion – objections (journalistic secrecy)	06/10/16	6.61	06/10/16	Urgent	**31 October 2016**
122	705-04-019538-160	B c. B	Jurisdiction	25/10/16		25/10/16	Urgent	**7 November 2016**
123	500-17-086155-150	Métro Richelieu c. CRT	Judicial review	19/11/15	15.02	19/11/15	19/02/16	**19 December 2016**
124	500-17-044822-081	Moteli c. Sogevem	Actions in damages	25/11/15	15.02	25/11/15	25/05/16	**5 February 2018**
125	705-17-005586-142 705-11-00932-144	Gestion Immobilia c. Litwin Boyadjian c. Hubert Pelletier	Bankruptcy	01/12/15		01/12/15	01/06/16	**30 January 2017**
126	700-17-012404-157	Gervais c. Chaput	Wellington motion	18/03/16		18/03/16	Urgent	**3 March 2017**

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127	500-17-057343-108	I.D. Foods c. DeCecco (Advisement after notes – June 28, 2016)	Damages	May–June/16	15.02	15/08/16	15/02/17	**20 July 2018**
128	500-17-090170-153	Godin c. Godin	Trust	16/08/16	15.02	23/08/16	23/11/17	**31 May 2017**
129	705-17-006101-156	Grégoire c. Lavergne (Joliette)	Contract	19/10/16		19/10/16	19/04/17	**31 August 2017**
130	505-04-024691-156	L c. B	Custody	25/11/16	1.09	25/11/16	25/02/17	**4 April 2017**
131	500-04-069327-162	F c. J	Contempt	1–2/12/16	2.13	Notes not received		**30 June 2017**
132	500-17-093032-160	LABORATOIRES CDL c. CHARTRAND	Inadmissibility – Pharmacist	05/12/16	12.61	05/12/16	05/06/17	**8 August 2017**
133	500-17-089104-155	Synd copropriété 4950 boul L'Assomption	Inadmissibility	8–9 Jan 17	14.07	09/01/17	09/03/17	**6 July 2017**
134	500-06-0100152-021	Lépine c. SCP	Motion to homologate a transaction	24/01/17	15.11	24/01/17	Urgent	**12 April 2017**
135	500-17-075381-130	El-Assaad c. MKI	Damages	30/01 to 08/02/17	15.06	08/02/17	08/08/17	**28 September 2017**
136	500-17-090850-150	Ville de Montréal c. CMP	Evocation / non-profit centre	28/02/17	15.06	28/02/17	28/08/17	**18 October 2017**

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137	505-17-007201-140	Potvin c. Lehner (1 box)	Latent defect	16/03/17	1.27	16/03/17	16/03/17	**31 October 2017**
138	500-17-087122-159	Pavladikis c. ZRYL	Servitude of right of way	31/03/17	15.02	31/03/17	31/09/17	**14 September 2017**
139	500-17-079536-135	9213 Québec c. 120 Ontario (A Bis Gourmet)	Damages / unfair competition	14–16/06/17	15.04	16/06/17	16/12/17	**13 July 2018**
140	760-17-003600-148	Péladeau c. Baril	Permanent injunction / neighbourhood disturbance	7–9, 12–13/06/17	Valley-field	13/06/17	13/12/17	**24 August 2018**
141	500-17-09369-166	Bombardier c. TAT	Judicial review (chromium)	20/06/17	15.02	20/06/17	20/12/17	**1 December 2017**
142	500-17-076135-139	Karisma Audio c. Morency	Damages / studio	28–30/11/17	15.02	30/11/17	30/05/18	**21 June 2018**
143	500-17-095329-168	Chamalishahi c. Min. Immigration	Judicial review (Iran)	07/12/17	15.12	07/12/17	07/06/18	**15 August 18**
144	500-17-096710-168	6819265 c. TAT et Régie Bâtiment	Judicial review (contractor’s permit)	05/01/18	15.02	05/01/18	05/07/18	**8 June 2018**
145	500-17-096736-163	Teamsters c. Labatt	Judicial review (pension plan)	18/01/18	15.02	18/01/18	18/07/18	**3 April 2019**

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146	500-05-072752-023	Provigo c. Bouclair	Damages / commercial lease	23–26/01/18	15.02	26/01/18	26/07/18	**5 April 2019**
147	500-17-075924-137	Sirajo c. Imvescor	Damages -Mike's franchisee	30–31/01/18	15.02	31/01/18	30/07/18	**21 May 2019**
148	500-17-098773-172	Tremblay c. Spiralco	Disqualification	05/02/18	15.05	05/02/18	05/05/18	**28 February 2018**
149	500-12-327801-159	B c. S	Divorce	21–23/12/17 + 16/02/18	15.02	16/02/18	16/08/18	**27 November 2018**
150	500-06-000821-161	Martel c. Merck	Motion – filing of documents	22/02/18	15.02	22/02/18	22/04/18	**6 December 2018**
151	505-04-026498-170	C c. F et PGQ	Custody	26–28/02/18	1.09	28/02/18	28/04/18	**2 May 2018**
152	505-17-009966-179	Gestion Immobilière Trams c. Trépanier	Judicial review	02/03/18	1.09	02/03/18	02/05/18	**8 March 2018**
153	540-12-020975-165	D c. M	Divorce	20–21/03/18		21/03/18	21/05/18	**25 May 2018**
154	500-17-072444-121	Verracchia c. Matik	Motion to examine affiant	24/04/18	15.05	24/04/18	24/07/18	**12 December 2018**
155	505-17-009910-177	Syndicat Canadien de la Fonction publique c. Hamelin	Judicial review — arbitration	05/06/18	1.15	05/06/18	07/12/18	**30 January 2019**

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156	705-17-006658-163	PGQ c. Maskimo [merits]	Damages – crane	14–15/05/18	1.30	12/06/18	12/12/18	**24 July 2019**
157	700-04-028769-179	T c. B	Choice of school	15/06/18		15/06/18	15/08/18	**14 August 2018**
158	500-17-101293-176	Fiori c. Gestion Son Image ADISQ	Declinatory exception	27/06/18	15.05	27/06/18	27/09/18	**28 December 2018**
159	540-17-013160-188	Succession Feue Francine Gariepy et Leduc c. Ayoub	Challenge to homologation of arbitration award	21/08/18		21/08/18		**14 February 2019**
160	500-17-100686-172	Ville Montréal-Est c. 2775328 Canada	Injunction (interlocutory)	27/09/18	15.02	27/09/18	Urgent	**20 November 2018**
161	500-17-095493-162	Lambda General Contractors c. Loyal [merits]	Account (construction contract)	1–4/10/18	15.02	04/10/18	04/04/19	**31 July 2019**
162	500-17-100921-173	Prévost c. T.P. Benhaim [merits]	Judicial review (Collège des médecins)	16/10/18	15.02	16/10/18		**16 April 2019**
163	500-17-091867-153	Montvest c. Caisse Desjardins [merits]	Brokerage contract	22–25/10/18	15.02	25/10/18	25/04/19	**7 August 2019**
164	760-17-004648-179	Brunet c. Anctil (Beauharnois)	Right of way	13/11/18		13/11/18	13/05/19	**12 February 2019**

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165	500-17-080428-132	Houle c. Canada (Attorney Gen)	Damages / penitentiary	8–18/12/17	15.12	18/12/18	18/06/18	**29 March 2019**
166	500-17-100593-170	Synd. Travailleuses c. Lussier [merits]	Judicial review	29/01/19	15.04	29/01/19	29/07/19	**23 August 2019**
167	500-17-079157-130	Nassif c. Casimir (broker immigration) [merits]	Damages (merits)	7–23/01/19	15.02	31/01/19	30/07/19	**19 December 2019**
168	500-17-100593-170	Synd. Travailleuses c. Lussier [merits]	Judicial review	29/01/19	15.04	29/01/19	29/07/19	**23 August 2019**
169	500-17-102841-189	Chief Wayne McKenzie c. Ball	Contempt	06/02/19	15.11	06/02/19	Urgent	**4 March 2019**
170	500-17-102982-181	Dalbec c. J.F. Petit et PGQ	Motion to dismiss #009	28/02/19	15.02	28/02/19	Urgent	**26 March 2019**
171	500-17-093330-168	Potvin-Roy c. Thériault [merits]	Injunction – fence Advisement after notes (merits)	12–13/09/18	15.10 12/02/19	Reopening	12/08/19	**29 January 2020**
172	760-04-013414-173	D c. T	Child custody	19/03/19		After note 21/03/19	Urgent	**25 April 2019**
173	500-17-105892-189	Banque Nationale c. Gestion Claude Vaudrin et Malo	Applications to annul seizures	09/04/19	15.02	09/04/19	Urgent	**30 April 2019**

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174	500-17-102274-183	Maïo c. Goulet et al.	Damages (dismissal, quarrelsome conduct)	15/05/19	15.08	15/05/19	Urgent	**27 September 2019**
175	500-17-103779-180	Cytrynbaum c. Delouya (Mr. Towner)	Prior claim/hypothec – motion to dismiss	14–21/05/19	15.08	21/05/19	Urgent	**9 September 2019**
176	500-17-105774-189	Pro-Forme c. CLP Construction Echelon	Inadmissibility and abuse	22/05/19	15.08	22/05/19	Urgent	**11 September 2019**
177	500-17-106323-192	C Series c. Leonardo	Application by Mtre Sylvestre – Splitting of proceeding	29/05/19	15.04	After note 31/05/19	Urgent (settlement?)	**Settled**
178	500-17-096688-166	Placement F.G. Lemay c. Fayolle et al.	Damages - $1M loan – mines – merits	11–14/06/19	15.02	14/06/19	14/12/19	**20 November 2020**
179	500-17-094485-169	Péladeau c. Placements Péladeau [merits]	Term in settlement agreement (merits)	9–23/04/19	15.04	30/04/19 r: 28/06/19	30/10/19	**30 April 2020**

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180	500-17-100450-173	Petosa c. Aoun	Acquisitive prescription – cedar hedge – merits	5–6/06/19 05/07/19	15.02	After note	05/01/20	**29 May 2020**
181	500-06-000632-121	Option c. Panasonic	Objections — class action	04/07/19	15.04	04/07/19	Urgent	**10 July 2019**
182	500-17-091712-151	Coty c. Costco	Norwich injunction	29–30/08/19	15.04	30/08/19	30/11/19	**22 June 2020**
183	500-17-096084-168	Dorion c. PGQ	Application to dismiss	13/09/19	15.11	18/10/19	18/12/19	**8 January 2020**
184	505-17-009303-167	Ultima c. Vergers Leahy	Damages	17–21/06/19 15–17/10/19	15.04	17/10/19	17/04/20	**30 December 2020**
185	500-11-056522-192	Banque Nationale c. Malo	Application to quash seizure	17–18/11/20	15.06	18/11/20	18/02/21	**17 February 2021**