Canadian
Judicial Council

Conseil canadien
de la magistrature

REPORT OF THE CANADIAN JUDICIAL COUNCIL TO THE MINISTER OF JUSTICE PURSUANT TO S. 65 OF THE *JUDGES ACT* IN RELATION TO THE INQUIRY INTO THE CONDUCT OF THE HONOURABLE GÉRARD DUGRÉ

December 19, 2022

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Introduction

[1] Much is expected of superior court judges in Canada. They must be more than simply knowledgeable in the law. Among other things, judges are also expected to be humble, fair, empathetic, tolerant, reliable, courteous, and patient.[1]

[2] The public's confidence in the judiciary is inextricably linked to an effective judicial system, one that exists to support the rule of law. From the moment of their appointment, judges hold positions of deep trust, confidence and responsibility. It is a fact that the loss of public confidence in a judge can translate into a loss of confidence in the judiciary as a whole, a loss that threatens the entire justice system, upon which the rule of law rests.

[3] While much is required of judges, including dealing with the pressures that come with operating in an increasingly complex legal system, they must faithfully execute the duties of their office. In many respects, the public looks to judges as exemplars of justice. Therefore, it is essential that judges behave in a manner that nurtures, not diminishes, the public's confidence in the justice system. When a

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[1] Office of the Commissioner for Federal Judicial Affairs Canada, *JUDICIAL ADVISORY COMMITTEES - Guidelines for Judicial Advisory Committee Members* (October 2016), Appendix A: Assessment criteria, candidates for Federal Judicial Appointment "Personal Characteristics", online: <https://www.fja.gc.ca/appointments-nominations/committees-comites/guidelines-lignes-eng.html#AppendixA:~:text=bilingual%20ability-,Personal%20Characteristics,-demonstration%20of%20a>.

judge behaves in a manner that consistently undermines the public's confidence in the judiciary, that judge damages the reputation of the judiciary.

[4] For the reasons that follow, we find that by engaging in this kind of conduct, Justice Dugré has undermined the public's confidence in the judiciary, so much so that he has "become incapacitated … from the due execution of his office", within the meaning of subsection 65(2) of the *Judges Act.*[2] Accordingly, we recommend his removal from office.

Role of the Canadian Judicial Council in Conduct Matters

[5] To ensure judicial independence, judges appointed to Superior Courts in Canada enjoy a very high degree of security of tenure. Subsection 99(1) of the *Constitution Act, 1867*[3] provides they will hold office during good behaviour and shall only be removed by the Governor General "on address of the Senate and House of Commons".

[6] As noted by the Federal Court of Appeal in *Girouard*,[4] judicial independence is one of the pillars upon which the Canadian Constitution rests. The

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[2] R.S.C., 1985, c. J-1. (the Act)
[3] 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5].
[4] *Girouard v. Canada (Attorney General)*, 2020 FCA 129, [2020] 4 F.C.R. 557 (*Girouard*, FCA), at paragraphs 25-27.

objective of judicial independence is "to promote public confidence in the administration of justice and to ensure the rule of law and the separation of powers."[5]

[7] Judicial independence is protected by the designation of the Canadian Judicial Council (CJC) as the body responsible for the investigation of conduct complaints involving federally appointed judges and advising the Minister whether it believes there has been a violation of good behaviour. Since "it is not always easy to determine when the obligation of good behaviour under section 99 of the [Constitution Act, 1867] has been violated as well as which type of misconduct is serious enough to warrant removal of a judge",[6] Parliament created the CJC pursuant to Part II of the Act.

[8] The function of the CJC in matters of judicial conduct is to intervene, when necessary, by means of an inquiry or investigation and to determine the appropriate course[7] when judges are alleged to have abused the powers of their office. The main objective is to preserve the integrity of the judiciary as a whole.[8] Therefore,

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[5] *Ibid.* at paragraph 26.
[6] *Ibid.* at paragraph 27.
[7] *Judges Act*, *supra* note 2, s. 63.
[8] *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, at paragraph 68; *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at paragraph 58.

Parliament mandated the CJC to make a recommendation for removal from office when, in Council's opinion and following an inquiry or investigation,[9] a judge becomes incapacitated from the due execution of the office. The decision to recommend that a judge be removed from office is a very difficult one and cannot be undertaken lightly.[10]

[9] The test to be applied in determining whether a recommendation for removal should be made is known as the Marshall test:[11]

> 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?

[10] The actions and expressions of an individual judge can trigger concerns about the integrity of the judicial function itself.[12] The CJC may investigate. The jurisdiction to conduct inquiries and investigations in relation to judicial conduct is found in section 63 of the Act which provides in part:

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[9] *Judges Act*, *supra* note 2, s. 65(2).
[10] *Valente* v. *The Queen*, [1985] 2 S.C.R. 673, at page 697.
[11] The test evolves from the *Report to the Canadian Judicial Council of the Inquiry Committee Established Pursuant to Subsection 63(1) of the Judges Act at the Request of the Attorney General of Nova Scotia*, (1991) 40 U.N.B.L.J. 210, at page 219.
The test has consistently been applied since and recognized by the Supreme Court as the criterion to use: *Moreau-Bérubé* v. *New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249 (*Moreau-Bérubé*), at paragraphs 12, 51, 66.
[12] *Moreau-Bérubé*, *supra* note 11, at paragraph 58.

> **Inquiries**
>
> **63 (1)** The Council shall, at the request of the Minister or the attorney general of a province, commence an inquiry as to whether a judge of a superior court should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).
>
> **Investigations**
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> **(2)** The Council may investigate any complaint or allegation made in respect of a judge of a superior court.
>
> **Inquiry Committee**
>
> **(3)** The Council may, for the purpose of conducting an inquiry or investigation under this section, designate one or more of its members who, 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, shall constitute an Inquiry Committee.

[11] The Act provides Council's authority to constitute an Inquiry Committee and to make by-laws respecting the conduct of its inquiries and investigations. There is a distinction to be made between the role of the Inquiry Committee and the role of Council as a whole after the Inquiry Committee has completed its investigation and inquiry. The task of the Inquiry Committee is to hear the evidence, determine the facts and report to Council.[13] Council's role is to make its own recommendation to the Minister.[14]

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[13] *Girouard* (FCA), *supra* note 4, at paragraph 88.
[14] *Ibid.* at paragraph 89.

[12] Where an inquiry or investigation is undertaken, the judge involved is to be given notice and the opportunity to participate in any hearing in accordance with section 64 [of the Act]:

> **Notice of Hearing**
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> **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.

[13] Upon conclusion of the inquiry or the investigation, the inquiry committee will submit a report to Council and to the judge who is the object of the inquiry. That judge will then have the opportunity to make submissions, responding to the inquiry committee's findings and recommendation. Council will then examine the report, along with any submissions provided by the judge, and make its own recommendation to the Minister of Justice in accordance with section 65 of the Act on whether the judge should be removed from office.

Investigation of Complaints Concerning Justice Gérard Dugré

[14] In August and September 2018, the CJC received two complaints about the conduct of The Honourable Gérard Dugré, a judge of the Superior Court of Québec. In March 2019, the Vice-Chair of the Judicial Conduct Committee

referred the matter to a Review Panel. After receiving submissions from counsel for Justice Dugré, the Review Panel recommended that the Inquiry Committee be constituted. Once the Inquiry Committee was set in place, five additional complaints were received by Council and those were also referred to the Inquiry Committee.

[15] On March 4, 2020, the Inquiry Committee provided Justice Dugré with a written notice detailing 13 allegations of potential judicial misconduct (the "Notice of Allegations") which stated:

> **Allegation 1A**
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> 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?
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> **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?
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> **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?
>
> **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?

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?

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?

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?

Allegation 6A

Did Justice Gérard Dugré fail in the due execution of his office at the hearing he presided over on April 11, 12 and 13, 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, 12 and 13, 2018, in *S.C.* (*D.F. c. S.C.* #540-04-013357-162) by his conduct or by his comments made at the hearing?

[16] After receipt of the Notice of Allegations, Justice Dugré, through counsel, brought motions in relation to several preliminary issues. The Inquiry Committee

heard the motions and issued a decision in November 2020 (the Preliminary Decision).

[17] The hearing by the Inquiry Committee began in April 2021 and concluded in December 2021. Throughout the proceeding, Justice Dugré was represented by legal counsel. The Inquiry Committee also engaged legal counsel to assist in the conduct of the inquiry. There were 38 sitting days and the Committee heard testimony from approximately 60 witnesses (including one expert witness), reviewed extensive documents and received two expert reports.

[18] Since some of the allegations related to comments made by Justice Dugré in court, the Inquiry Committee reviewed transcripts of those proceedings. In addition, the Inquiry Committee listened to the audio recordings of the proceedings. Therefore, not only did the Committee read the transcripts of proceedings, but to fully understand the nuances of those proceedings, the Committee listened to the full recordings of the court hearings relating to several allegations during the inquiry hearings, so that any necessary corrections could be made to the transcripts. In total, 46 hours of recordings were listened to.

[19] In June 2022, the Inquiry Committee issued a comprehensive report[15] setting out its factual findings and conclusions with respect to all 13 allegations. The report recommended that Justice Dugré be removed from office. The Inquiry Committee's conclusion is summarized in paragraph 5 of the report:

> 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 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*.

[20] Following the Inquiry Committee's report, the CJC received written submissions from counsel for Justice Dugré. Pursuant to subsection 11(1) of the Bylaws,[16] the CJC is required to consider those materials and prepare its own report and recommendations for the Minister of Justice in accordance with section 65 of the Act. This is that report.

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[15] *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* (June 2022), online: <https://cjc-ccm.ca/en/what-we-do/review-procedures/inquiries-listings#:~:text=Proceedings%20and%20reports%20regarding%20Justice%20G%C3%A9rard%20Dugr%C3%A9>

[16] *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203.

Consideration by Council of the Inquiry Committee Report and Submissions of Justice Dugré

[21] Under the Act, in relation to matters of judicial conduct, the mandate of the CJC is to determine whether a recommendation should be made to the Minister of Justice, as representative of the Governor in Council, that a judge be removed from office.

[22] The primary method used by the CJC for fact finding is the Inquiry Committee.[17] It is the Inquiry Committee that has the benefit of hearing the evidence and considering the submissions from counsel. In these circumstances, the Inquiry Committee is in the best position to draw factual conclusions from the evidence because of its privileged position in relation to the evidence as a whole. Accordingly, when considering an Inquiry Committee report, the CJC should have regard to the well-accepted advantages of the Inquiry Committee when coming to conclusions arising from the evidence elicited before it. Those factual conclusions should not be departed from without good reason. Should the CJC, in its report to the Minister, make different findings of fact than the Inquiry Committee, the CJC should clearly explain its reasons for doing so.[18]

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[17] *Girouard v. Canada (Attorney General)*, 2019 FC 1282, [2020] 2 F.C.R. 199 (*Girouard*, FC), at paragraph 55.
[18] *Girouard*, FCA, *supra* note 4, at paragraphs 82, 88-90.

[23] In this matter, we are satisfied that we should accept the conclusions set out by the Inquiry Committee in its report. Contrary to the submissions of counsel for Justice Dugré, we see no basis on which we ought to reject any of the Inquiry Committee's factual findings.

[24] The Inquiry Committee's opinions with respect to whether a judge has become incapacitated or disabled from the due exercise of their office, or whether a recommendation should be made for their removal, should not be treated in the same fashion as factual findings. The CJC is not only well positioned to reach independent conclusions on these issues, but is duty bound to do so. It is for the CJC to consider the recommendations of the Inquiry Committee afresh, applying its own independent judgment to the facts and having regard to the submissions made by counsel to Justice Dugré.[19] The much larger number of participants and the extensive collective experience of CJC members means it is well suited for consideration of the complex and constitutionally significant issues associated with the potential removal of a judge from office. While the recommendations of the

[19] See Canadian Judicial Council, *Majority Reasons of the Canadian Judicial Council in the Matter of an Inquiry into the Conduct of the Honourable P. Theodore Matlow* (December 3, 2008), online: <https://cjc-ccm.ca/en/what-we-do/review-procedures/inquiries-listings#:~:text=Proceedings%20and%20reports%20regarding%20Justice%20Theodore%20Matlow>; *Girouard,* FCA, *supra* note 4, at para. 89

Inquiry Committee in this regard are informative, they should be given no special deference.

[25] Accordingly, and to be clear, in fulfilling its statutory obligation, the CJC does not engage with and is not constrained by a standard of review applicable in other contexts. It is not bound to deference.

[26] The Inquiry Committee decided that allegations 4A and B had not been established. We accept this conclusion and will not discuss those allegations or the evidence related to them further in our report.

[27] In considering the work of the Inquiry Committee and formulating our report for the Minister, we carefully considered the submissions of counsel for Justice Dugré and the issues which they raise.

[28] Counsel for Justice Dugré made comments on the individual allegations and, in addition, raised several preliminary and overarching complaints. We believe that the substance of his submissions can be grouped under the following general headings:

1. Procedural Fairness and Jurisdiction.
2. Factual Findings and Evidence.
3. Collective Consideration of the Complaints.

[29] We will organize our report under those same headings in order to directly address all of Justice Dugré's concerns.

1. Procedural Fairness and Jurisdiction

[30] Section 64 of the Act makes clear that a judge must have proper notice of allegations against them and a full opportunity to participate at any hearing. This important principle is emphasized in section 7 of the 2015 By-laws:

> **7** The Inquiry Committee must conduct its inquiry or investigation in accordance with the principle of fairness.

[31] In the context of the allegations against Justice Dugré, it is important to note the ways in which he was provided notice and an opportunity to respond. These include the following:

- He was given the opportunity to, and did, provide submissions to the Review Panel in relation to the complaints giving rise to allegations 1A, 1B, 2A and 2B.

- In September 2019, he received two Review Panel reports and their reasons for recommending an Inquiry Committee in relation to allegations 1A, 1B, 1C, 2A and 2B.

- In March 2020, the Inquiry Committee provided the Notice of Allegations to Justice Dugré informing him of the allegations it intended to investigate. This was more than a year prior to commencement of the hearing.

- Justice Dugré was able to present his preliminary motions with respect to his concerns in relation to procedural fairness, jurisdiction and evidence in the summer of 2020 before the Inquiry Committee.

- Justice Dugré requested and was granted a number of adjournments of the hearing for various reasons including preparation of his testimony.

[32] We are of the view that Justice Dugré was provided with appropriate notice and a fair opportunity to respond to all allegations which were considered by the Inquiry Committee. We will now consider the specific fairness concerns raised by counsel for Justice Dugré. These arise in two areas: Referral of Complaints Directly to the Inquiry Committee and the Role of Legal Counsel.

Referral of Complaints Directly to the Inquiry Committee

[33] In August and September 2018, the CJC received two complaints, which give rise to allegations 1A, 1B, 2A and 2B. In accordance with the procedure set

out in the 2015 By-laws, the complaints were considered by the Vice-Chair of the Judicial Conduct Committee, referred to a Review Panel and investigated by the Inquiry Committee.

[34] In relation to the allegation from complainant *K.S* about the delay in rendering judgment, the former Chief Justice of the Superior Court of Québec, the Honorable Jacques Fournier, provided his comments and highlighted the existence of a "chronic problem" with Justice Dugré's delay in rendering his judgments. This comment caused the Review Panel to include this question in its report recommending appointment of an Inquiry Committee. The Inquiry Committee investigated the question of chronic delays raised by the Review panel which constitutes allegation 1C.

[35] The complaints forming allegations 3A, 3B, 4A, 4B, 5A, 5B, 6A and 6B came to the attention of the CJC after the Inquiry Committee was created. As the Inquiry Committee had already been established, and its work was underway, these subsequent complaints were referred directly to the Inquiry Committee in the fall of 2019. One of the complaints was referred to the Inquiry Committee by the Vice-Chair of the Judicial Conduct Committee and the others by the Executive Director of the CJC.

[36] Justice Dugré contends that referring these complaints to the Inquiry Committee, without first going through a Review Panel, was unfair and a breach of subsection 5(1) of the 2015 By-laws. Section 5 deals with proceedings of the Inquiry Committee. It says:

> **Complaint or allegation**
>
> **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.
>
> **Sufficient notice to respond**
>
> **(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.
>
> **Comments from judge**
>
> **(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.

[37] The alleged unfairness is said to arise from the fact that Justice Dugré lost the opportunity to make submissions to the Review Panel, submissions that may have resulted in a decision not to refer the complaints to the Inquiry Committee for investigation. We do not accept that submission. The additional complaints were similar to the initial ones; they raised allegations of delays and mostly concerned Justice Dugré's behaviour in the courtroom which were sufficiently serious, on their face, to potentially lead to a recommendation for his removal from office. We see no basis to believe that a Review Panel, had it considered the complaints,

would have decided there was no purpose in having an investigation by the Inquiry Committee.

[38] In any event, we reject the suggestion that subsection 5(1) of the 2015 By-laws precludes an Inquiry Committee from considering an allegation until such time as a Conduct Review Panel has looked into the matter and provided written reasons.

[39] Section 5 is procedural in nature and intended to ensure that an Inquiry Committee meets its obligation to conduct an investigation in accordance with the principles of fairness. Subsection 5(1) indicates that the Inquiry Committee may consider any complaint or allegation brought to its attention. This could include matters arising during its investigation, an investigation that is only commenced after the Review Panel has produced its report. The reference to the Review Panel's reasons and statement of issues does not create a requirement that a newly discovered complaint must first be sent to a Review Panel when an Inquiry Committee is already in existence and is in the process of examining that same judge's conduct.

[40] Subsection 5(1) does not require an Inquiry Committee which becomes aware of new allegations against a judge in the course of its investigation to refer

those to a Review Panel to consider and report back. Such an interpretation would place form over substance, resulting in unnecessary complexity, delay and formality. We are of the same view with respect to section 8.2 of Council's *Review Procedures*[20] whereby the Executive Director refers new complaints to a Review Panel for consideration. If an Inquiry Committee is already investigating complaints against the judge the referral of the new complaint may go directly to it.

[41] Furthermore, subsection 5(1) is clear on its face. The interpretation offered by counsel to Justice Dugré cannot withstand scrutiny. Had the provision been intended to carry such a restrictive meaning, it would have said that the Inquiry Committee "may consider any complaint or allegation pertaining to the judge that is brought to its attention" provided that the "Judicial Conduct Review Panel's written reasons and statement of issues [in respect of those complaints or allegations]" had already been provided to the Inquiry Committee. It does not say that. Rather, it says that in taking into account complaints and allegations brought to its attention, the Inquiry Committee "must take into account the Judicial Conduct Review Panel's written reasons and statement of issues." The Inquiry Committee did that in this case. The fact that those written reasons and statement

[20] Canadian Judicial Council, *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges* (2015), online: https://cjc-ccm.ca/en/what-we-do/review-procedures.

of issues did not contain reference to all of the allegations eventually brought to the Inquiry Committee's attention matters not.

[42] We conclude by emphasizing that Justice Dugré was provided with notice of all allegations and given a full and fair opportunity to respond. For a judge to participate in the process is fundamental and must be maintained throughout any judicial conduct inquiry by the CJC. We are satisfied this standard was met in relation to the allegations against Justice Dugré.

The Role of Legal Counsel

[43] Section 62 of the Act provides that counsel may be engaged for purposes of assisting with "the conduct of any inquiry or investigation described in section 63." As well, section 4 of the 2015 By-laws authorizes that legal counsel be engaged to assist with an inquiry:

> **Persons to advise and assist**
>
> **4** The Inquiry Committee may engage legal counsel and other persons to provide advice and to assist in the conduct of the inquiry.

[44] Pursuant to this authority, Mr. Giuseppe Battista was retained. The tasks he carried out included the collection of evidence and presentation of that information at the Inquiry Committee hearing.

[45] Justice Dugré says that because Mr. Battista was not retained as "independent counsel", the entire process was procedurally unfair. As an illustration, Justice Dugré says that Mr. Battista met with Chief Justice Fournier and Associate Chief Justice Petras to gather information concerning the alleged issue of chronic delay in rendering judgments. He says this information was given by Mr. Battista to the Inquiry Committee which then used it to draft a "new allegation" in the form of allegation 1C. Justice Dugré argues that Mr. Battista should not have been providing evidence to the Inquiry Committee and then subsequently presenting that same evidence in hearing.

[46] Justice Dugré's concerns with respect to the absence of independent counsel are set out in the following extract from his submissions concerning the Inquiry Committee report:

> 81. The CJC's rules then provided for the appointment of independent counsel in the CJC Inquiries and Investigations By-laws (2010) as an effective measure for ensuring procedural fairness. Counsel was appointed by the Chairperson or Vice-Chairperson of the Judicial Conduct Committee. The Inquiry Committee could, for its part, appoint counsel to assist them in their communications with independent counsel before and during the inquiry.
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> 82. The role of independent counsel was central to the inquiry process, as they were responsible for presenting all relevant evidence to the Inquiry Committee, so that it would not be influenced by the possible pre-determined points of view of the Inquiry Committee or the CJC, and for drafting the notice of allegations.
>
> 83. In 2015, following a procedural reform, the Council decided to remove the role of independent counsel. Now, the Inquiry Committee may appoint counsel to assist it in its inquiry, present relevant evidence to it or advise it on steps to be taken to ensure fairness and impartiality in the inquiry process. However, their appointment remains purely optional. In addition, counsel appointed by the

> Inquiry Committee is under its authority and bound by its directions. This counsel is therefore not independent.
>
> 84. This reform has made procedural fairness guarantees insufficient as regards the only sanction that a judge faces at the end of the inquiry process.

[47] The same argument was made to the Inquiry Committee and rejected in its Preliminary Decision. The process followed by the Inquiry Committee and the CJC is inquisitorial in nature. An investigation and inquiry is carried out for purposes of preparing a report. Whether the absence of an independent counsel in the CJC process is procedurally unfair was considered by the Federal Court of Appeal in *Girouard*.[21] Its conclusion on the issue was as follows:

> [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.
>
> [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 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* [at paragraph 104]:
>
> > [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

[21] *Girouard*, FCA, *supra* note 4, at paragraphs 75-77.

> 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.

[48] In our view, this reasoning is applicable and addresses Justice Dugré's arguments about the absence of independent counsel.

[49] We have considered the actions of Mr. Battista which are raised by Justice Dugré. We see no basis for his concerns in light of the inquisitorial nature of the process. Mr. Battista was retained to assist in the investigation and inquiry of the complaints against Justice Dugré and he did so in accordance with his mandate.

[50] As well, although it may be a minor point, it is worth noting that the issue of chronic delay in rendering judgments, which forms the basis of allegation 1C, was identified by the Review Panel and referred to the Inquiry Committee for investigation. Justice Dugré's submissions suggest it was the Inquiry Committee that added this allegation to the proceeding after receiving information obtained by Mr. Battista from Chief Justice Fournier and Associate Chief Justice Petras. That is not what happened. Chronic delay was part of the investigation from the time it was identified by the Review Panel.

[51] There is nothing in the work done by Mr. Battista or the absence of a designated independent counsel which adversely impacted the fairness of the Inquiry Committee process. Justice Dugré knew the allegations against him as well the supporting evidence. He had the opportunity to respond as he saw fit.

2. Factual Findings and Evidence

[52] In his response to the Inquiry Committee report, Justice Dugré disputes some of the Committee's factual findings on the basis they improperly assessed, interpreted or applied the evidence. We will illustrate the nature of his concerns by providing several examples.

[53] With respect to the conclusions concerning the nature of Justice Dugré's in-court behaviour, he says the Inquiry Committee made the following errors:

- Did not properly assess the credibility of some witnesses who testified they had limited recollection of the appearances.

- Discounted the testimony of witnesses who testified they were not troubled by Justice Dugré's in-court conduct on the basis they had been successful litigants and were therefore biased.

- Ignored inconsistencies in the testimony of some complainants concerning the events in court when compared with the audio recordings.

- Mischaracterized the comments made by Justice Dugré in court because they were “quips” and intended to lighten the mood and encourage resolution of the dispute.

[54] We have previously said we accept the findings of fact of the Inquiry Committee. It is the Inquiry Committee that enjoyed the advantage of hearing and observing the witnesses testify, of hearing all 46 hours of court recordings, and that was able to consider all of the evidence within its broader context. We do not see any error in how it approached this task. In our view, assessments of credibility and questions of evidentiary weight are better suited for those who have the benefit of first-hand experience with that evidence. In these circumstances, we see no basis to interfere with how the Inquiry Committee approached its task as a fact finder.

[55] In response to the submissions of Justice Dugré, we note the Inquiry Committee did not rely primarily on witness testimony in relation to the in-court events. To the contrary, from its perspective, the most significant evidence was the audio recording of the hearings. This is demonstrated by the following passage from its report:

> [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.** [Emphasis added.]

[56] With respect to allegations 1A and 1B, allegations arising from delay in rendering judgment, Justice Dugré says the Inquiry Committee was wrong to conclude that the matter was urgent. This finding was central to its conclusion that he failed to provide his judgment in a timely fashion in accordance with his undertaking to do so. He says this is wrong because the minutes of the court appearance on February 16, 2018 do not say he found an urgency existed.

[57] In our view, the Committee's conclusion in this regard is well supported by the record. The Committee relied on extensive evidence, including the audio recording of the discussions in court, in reaching its conclusion. They summarized the significant evidentiary points in the following passage taken from its report:

> [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:
> >
> > . . . 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.

[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". 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 . .

[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.
>
> We therefore apologize for the inconvenience, and I will keep you abreast of any developments. Your case is still a priority.
>
> [Emphasis added]

[518] What is more, Ms. Dumont related that the judgment had almost been completed at that time.

[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.
>
> [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.

[58] Accordingly, even though the minutes of the court appearance do not record an express finding of urgency, this does not undermine the Inquiry Committee's conclusion that the matter was in fact urgent, a conclusion that was reached after a detailed consideration of all the evidence and one that is well supported in the record.

[59] In relation to allegation 1C, an allegedly "chronic problem" in delivering timely judgments, Justice Dugré criticizes the Inquiry Committee's reliance on a table of deliberations prepared by Justice Dugré's assistant, Ms. Dumont. This table and the Inquiry Committee's assessment of its reliability are described in its report as follows:

> [617] Finally, Justice Dugré objects to the table of deliberations prepared by Ms. Dumont. 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 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.

[60] The summary that follows the above quotation, a summary of Justice Dugré's delays as confirmed by the testimony of his own witnesses, reflects delays that vary from over six months, all the way up to around two years.

[61] We see no error in the Inquiry Committee's acceptance of Ms. Dumont's table of deliberations nor its use of it, in conjunction with other evidence, to

conclude that Justice Dugré had a significant and chronic issue with delays in rendering judgments.

[62] In addition, we see no error in how the Inquiry Committee approached Justice Dugré's decision not to testify.

[63] The Inquiry Committee noted on several occasions the absence of testimony from Justice Dugré, testimony that might have provided an explanation or context for other evidence. An example is found in the section of the report dealing with whether to recommend his removal:

> [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. 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. 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.

[64] Justice Dugré says that if the Inquiry Committee believed he had relevant evidence to give, then the Committee should have "taken the necessary measures" to obtain his evidence if it found that his "decision" not to testify was "incorrect". This is a striking submission.

[65] The fact is that, following the presentation of evidence by Inquiry counsel, Justice Dugré requested an adjournment of approximately one month to prepare for his testimony. At the resumption of the hearing, he advised that he had decided not to testify. The Inquiry Committee discussed Justice Dugré's decision and how it would impact their findings as follows:

> [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. He further stated that, for this reason, no negative inference could be drawn from his decision not to testify.
>
> …
>
> [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.

[66] The Inquiry Committee based its findings on the evidence which was presented. The Committee drew no inferences, let alone adverse inferences, from Justice Dugré's decision not to testify. We do not believe this issue has any impact on the factual findings of the Inquiry Committee.

[67] As we have already noted, we accept and rely upon the factual findings of the Inquiry Committee for purposes of this report to the Minister of Justice. It is therefore unnecessary to repeat all of those factual findings in this report. Instead, what follows is a condensed factual summary, one that is predicated upon the factual findings of the Inquiry Committee and one that is designed to provide some context for our ultimate conclusions.

Allegations 1A and 1B: Delay in Rendering Judgment in an Urgent Matter

- Justice Dugré gave an undertaking to the parties in court on February 16, 2018 that he would render his judgment within a short timeframe.

- The matter was urgent, involving the sale of a family residence. Justice Dugré acknowledged this fact, noting that he would "render judgment rather quickly" and that 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."

- The parties made a number of inquiries over the next few months and ultimately counsel wrote a joint letter to Associate Chief Justice Petras on November 14, 2018 requesting her intervention.

- On November 27, 2018 Justice Dugré rendered his judgment, nine months after having taken the matter under advisement.

Allegation 1C: A Chronic Problem in Delivering Judgments

- Justice Dugré was appointed to the Québec Superior Court on January 22, 2009.

- In November 2010, former Chief Justice Rolland of the Québec Superior Court filed a complaint with the CJC regarding excessive delays in rendering judgment on the part of Justice Dugré. The complaint was resolved by the offer of assistance in the form of mentoring for Justice Dugré.

- In January 2014, former Chief Justice Rolland filed a new complaint with the CJC stating that, despite the help which had been given, Justice Dugré was still not rendering judgments in a timely manner.

- Justice Dugré was aware of the concerns of the Chief Justices of the Québec Superior Court as well as the CJC regarding delays in rendering judgment since 2010 and he had been provided with resources to help him follow up on deliberations.

- A table of deliberations lists 185 judgments, 60% of which were rendered more than six months after being taken under advisement and 18% were rendered more than a year after that date.

- Justice Dugré was described by Chief Justice Fournier as an "outlier, a total outlier", in that there were no other judges who experienced comparable delays in rendering judgments. This is despite the fact that Chief Justice Fournier was clear that the workload between judges was "equal".

- Additional findings are set out by the Inquiry Committee at para. 652 of its report:

> [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.
> - 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.

Allegations 2A and 2B: A Choice of School Case

[68] In a hearing on September 7, 2018 Justice Dugré:

- Harshly criticized counsel for Ms. S. for not insisting on an earlier hearing date.
- During exchanges with counsel displayed an attitude which was harsh, even unpleasant.
- Made remarks which were insensitive and pointed blame at Ms. S. and which had nothing to do with the circumstances of the case,

- On two occasions, proposed a solution whereby the child in question would be sent to boarding school or put up for adoption,

- Throughout the hearing, used an unpleasant and often aggressive tone. Having listened to the proceeding, the Inquiry Committee concluded that a reasonable and well-informed person could see the judge's conduct as a "form of bullying".

Allegations 3A and 3B: Family Matter Involving Provisional Measures and a Safeguard Order

[69] In a hearing on April 3, 2018, Justice Dugré:

- Before the applicant had an opportunity to argue the case, declared that the application was allowed and that Mr. A. would have to take out a loan to meet his obligations under the court order.

- Declared it was a lost cause when counsel for Mr. A. tried to plead her case because his mind was made up.

- Constantly interrupted counsel for Mr. A and casually, even derisively, rejected her arguments while she tried to present her client's position.

- Appeared to abandon an appearance of objectivity and appeared biased in favour of Ms. M. As the Inquiry Committee described it, he seemed to have "traded in his judge's robe for that of a lawyer."

- Was often sarcastic and disrespectful towards Mr. A. and his counsel.

- Some of the comments made during the hearing include:

    - Telling Mr. A. that he would have to call his "mommy" to borrow money;

    - Saying that the "riot act" should be read to Mr. A. who was in need, not only of a "reality check", but a "small electric shock" so that he would take care of his children; and

    - Saying that he hoped the mother of the children was driving a Porsche while Mr. A. should sell his 2004 Mazda to pay for a month of child support.

Allegations 5A and 5B: Claim for Damages

[70] In a hearing on November 27-30, 2017, Justice Dugré:

- Made jokes in reference to allegations of sexual misconduct about a colleague of one of the parties. He asked whether one of the parties had been "accused of sexual assault yet", suggesting that he just wanted to make sure that "everyone's behaved themselves." The case had absolutely nothing to do with sexual assault.

- Made comments about transgendered individuals, in a case having nothing to do with that subject matter.

- Interfered in the direct examination of one of the parties, asked his own questions and cut off the witnesses' attempt to reply. He did not let them present their case in their own fashion but rather imposed his perspective despite having an incomplete understanding of the facts.

- Intervened in a fashion that was so extreme it contributed to confusion throughout the trial process.

The matter was appealed to the Québec Court of Appeal.[22] The Court rejected the bias complaint, but only on the basis that although the judge's conduct was regrettable, it was not "determinative of the outcome of the dispute". While he was

[22] *Karisma Audio Post Vidéo & film inc. c. Morency,* 2020 QCCA 100

found to have been “exasperated by the evidence presented”, “impatient and extremely interventionist”, “had trouble keeping up with the witness”, and appeared “frustrated”, Justice Dugré had essentially treated both parties with the same attitude.

Allegations 6A and 6B: Claim for, among other things, Custody, Child Support, Division of Property, Support

[71] In a hearing which took place on April 11, 12 and 13, 2018, Justice Dugré:

- Insinuated that the financial statements of the self-represented complainant were inaccurate and prepared for the purpose of defrauding tax authorities.

- Suggested the complainant’s non-disclosure of certain documents could result in a finding of contempt of court and incarceration in a cell with starving rats.

- Suggested to the complainant that he should consider settlement rather than a judgment which would make him out to be “a bad father”.

- Made a finding that the complainant had failed to include a commercial building in his personal balance sheet even though no evidence had been presented.

- Asked the complainant whether he was taking him for an "idiot" and suggested that he deserved to be smacked with a ruler.

- Took over the direct examination of the first witness called by the complainant at trial and conducted the examination for approximately 40 minutes.

- Made long speeches, sharing his views on various subjects, when witnesses were on the stand. For instance, as only one of many examples, he shared his views on alcoholism with a witness on the stand:

> 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.

- Took control of the examination of other witnesses and included extensive personal comments on a variety of issues which had little to do with the case.

- Engaged in frequent interventions resulting in a disorderly hearing. He seemed to be in charge of the case and the trial bore only a passing resemblance to an adversarial process.

- Didn't allow the complainant an opportunity to argue his case as he intended.

- Continued conversing with counsel for Ms. F. while the complainant was absent from the courtroom.

[72] Justice Dugré's submissions with respect to the factual findings of the Inquiry Committee were, for the most part, repetitive of the post hearing arguments he made to the Committee. The report demonstrates the Committee considered these submissions in reaching its conclusions. We see no error in its assessment of the evidence nor the factual findings in its report.

3. Collective Consideration of Complaints

[73] In his submissions to us, Justice Dugré argues that it was improper and unfair for the Inquiry Committee and as well as the CJC to consider all the allegations in the Notice of Allegations in a single proceeding. He argues the Act and 2015 By-laws requires all complaints to be investigated by separate Inquiry Committees and an independent conclusion reached as to whether each justifies a recommendation for removal from office. We disagree.

[74] There is nothing in the language of the Act or the 2015 By-laws which supports Justice Dugré's position. In fact, subsection 5(1) of the By-laws explicitly states that an Inquiry Committee may consider any complaint or allegation that is brought to its attention. Similarly, subsection 5(2) speaks of complaints or allegations in the plural.

[75] It is clear from the Inquiry Committee report and the way the hearing was conducted that the factual circumstances of the allegations were considered independently. The analytical process followed by the Committee involved assessment of the evidence and a determination of the facts with respect to each allegation. It then considered those factual findings and decided whether they demonstrated a failure in the due execution of Justice Dugré's office. This

compartmentalized approach is evidenced by the fact that two of the 13 allegations were determined to be unfounded.

[76] Combining multiple complaints or allegations into a single investigation frequently makes sense from an efficiency perspective. It avoids witnesses being required to testify on multiple occasions.

[77] In his preliminary motions, Justice Dugré asked that all allegations be separated and considered by different inquiry committees. That proposition was rejected by the Inquiry Committee for the following reasons which we adopt:

> [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" and would contribute to [TRANSLATION] "the reduction of the duration of the inquiry and its associated costs." 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.
>
> [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.

[78] For reasons which we will expand upon when discussing our recommendations, we believe that it is appropriate to consider the cumulative impact of the findings in relation to all of the allegations in deciding whether to recommend Justice Dugré's removal from office.

Conclusions on Complaints and Recommendation

[79] The process which we followed in our deliberations had the following components:

1. First, we determined whether to accept the factual findings of the Inquiry Committee and, if not, to explain our reasons for departing from its conclusions;

2. Second, we considered whether the factual circumstances of each allegation amounted to judicial misconduct or failure of execution of judicial office;

3. Finally, we considered all the allegations for which there was judicial misconduct and failure of due execution of office and determined whether to

recommend to the Minister of Justice that Justice Dugré be removed from office.

[80] We have already outlined our reasons for accepting the factual findings of the Inquiry Committee. We have considered, and agree, with the Inquiry Committee's conclusions that in 11 of the 13 allegations Justice Dugré's actions amount to either judicial misconduct or failure in the due execution of his office.

[81] Not all behaviour constituting judicial misconduct will necessarily result in a recommendation for removal; some circumstances are more serious than others. An example where findings of judicial misconduct and failure in the due execution of judicial office did not lead to a recommendation for removal can be found in the CJC report to the Minister in relation to the conduct of the Honourable Justice Theodore Matlow.[23]

[82] Allegations 2A, 2B, 3A, 3B, 5A, 5B, 6A and 6B all relate to Justice Dugré's conduct in court hearings. Although the cases are each unique, his behaviour in belittling parties and counsel, making inappropriate and offensive comments and not permitting parties an opportunity to present their case, are all sufficient to ground a finding of judicial misconduct.

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[23] Canadian Judicial Council, *Majority Reasons of the Canadian Judicial Council in the Matter of an Inquiry into the Conduct of the Honourable P. Theodore Matlow* (December 3, 2008)*, supra* note 19.

[83] Allegations 1A and 1B involve the failure to follow through on an undertaking to provide a timely decision in an urgent matter until the intervention of the Associate Chief Justice. This is also an example of judicial misconduct and a failure in the due execution of judicial office.

[84] Justice Dugré says that in relation to allegation 1C, an assessment of whether any given judgment was unreasonably delayed necessitates an examination of that specific matter. In our view, the evidence indicates that Justice Dugré had difficulties with timely rendering of judgments from the early stages of his judicial career. There were CJC complaints by his Chief Justice in 2010 and 2014 and a mentorship relationship established. The evidence is that there were a significant number of decisions which were more than six months late in delivery and some more than a year. The response by Chief Justice Fournier to the complaints giving rise to allegations 1A and 1B indicated delay in delivery of judgments was a chronic problem with Justice Dugré. The evidence presented to the Inquiry Committee confirmed this.

[85] We acknowledge it is possible that the time taken for release of some judgments by Justice Dugré might have been justified depending on the nature of the case. However, it would be unreasonable to suggest that this would be the case for the large number identified by the Inquiry Committee as having not been

delivered on a timely basis. There are circumstances where judges experience legitimate delay in rendering decisions. This would rarely rise to the level of judicial misconduct or a failure in the due execution of office. Yet, Justice Dugré's situation is an extreme one, a career-long pattern of delay and sometimes severe delay, being described by Chief Justice Fournier as an "outlier" in comparison to the other judges of the Québec Superior Court.

[86] Having concluded Justice Dugré engaged in judicial misconduct and failed in the due execution of his office, we must decide what recommendation we should make to the Minister of Justice pursuant to subsection 65(2) of the Act.

[87] To determine the appropriate recommendation, it is essential for us to consider all of the circumstances related to Justice Dugré, his judicial career and the allegations which have been established. We should not, as argued by Justice Dugré, treat each allegation in a silo and come to a conclusion as to whether it, in isolation, would justify a removal recommendation. Such an exercise would exclude from consideration important and relevant circumstances. For example, there are patterns of behaviour in relation to the allegations of in court misconduct which must be considered.

[88] This argument was advanced on behalf of Justice Dugré to the Inquiry Committee and rejected. We would adopt the Committee's analysis on that issue which was as follows:

> [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*:
>
> > [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.** [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.

[89] Justice Dugré has been a judge of the Québec Superior Court since 2009. He has made positive contributions to the administration of justice in Québec. The record indicates that he has rendered many decisions and successfully resolved a significant number of disputes through judicial conciliation. The question for us to consider is whether these positive attributes have been sufficiently overshadowed by our findings of judicial misconduct and failures in the due execution of office that we ought to recommend his removal from office.

[90] Federally appointed judges enjoy the protection of judicial independence. It is essential that judges be independent in order for them to properly exercise their important role in our constitutional structure. Threats to independence are damaging to the administration of justice as well as public confidence in the judiciary. In exceptional circumstances, though, a judge must be removed from office in order to ensure the public's confidence in the judiciary is secured. That is this case.

[91] We must also assess whether the inappropriate behaviour would continue should Justice Dugré remain a member of the Québec Superior Court.

[92] Justice Dugré's in-court behaviour was unacceptable. It demonstrates a significant lack of respect for parties and counsel and, in some cases, demonstrated

a lack of objectivity. The language chosen by the Inquiry Committee to describe its impression of the audio recordings from the hearings is significant. It described Justice Dugré's actions as "shocking", "bullying", "unpleasant and often aggressive" which demonstrated "a lack of restraint, civility and composure". In one case, he was described as being "sarcastic and disrespectful" and as making comments which were "condescending and disdainful". Such behaviour adds to the rationale underscoring our recommendation for removal.

[93] Although Justice Dugré did not testify, he made submissions and called evidence to suggest that he had a unique "style" in conducting hearings which included telling jokes to put people at ease. His counsel in submissions described these as "quips". The implication of these submissions is that some of Justice Dugré's questionable conduct was not out of the ordinary for him.

[94] According to his counsel's submissions, after receiving the Inquiry Committee report Justice Dugré sent letters of apology to the complainants in relation to allegations 2A, 2B, 3A, 3B, 5A, 5B, 6A and 6B. He went on to say, through counsel, that he would change his behaviour if he were to remain on the bench. This suggests Justice Dugré was apparently unwilling or unable to recognize any deficiencies in his courtroom conduct until after receipt of the Inquiry Committee report.

[95] There can be no doubt that unreasonable delays in rendering decisions will impact on public confidence in the judiciary. Parties are entitled to timely answers with respect to issues which they bring before the court. A decision which is on reserve for an extended period may leave the impression that the matter is not important and can exacerbate feelings of anxiety and stress about the unresolved dispute. Parties may not be able to move forward in their lives until the litigation is concluded.

[96] In Justice Dugré's case, it is not a matter of a few decisions which were delayed here or there. The evidence establishes a consistent pattern, for almost the entirety of his judicial career, which was unresolved despite the involvement of two Chief Justices, an Associate Chief Justice and a mentor. This demonstrates either an unwillingness or inability to address a chronic problem. Either way, it demonstrates a judge who is unable to fulfill the duties of their office.

[97] The issue of whether Justice Dugré's misconduct would likely continue if he remained in his position was also addressed by the Inquiry Committee. We adopt its conclusions as follows:

> [675] Justice Dugré defended how he manages hearings, arguing that the sphinx-like passivity of judges is an outmoded concept. 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. However, judges must still respect certain limits and [TRANSLATION] "demonstrate balance, prudence and sensitivity in their

interventions". 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. 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. 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 incapacitated or disabled from the due execution of the office of judge within the meaning of subsection 65(2) of the *Judges Act*.

…

[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, 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, Justice Dugré never corrected his chronic failure to render reserved judgments promptly. Even though he had not been given any new assignments since September 2019, he continued to incur delays into December 2020. 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.
>
> [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.

[98] We have considered the Inquiry Committee's comprehensive report and accept its factual findings. We have also carefully reviewed and considered Justice Dugré's comments in response to the report.

[99] After due deliberation we conclude Justice Dugré's misconduct significantly damages the administration of justice. Considered as a whole, his conduct is so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role, that the public's confidence in Justice Dugré is sufficiently undermined that he is incapable of executing the judicial office. For this reason, we find him to be incapable of executing his judicial office and recommend his removal from that position.

QUORUM:

The Honourable Christopher Hinkson (Chair)
The Honourable Deborah K. Smith
The Honourable Eugene P. Rossiter
The Honourable Robert Bauman
The Honourable John D. Rooke
The Honourable Lawrence I. O'Neil
The Honourable Paul S. Crampton
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The Honourable Raymond P. Whalen
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