CANADA
PROVINCE OF QUEBEC

INQUIRY COMMITTEES OF THE CANADIAN JUDICIAL COUNCIL

CJC files:
CJC-18-0301
CJC 18-0318
CJC 19-0014
CJC 19-0358
CJC 19-0372
CJC 19-0374
CJC 19-0392

In the matter involving **THE HONOURABLE GERARD DUGRÉ**

Judge of the Superior Court of Québec

SUBMISSIONS BY THE HONOURABLE JUSTICE GÉRARD DUGRÉ, J.S.C., ON THE INQUIRY COMMITTEES' REPORT DATED JUNE 9, 2022[1]

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[1] Two separate Inquiry Committees were formed, one for K.S.'s complaint and another for S.S.'s complaint. The fact that the same members were appointed to both committees does not matter. Therefore, when we define "Inquiry Committee," we are referring to either or both of the committees formed by the two Review Panels on August 30, 2019;

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I. INTRODUCTION

1. On June 9, 2022, two Inquiry Committees composed of the same members (the Honourable Chief Justices J.C. Marc Richard and Louise A. M. Charbonneau and Audrey Boctor) (hereinafter the "**Inquiry Committee**") issued a report recommending that the Canadian Judicial Council (hereinafter the "**Council**") remove the Honourable Gérard Dugré, a judge of the Superior Court of Quebec, from office as of January 2009.

2. Section 9 of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015* (hereinafter the "**CJC By-laws**") allows the judge to make submissions to the Council within 30 days of receipt of the Inquiry Committee's report.

3. In the submissions that follow, we will demonstrate that the Honourable Justice Dugré was not treated fairly, that several errors were made tainting the process, and that the recommendation for removal must not be followed by the Council.

4. Justice Dugré submits that he is not perfect, but, contrary to the overly negative image painted by the Inquiry Committee, he is very productive, competent and compassionate and takes the interests of those who appear in court to heart. He does not use his position to humiliate or intimidate. It has always been his philosophy that it is essential to render well-thought-out quality judgments to find a fair solution to the problems posed to him by litigants in accordance with the law after trying to ensure that the parties reconcile their differences in the vast majority of cases.

5. In his ten (10) years as judge of the Superior Court, he has rendered 416 judgments that were published in SOQUIJ, 170 of which were selected as important and three of which were upheld by the Supreme Court of Canada.

6. He has an interventionist and humorous style, which is appreciated by several counsel and litigants who testified to this effect before the Inquiry Committee. Many of the comments he was accused of making at the hearings were not perceived by most of those present as shocking or inappropriate. Those present, who were able to physically see the judge make the comments, understood that in most cases they were jokes, humorous comments or figures of speech that the judge used to lighten the stressful atmosphere that often prevailed in courtrooms or during judicial conciliation to encourage the parties to find a solution to their own dispute.

7. The Inquiry Committee cast doubt on the credibility of several of Justice Dugré's witnesses who did not see anything wrong with his remarks on the basis that the witnesses in question or their clients had been successful before Justice Dugré. However, the Inquiry Committee did not make the same comments or question the credibility of the witnesses of the Inquiry Committee's counsel most of whom had lost their cases before Justice Dugré. Thus, dismissing the testimony of some forty witnesses who testified to the judge's positive behaviour in the courtroom and only taking into account the negative testimony of witnesses hostile to the judge is an example of the Inquiry Committee's exaggerations.

8. In addition, the Inquiry Committee questioned the credibility of witnesses who could not perfectly recall a hearing held in the past, while the mere fact that the hearing did not leave an impression was relevant in itself.

9. These errors led the Inquiry Committee to fail to take into account relevant evidence when it responded to the allegations.

10. Despite the Inquiry Committee's erroneous and exaggerated portrayal of him, Justice Dugré carefully read the Inquiry Committee's reasons and has learned from them. Reading the reasons made him realize that his conduct offended some people and seemed unfair to others although his intention was never to offend anyone and was always to be fair to everyone. He has therefore taken note of the Inquiry Committee's comments in this regard.

11. Accordingly, Justice Dugré wishes to express his sincere apologies to all those who were hurt by his comments and asks the Council to take note that he will change his conduct in the courtroom so as not to cause the kind of misunderstandings and disappointments that the complainants have felt. Four (4) letters of apology, addressed to Ms. S.S., Mr. S.C., Mr. Gouin, and Ms. Décarie, signed by Justice Dugré, and sent to the recipients, form **Annex A** hereto.

12. However, the process followed in this file did not give Justice Dugré any warning or the opportunity to change his conduct as the feedback Justice Dugré received while in office was generally positive. Thus, the judge believed in good faith that his ways of doing things for the past 10 years were fine.

13. It would be unfair and unjust not to give him the opportunity to change his conduct.

14. On the issue of the delays in rendering his judgments, Justice Dugré has been working diligently for the last 10 years to render quality judgments for the litigants' benefit. His removal is being sought because he does not render all his judgments within six (6) months, yet those seeking his removal do not know the circumstances of each judgment. We will see below that this approach is unfair and that the Inquiry Committee cannot recommend that the Council remove Justice Dugré because of the delays in delivering his judgments without considering the circumstances of each judgment handed down after the six-month time limit, which the Inquiry Committee failed to do.

15. We submit that the Council is not bound by the Inquiry Committee's report, which is only advisory in nature, and that each Council member must draw their own conclusions after conducting their own analysis. To that end, we request that each Council member who will be sitting in plenary sessions have access to an English translation of the evidence submitted to the Inquiry Committees.

II. BREACHES OF PROCEDURAL FAIRNESS AND EXCESS OF JURISDICTION BY THE CJC'S EXECUTIVE DIRECTOR, THE VICE-CHAIRPERSON OF THE JUDICIAL CONDUCT COMMITTEE, AND INQUIRY COMMITTEE MEMBERS

A. The recommendation to remove the Honourable Justice Gérard Dugré, J.S.C. from office, found at paragraph 687 of the inquiry report dated June 9, 2022, is illegal, unfair, and unreasonable.

16. To reach its recommendation for removal, the Inquiry Committee assembled unlawfully, heard six (6) complaints at the same time, and considered the cumulative effect of its findings that five (5) of the complaints were well-founded to recommend the removal of Justice Dugré

17. However, four (4) (A., Gouin, LSA, S.C.) of the six (6) complaints (including that of S.S. and of K.S.) heard that were referred to the Inquiry Committee were heard in violation of the provisions of the CJC By-laws and the Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges (hereinafter the "**2015 CJC Procedures**"). The Procedures require that any complaint be first referred by the Executive Director to the Chairperson of the Judicial Conduct Committee and then, if necessary, be referred to a review panel before it can be heard by an inquiry committee.

18. The Inquiry Committee itself recognizes at paragraph 27 of its report that the process normally followed with respect to a complaint before the CJC has five steps, including the early screening process by the Review Panel:

> [TRANSLATION]
>
> [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.

19. Section 4.3 of the 2015 CJC Procedures requires the Executive Director to refer to the Chairperson of the Judicial Conduct Committee any matter that they believe warrants 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.
>
> [Emphasis added.]

20. Section 8.2 of the 2015 CJC Procedures sets out the obligation of the Chairperson or Vice-Chairperson of the Judicial Conduct Committee to review the comments received from the judge and, where appropriate, to refer the matter to a review panel rather than to an inquiry committee:

> 8.2 The Chairperson **must review the comments received from the judge** and their chief justice, as well as any other relevant material received from them in response to the request, and may: ...
>
> (d) refer the matter to a **Panel**, in accordance with subsection 2(1) of the By-laws, if the Chairperson determines that the matter may be serious enough to warrant the removal of the judge.
>
> [Emphasis added.]

21. In Justice Dugré's file, the word "must" in sections 4.3 and 8.2 of the 2015 CJC Procedures cited above has simply been deleted.

22. As discussed below, the early screening process is essential in that it allows the judge in question to make submissions and to convince the Chairperson or the Vice-Chairperson of the Judicial Conduct Committee or the review panel that the complaint is unfounded through a confidential process that protects the judge's reputation and ensures that an unfounded complaint does not become the subject of a public inquiry. A judge undergoing a public inquiry is a judge whose authority can be undermined, and, even if the outcome of the inquiry proves to be favourable to the judge, the inquiry itself will always leave a stigma that is unfavourable to the judge and thus to the justice system.

23. However, the early screening process for complaints was bypassed in this case as five (5) complaints were referred directly to the Review Panel without going through the early screening process. On October 4, 2019, the Vice-Chairperson of the Judicial Conduct Committee referred the complaint from the A file directly to the Inquiry Committee even though the complaint was received by the CJC on April 2, 2019, and a review panel had already been established and could have considered the complaint at that time. In addition, on November 13, 2019, the Executive Director of the CJC referred four complaints directly to the Inquiry Committee without obtaining the judge's comments (the LSA, Gouin, S.C., and Morin files).

24. Subsections 2(1), 2(4), 2(7), 3(4), and 5(1) of the CJC By-laws clearly set out the procedure that was to be followed:

> **Establishment of Judicial Conduct Review Panel**
>
> 2 (1) The Chairperson or Vice-Chairperson of the Judicial Conduct Committee, established by the Council in order to consider complaints or allegations made in respect of a judge of a superior court may, if they determine 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 in accordance with subsection 63(3) of the Act.
>
> **Serious matter**
>
> (4) The Judicial Conduct Review Panel 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.
>
> **Decision, reasons and statement of issues**
>
> (7) The Judicial Conduct Review Panel must prepare **written reasons and a statement of issues to be considered by the Inquiry Committee**. The Council's Executive Director must send a copy of the Judicial Conduct Review Panel's decision, reasons and statement of issues to
>
> (a) the judge and their Chief Justice;

(b) the Minister; and

(c) the Inquiry Committee, once it is constituted.

Designating Members to Inquiry Committee

Persons not eligible to be members

3(4) … The following persons are not eligible to be members of the Inquiry Committee:

(a) the Chairperson or Vice-Chairperson of the Judicial Conduct Committee who referred the matter to the Judicial Conduct Review Panel;
(b) a member of the same court as that of the judge who is the subject of the inquiry or investigation; and
(c) a member of the Judicial Conduct Review Panel who participated in the deliberations to decide whether an Inquiry Committee must be constituted.

Inquiry Committee Proceedings

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**.

[Emphasis added.]

25. It is important to note that, pursuant to subsection 3(4) of the CJC By-laws, review panel members cannot be members of the Inquiry Committee to ensure impartiality of the process and procedural compartmentalization, because Review Panel members may only constitute an Inquiry Committee if they determine that the matter might be serious enough to warrant the removal of the judge. Thus, since review panel members must form an opinion on the seriousness of the matter and determine that it might warrant the removal of the judge, they clearly cannot sit on the inquiry committee, which must be impartial.

26. It is clear from subsections 2(1), 2(4), 2(7), 3(4) and 5(1) of the CJC By-laws that

a) Under subsection 2(1), the review panel is responsible for "**deciding whether**" an inquiry committee should be constituted;

b) Under subsection 2(4), only "**if it determines**" that the matter might be serious enough to warrant the removal of the judge can the review panel constitute an inquiry committee. Therefore, the review panel alone has the authority to constitute an inquiry committee if it finds that the matter is serious enough to warrant the removal of the judge. If only the review panel can constitute the Inquiry Committee, then only it can refer a matter to the inquiry committee, since

doing otherwise would be tantamount to allowing the Executive Director or the Vice-Chairperson of the Judicial Conduct Committee to constitute an inquiry committee by referring to it any matter that has not passed before the review panel. By referring five files directly to the Inquiry Committee, without going through the review panel, the Executive Director and the Vice-Chairperson of Judicial Conduct Committee usurped the role and authority of the review panel and exceeded their jurisdiction;

c) Subsection 2(7) requires the review panel—not the Vice-Chairperson or Executive Director of the CJC—to give reasons for its decision to refer the matter to the inquiry committee and to determine the issues to be considered by the inquiry committee. Again, they usurped the review panel's role and authority by referring five complaints directly to the Inquiry Committee;

d) Under subsection 5(1), the committee may consider any complaint or allegation pertaining to the judge brought to its attention. **In so doing**, It must, in considering all complaints against the judge brought to its attention, take into account the **written reasons and the statement of the issues identified by the review panel** under subsection 2(7);

e) Under subsection 3(4), members of the inquiry committee cannot be the same as those of the review panel in order to ensure impartiality of the process. Here, by agreeing to include in their inquiry and in the Notice of Allegations dated March 4, 2020, five complaints that were not referred to them by the review panel, the Inquiry Committee members put themselves in a position where they had to conclude, before the inquiry began, that the five complaints were serious enough to warrant Justice Dugré's removal. This breaches procedural fairness and the principles of natural justice, as justice must not only be done but must also appear to be done impartially.

27. The essential phrase "In so doing, it must take into account the **Judicial Conduct Review Panel's written reasons and statement of issues**..." in subsection 5(1) leaves no doubt that there must be "written reasons and a statement of the issues identified by the Review Panel" under section 2(7) in relation to each of the complaints brought to the Inquiry Committee's attention. Issues must therefore be identified in advance by the review panel in relation to each of the complaints that the inquiry committee must consider. In the absence of written reasons and issues identified by the review panel in respect of the complaint submitted to the inquiry committee, the inquiry committee simply cannot hear the complaint in question. Should it do so, the ensuing process would be manifestly unfair.

28. Consequently, the Vice-Chairperson of the Judicial Conduct Committee and the Executive Director of the CJC could not bypass the process set out in the CJC By-laws and the 2015 CJC Procedures and usurp the role and authority of the review panel by referring five complaints directly to the Inquiry Committee.

29. The Inquiry Committee also could not usurp the role and authority of the review panel by agreeing to investigate five (5) complaints that had not first been heard by the review panel, and the Inquiry Committee could not investigate any of those five (5) complaints because it had not been duly and specifically constituted to investigate each one.

30. The Executive Director of the CJC, the Vice-Chairperson of the Judicial Conduct Committee, and the members of the Inquiry Committee all exceeded their jurisdiction because of the above facts and acted unfairly and unreasonably.

31. As a result, five (5) of the seven (7) complaints that the Inquiry Committee investigated had not been properly referred to it. This is a serious breach of procedural fairness. The early independent screening process conducted by the review panel is of critical importance in terms of fairness, particularly because of the following:

    a) It ensures that an independent committee, the review panel, verifies the seriousness of complaints and thus ensures that complaints that do not warrant a public inquiry are kept confidential (which is essential to protecting the credibility of the judge and the entire justice system);

    b) It ensures that the Inquiry Committee is impartial by preventing it from deciding before the investigation on the theoretical seriousness of the facts alleged against the judge;

    c) It allows the judge to make submissions and to persuade the review panel or the Chairperson or Vice-Chairperson of the Judicial Conduct Committee not to escalate the complaint to the next stage;

    d) It is even more crucial to the fairness and impartiality of the administrative process that there is no longer independent counsel tasked with investigating and presenting evidence to the inquiry committee.

32. The Inquiry Committee committed at least three (3) fundamental errors, namely:

    a) Five complaints were unlawfully referred to the Inquiry Committee for investigation.

    b) The Inquiry Committee unlawfully merged seven complaints into a joint inquiry, refusing to split the inquiry even though there was no connection whatsoever, be it temporal or factual, between the complaints.

    c) For the purposes of its recommendation(s), the Inquiry Committee considered a “cumulative effect” that did not exist in law and fact but was created by the unlawful, unfair, and unreasonable merging of the seven (7) complaints.

33. In addition, by unlawfully merging seven (7) separate complaints together and conducting an inquiry into six (6) of them, the Inquiry Committee forced Justice Dugré to defend himself simultaneously against six (6) complaints related to six (6) different hearings. This is equivalent to forcing an accused to have six (6) trials at the same time for six (6) separate events. It imposed on him a much too heavy burden of defence, which was completely unfair and made the inquiry completely inequitable.

34. Regarding the extent and stringency of the procedural fairness owed to litigants, the Supreme Court wrote the following in Baker:

    25 A third factor in determining the nature and extent of the duty of fairness owed is the importance of the decision to the individual or

individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. This was expressed, for example, by Dickson J. (as he then was) in *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113:

> A high standard of justice is required when the right to continue in one's profession or employment is at stake. . .. A disciplinary suspension can have grave and permanent consequences upon a professional career.

As Sedley J. (now Sedley L.J.) stated in *R. v. Higher Education Funding Council, ex parte Institute of Dental Surgery*, [1994] 1 All E.R. 651 (Q.B.), at p. 667:

> In the modern state the decisions of administrative bodies can have a more immediate and profound impact on people's lives than the decisions of courts, and public law has since *Ridge v. Baldwin* [1963] 2 All E.R. 66, [1964] A.C. 40 been alive to that fact. While the judicial character of a function may elevate the practical requirements of fairness above what they would otherwise be, for example by requiring contentious evidence to be given and tested orally, what makes it "judicial" in this sense is principally the nature of the issue it has to determine, not the formal status of the deciding body.

The importance of a decision to the individuals affected, therefore, constitutes a significant factor affecting the content of the duty of procedural fairness.

35. The Inquiry Committee took into account the cumulative effect of its findings regarding four (4) of the seven (7) complaints referred to it to recommend the removal of Justice Dugré, including five (5) complaints that it clearly could not investigate. This recommendation is therefore invalid, unfair and patently unreasonable and must be set aside. The Council should therefore not endorse this recommendation.

III. THE INQUIRY COMMITTEES COULD NOT CONSIDER THE CUMULATIVE EFFECT OF THE COMPLAINTS TO JUSTIFY THE RECOMMENDATION TO REMOVE JUSTICE DUGRÉ BECAUSE EACH COMPLAINT MUST BE LIKELY TO LEAD TO REMOVAL

36. The Inquiry Committees concluded that they could rely on the cumulative effect of the misconduct as the basis for their recommendation to remove Justice Dugré

37. This Inquiry Committees' conclusion errs in law. Under the current federal disciplinary system, each complaint (and any resulting misconduct) must be investigated and decided on its own merits. A recommendation based on it cannot rely on a so-called "cumulative effect" especially since, in this case, the complaints are not connected temporally or factually and have been artificially merged into one investigation specifically for this purpose, as confirmed in the letter of Associate Chief Justice Petras dated March 27, 2019 (Exhibit AP-1).

38. However, a final inquiry report concluding that there was misconduct may later be used as the basis for a cumulative effect in a subsequent inquiry report, as the judge would have been duly informed and had the opportunity to change his conduct with respect to the misconduct found in the previous inquiry report, unless of course the misconduct found places the judge in a position of incompatibility, which is not the case here.

39. It is important to reiterate at the outset that five (5) complaints (those of A., Gouin, LSA, S.C., and Morin) that were before the Inquiry Committee were not subject to a proper early screening process and that the seven (7) complaints, including those of S.S. and K.S., have been merged into a single inquiry. This clearly contravenes the law and breaches procedural fairness. Relying on cumulative effect in such circumstances exacerbates these significant breaches.

40. Accepting the cumulative effect theory relied on by the Inquiry Committee would enable it to do indirectly what it cannot do directly, namely, base a recommendation on a complaint that is not in itself sufficient to warrant the judge's removal.

41. Moreover, the cumulative effect would be unfair and unjust in that it would treat the judge as a "repeat offender" with respect to the alleged misconduct, even though there has not yet been a final inquiry report regarding his conduct and the judge has not been duly informed of it, enabling him to change his conduct if necessary.

42. If this approach were validated, it would mean that complaints against judges could be arbitrarily retained indefinitely by the CJC. This would pose a threat to a judge who might one day face an inquiry into several complaints, even though they would be dismissed individually.

43. With respect, the Inquiry Committee has made a fundamental and determinative error in law by considering the cumulative effect of the complaints it concluded were well-founded rather than determining whether each complaint warrants the judge's removal.

44. The Council was established under the *Judges Act*, R.S.C. (1985), c. J-1.

45. For this reason, it is a federal board, commission or other tribunal subject to the same constraints of legality in its actions and of procedural fairness as any other body or person subject to review and oversight by superior courts.

46. The Council must therefore act within the strict framework of authorities delegated to it by the Parliament of Canada.

47. In this case, Parliament has chosen to confer the authority to remove federal judges belonging to Her Excellency the Governor General under section 99 of the *Constitution Act, 1867* on a pre-inquiry process.

48. In short, the Parliament of Canada has delegated to the Council the authority to investigate the conduct of federal judges, which would have otherwise belonged to it.

49. As with any delegated authority, the Council's powers of inquiry and recommendation must therefore be exercised in accordance with enabling legislation. Any action taken outside the requirements of this legislation is null and void.

50. In this case, the Council derives its power to inquire into the conduct of federal judges from paragraph 60(2)(c) and section 63 of the *Judges Act*. Paragraph 61(3)(c) of this Act provides that the Council may makes by-laws in respect of inquiries into the conduct of judges.

51. The Council exercised this jurisdiction by making the CJC By-laws. The Council has therefore committed to complying with the requirements of the by-laws in its inquiries into the conduct of federal judges.

52. Subsection 2(1) of the CJC By-laws provides that:

> 2. (1) The Chairperson or Vice-Chairperson of the Judicial Conduct Committee, established by the Council in order to consider complaints or allegations made in respect of a judge of a superior court may, if they determine 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 in accordance with subsection 63(3) of the Act.

53. The wording of this provision confirms that the establishment of a review panel is subject to the prerequisite that the complaint or allegation brought against the judge might be serious enough to warrant their removal.

54. The review panel can therefore only be established if the complaint itself is serious enough to warrant the removal of the judge.

55. In addition, subsection 2(4) of the CJC By-laws provides that

> 2 (4). The Judicial Conduct Review Panel 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.

56. Again, the *CJC By-laws* limit the analysis to only the matter before a Review Panel (i.e., a complaint or allegation pursuant to subsection 2(1)) and require that an inquiry committee be constituted only if this complaint or allegation might be serious enough to warrant the removal of the judge.

57. The Inquiry Committee stated the following at paragraph 176 of its decision on the preliminary arguments raised by Justice Dugré:

> [TRANSLATION]
>
> It goes without saying that, when a complaint is referred directly to the Inquiry Committee, it will have to read the complaint and conduct a preliminary review of it. The Inquiry Committee must then decide whether the complaint should be included in the Notice of Allegations because, either alone or through cumulative effect with complaints of the same nature already before the Committee, it could be serious enough to lead to a judge's removal from office.

58. However, this conclusion is untenable in light of the legal framework established by the Act and the CJC By-laws. Moreover, paragraph 176 shows that the Inquiry Committee had to add words in its reading of the Act and the CJC By-laws that are not found anywhere in the legal framework to justify its conclusion that it could consider the cumulative effect of the alleged misconduct to base its recommendation for removal on.

59. It is clear that the Inquiry Committee had to consider each of the complaints referred to it by the Review Panel, decide whether each complaint was well-founded, and, if so, decide whether the findings made by the Inquiry Committee in the course of dealing with the complaint were sufficient to warrant a recommendation for removal.

60. Moreover, no decision of an inquiry committee, other than the one at issue, uses the theory of cumulative effect. This is a first, but unfortunately a first without basis.

61. In this case, the Inquiry Committee exceeded its jurisdiction by failing to comply with the requirements of the legal framework established for the conduct of its inquiries into each of the complaints made against Justice Dugré

62. It is also surprising that the Inquiry Committee used the *Ruffo* report[2] to justify its claim regarding the cumulative effect of the misconduct. The *Ruffo* report was delivered as part of a provincial removal process with a different legal framework.[3] Provincial legislation provides for the possibility of imposing gradual sanctions on a judge who has committed an ethical error (ranging from a mere reprimand to removal), while the federal *Judges Act* does not provide for any progressive sanctions, only rejection of the complaint or removal of the judge.

63. Moreover, in the *Ruffo* report, the Court of Appeal agreed to analyze not only the judge's conduct in relation to the complaint under investigation, but also her conduct in a televised interview during the investigation as well as previous decisions of the Council and the reports of five inquiry committees, four of which had concluded that a reprimand would be an appropriate sanction. All this was done to determine the appropriate sanction for the complaint under investigation at the time.

64. In addition, there is nothing in *Marshall* that supports the Inquiry Committee's claim in this regard. On this point, the Inquiry Committee merely uses the test for assessing the conduct of judges in order to justify, quite mistakenly, its new theory of accumulating misconduct.

65. In short, we respectfully submit that the recommendation for removal should not be endorsed by the Council as it is based on non-existent cumulative effect, and that, in so doing, the Inquiry Committee confirms that no complaint is sufficient in itself to justify the Inquiry Committee's recommendation.

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[2] *Ruffo (Re)*, 2005 QCCA 1197

[3] Paragraph 658 of the Inquiry Committee Report;

IV. THE INQUIRY COMMITTEE'S INSTITUTIONAL BIAS

66. The members of the Inquiry Committee were appointed on November 4, 2019.

67. Following the appointment, Giuseppe Battista and later Emmanuelle Rolland were retained as counsel by the Inquiry Committee without any clear direction from the outset regarding their respective roles in the inquiry process.

68. An email sent by Mr. Battista to Justice Dugré's counsel on January 17, 2020, states that, in the case at hand, the members of the Inquiry Committee, not him, will draft the allegations against the judge. Mr. Battista added that his role is essentially to assist the Inquiry Committee.

69. It was filed in evidence before the Inquiry Committee that Mr. Battista met with Chief Justices Fournier and Petras at the Inquiry Committee's request not only to prepare to present the evidence, but also to gather evidence to make a new allegation against Justice Dugré (allegation 1C: chronic problem). This meeting took place at the office of Chief Justice Fournier without the knowledge and in the absence of Justice Dugré and his counsel. Chief Justices Fournier and Petras then testified before the Inquiry Committee.

70. It was only after Justice Dugré filed an application for judicial review with the Federal Court of Canada on April 6, 2020, Justice Dugré challenging this fundamental flaw that Directions to counsel were issued by the Inquiry Committees to clarify the roles of Mr. Battista and Ms. Rolland. The directions provide that Mr. Battista is responsible for presenting evidence during the inquiry and that Ms. Rolland will act as senior counsel for the Inquiry Committee.

71. Since at least *Nicholson*,[4] the requirement to comply with the rules of natural justice—a common law principle—has extended to all administrative bodies, including federal boards such as the Council.

72. The Supreme Court, in *Cardinal*,[5] reiterates the importance of the independent and unqualified right to a fair hearing:

> Certainly, a failure to afford a fair hearing, which is the very essence of the duty to act fairly, can never of itself be regarded as not of "sufficient substance" unless it be because of its perceived effect on the result or, in other words, the actual prejudice caused by it. If this be a correct view of the implications of the approach of the majority of the British Columbia Court of Appeal to the issue of procedural fairness in this case, I find it necessary to affirm that the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a

[4] *Nicholson v. Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 SCR 311, p. 324

[5] *Cardinal v. Director of Kent Institution*, [1985] 2 SCR 643, page 661, para. 23

> different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

73. In *Université du Québec à Trois-Rivières v. Larocque*,[6] the Supreme Court reiterates the principles set out in *Cardinal* (above) and emphasizes that the application of the rules of natural justice is so fundamental that the denial of these rules must always make a decision invalid, regardless of the effect of that denial:

> Secondly, and more fundamentally, the rules of natural justice have enshrined certain guarantees regarding procedure, and it is the denial of those procedural guarantees which justifies the courts in intervening. The application of these rules should thus not depend on speculation as to what the decision on the merits would have been had the rights of the parties not been denied. I concur in this regard with the view of Le Dain J., who stated in *Cardinal v. Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643, at p. 661:
>
> . . . the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have.

74. As the Supreme Court reiterated in *Therrien (Re)*,[7] the duty to act fairly necessarily implies the right to an impartial hearing of one's case;

75. The scope and nature of this obligation vary depending on the particular context and nature of the dispute that the administrative body must decide.[8]

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6 *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 SCR 471, p. 493

7 *Therrien (Re), 2*001 SCC 35, paras. 81–82

8 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817

76. Given the constitutional protection granted to the security of tenure of superior court judges to ensure judicial independence, the inquiry process carried out by the Inquiry Committee must ensure that procedural protections are applied very stringently.[9]

77. The stringency in the implementation of procedural guarantees is also required as there is only one sanction, namely, removal. There are no half measures, it is capital punishment or nothing.

78. The Council itself has stated in the past that a judge undergoing an inquiry must be afforded the highest level of procedural protection, given that, if the judge is not removed, their credibility and dignity must be preserved so that they can hear future cases with the requisite judicial authority and independence.

79. Moreover, section 7 of the CJC By-laws provides that the process must be fair.

A. The need for independent counsel to ensure the impartiality of the Inquiry Committee

80. Thus, in the specific context of an inquiry conducted by an inquiry committee, five criteria were defined in *Cosgrove*[10] as sufficiently adequate guarantees to preserve procedural fairness:

> I would emphasize five aspects of the inquiry procedure that, taken together, establish that the inquiry, once commenced, is fair to the judge who is the subject of the inquiry:
>
> (1) The judge is given notice of the allegations of the complainant and an opportunity to respond and to be heard.
>
> (2) The inquiry is entrusted in the first instance to a group of senior judges and lawyers, and their recommendation is reviewed independently by a larger group consisting of Chief Justices, Associate Chief Justices and other senior judges of the superior courts. That ensures that the issues are considered by a number of different individuals whose collective knowledge and experience is not only appropriate to the task, but the best available in terms of their knowledge of the relevant constitutional principles and the work of the judiciary.
>
> (3) The substantive and procedural aspects of the inquiry are guided by the participation of independent counsel, who is required to act impartially and in the public interest, which necessarily includes the public's

[9] *Smith v. Canada (A.G.), 2020* FC 629

[10] *Cosgrove v. Canadian Judicial Council,* [2007] 4 FCR 714, para. 65;

> interest in maintaining the independence of the judiciary. I note parenthetically that it was independent counsel who argued for the summary dismissal of the Attorney General's request for an inquiry in the *Boilard* case (referred to above).
>
> (4) The attorney general who requests an inquiry does not present or prosecute the case against the judge and has no formal role in the conduct of the inquiry.
>
> (5) The outcome of the proceedings is a report and recommendation to the Minister, who must determine whether the matter will be referred to Parliament. The Minister, as the Attorney General of Canada, is obliged and presumed to consider that question in good faith, objectively, independently and in the public interest.
>
> (Emphasis added.)

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.

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.

85. Moreover, in 2016, the Department of Justice Canada produced a report in which it recommended a new reform of the process adopted only a few months earlier by the 2015 Council and specified the following:

    i) That independent counsel was one of the guarantees of procedural fairness;

ii) That the presence of independent counsel, as a guarantee of fairness, was important for two reasons: the credibility of the justice system as a whole and the fact that such a guarantee of fairness reduced the risk of judicial review;

- **Government of Canada, Department of Justice Canada. Possibilities for further reform of the Federal judicial discipline process (June 2016), page 30**

86. The current CJC rules are also being criticized as regards the lack of independent counsel, which creates a reasonable apprehension of bias:

- **Federation of Law Societies of Canada –Department of Justice Consultation Regarding the Possibilities for Further Reform of the Federal Judicial Discipline Process, September 9, 2016**

- **Canadian Bar Association – Federal Judicial Discipline Process (September 2016)**

B. Institutional bias

87. As discussed in *Lippé*,[11] the requirements of judicial impartiality and of judicial independence have both an individual and an institutional aspect. Both aspects are covered by the constitutional guarantee of an independent and impartial tribunal. Therefore, the mindset of an inquiry committee is of little importance if, in the end, the system that led to its decision is structured in such a way as to create a reasonable apprehension of institutional bias.

88. We respectfully submit that this is the case here and that the process/system leading to the Report issued by the Inquiry Committee is flawed with respect to the requirement of impartiality.

89. For the following reasons, we submit that the Report should not be endorsed by the Council because it would bring the administration of justice into disrepute, given that the process that led to it violates a fundamental principle of our justice system:

> The importance of institutional impartiality was first raised by the Honorable Justice Le Dain, on behalf of the majority, in *Valente*:
>
> 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

[11] *R. v. Lippé*, [1991] 2 SCR 114

> 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.[12]

90. To determine whether there is a reasonable apprehension of bias, case law applies the test established in *Lippé*: what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude?[13]

91. Moreover, the Supreme Court in *Régie des permits d'alcohol* states that, although the degree of independence required of an administrative tribunal varies according to its nature, institutional constraints, and the peremptory nature of its decisions, the duty of impartiality does not vary. Administrative tribunals are also subject to the *nemo judex in sua causa* rule, which includes the duty to act impartially.[14]

92. Considering the extremely serious consequences for the judge as a result of being investigated, it is essential and vital that the Inquiry Committee does not raise a reasonable apprehension of institutional bias.

93. In this case, there is a reasonable apprehension of bias. Here is why.

C. Application to the facts

94. The process set out in the CJC By-laws is institutionally flawed in that no independent counsel is to be appointed when an inquiry committee is constituted.

95. In this case, the process in place fails to meet the requirement of procedural fairness.

96. One of the primary roles of independent counsel is to receive the review panel's file and use it to prepare the inquiry that must take place. They must prepare a Notice of Allegations, which must take into account the contents of the review panel's report, and prepare the evidence that must be submitted to the Inquiry Committee.

97. Since independent counsel is not involved in the consideration process or the decision that will ultimately be made by the Inquiry Committee, their familiarization and the decision they will make when writing the Notice of Allegations will not affect the decision to be rendered.

98. However, in the absence of such counsel, the Inquiry Committee reviewed not only the Review Panel's report, but also the evidence that was sent to it so that the Committee itself could draft a Notice of Allegations based on that evidence against Justice Dugré.

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[12] *Valente v. Q.,* [1985] 2 SCR 673, p. 689;

[13] *Lippé,* op. cit. 9;

[14] *2747-3174 Québec inc. v. Quebec (Régie des permis d'alcool)* [1996] 3 SCR 919, paras. 109–115;

The Inquiry Committee therefore drafted the allegations against Justice Dugré and then decided on their merits.

99. In addition, the Executive Director of the CJC, Mr. Sabourin and the Vice-Chairperson of the Judicial Conduct Committee, the Honourable Chief Justice Joyal, forwarded the complaints of A, Morin, S.C., Gouin and LSA Avocats directly to the Inquiry Committee, without submitting them for the early screening process.

100. By failing to comply with the process set out in the By-laws, Mr. Sabourin and Chief Justice Joyal gave the Inquiry Committee complete discretion to decide on the relevance of the complaints submitted. Through its counsel, the Inquiry Committee even met with Chief Justices Fournier and Petras at Justice Fournier's office, without the knowledge and in the absence of Justice Dugré or his counsel, to obtain evidence to create a new complaint against Justice Dugré. Justice Fournier had not filed a complaint against Justice Dugré, but merely made a comment that Justice Dugré had a chronic problem with delivering his judgments. After meeting privately with counsel for the Inquiry Committee to provide evidence in support of a new complaint created by the Inquiry Committee itself, Chief Justices Fournier and Petras also acted as witnesses during the inquiry.

101. The Inquiry Committees members had the opportunity to correct this error by returning the complaints to be dealt with in accordance with the prescribed administrative process, but they failed to do so. On the contrary, the members of the Inquiry Committees incorporated and combined them, *proprio motu*, in a single Notice of Allegations against Justice Dugré. In order to do so, the Committee members had to decide, without obtaining the submissions of Justice Dugré, that the complaints were serious enough and that they could warrant the removal of the judge.

102. However, with respect, the Inquiry Committee members cannot decide the legitimacy of the allegations contained in the complaints against Justice Dugré by incorporating them in the Notice of Allegations and deciding whether they are serious enough to warrant the removal of the judge and then participate in the inquiry process for this notice. The task of determining whether the allegations are serious enough to warrant an inquiry is the responsibility of the Review Panel and, pursuant to subsection 3(2) of the CJC By-laws, members of the review panel cannot be members of the Inquiry Committee. Here, the Inquiry Committee members played both the roles of the review panel and of the Inquiry Committee. Any reasonable and informed person would be particularly troubled by the fact that five (5) complaints were referred to the Inquiry Committees in an illegal, unfair, and unreasonable manner, and then the Committees drafted their own allegations stemming from four of the complaints, then conducted their comprehensive inquiry, and finally concluded that certain allegations were, in their view, well-founded, and that a recommendation to remove the judge was necessary as a result of the cumulative effect of those allegations.

103. Although counsel, namely, Mr. Battista, was appointed by the Inquiry Committee to assist it, no independent counsel was appointed.

104. It is true that directives to counsel, dated April 16, 2020, were forwarded; however, they were late, as they were issued after the Notice of Allegations was drafted and signed by the members of the Inquiry Committee. They also did not make Mr. Battista independent, since he remains permanently not at arm's length from the Inquiry

Committees. Thus, unlike what was done in *Camp*, where clear directives were issued to counsel, including that to act "free of direction from the Inquiry Committee or any outside influence," such a directive was not issued in this case.

105. This situation is all the more worrying for Justice Dugré, as Mr. Battista's mandate is not to ensure the independence of the inquiry process. On the contrary, "[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." (CJC Handbook on Inquiry Committee Practice and Procedure (2015), s. 3.3.).

106. As noted above, after the Inquiry Committee was appointed, it retained the services of Mr. Battista to act as counsel for the Inquiry Committees, not as independent counsel.

107. On or about January 15, 2020, a meeting took place between his counsel and Mr. Battista to understand his exact role in the inquiry. In this meeting, Mr. Battista informed them that his role was similar to that of [TRANSLATION] "counsel for a commission of inquiry" and that he himself and a colleague were going to prepare the detailed Notice of Allegations.

108. However, on January 17, 2020, Mr. Battista sent an email to the counsel of Justice Dugré to clarify his role by stating that he [TRANSLATION] "was counsel in charge of assisting the Committee," but, with respect to the allegations that the Inquiry Committee would investigate, they "would be prepared by the Committee ..."[15]

109. On January 24, 2020, counsel for Justice Dugré raised their concerns with Mr. Battista about the exact nature of his status in the inquiries:

110. [TRANSLATION] "Furthermore, we would like to inform you that, contrary to what you said, we do not believe that you have the same role as counsel for a commission of inquiry. Moreover, your email dated January 17 continues to be of concern to us given the lack of distance between you and the Council."[16]

111. On March 6, 2020, one of Justice Dugré's counsel received the detailed Notice of Allegations signed by each of the members of the Inquiry Committees on March 4, 2020.

112. On April 6, 2020, Justice Dugré filed an application for judicial review of the Inquiry Committees' decision to issue the Notice of Allegations, alleging, *inter alia*, that they exceeded their jurisdiction, and raising, among other things, a reasonable apprehension of bias because of the facts listed above and below.

113. On April 17, 2020, following receipt of the application for judicial review, the Chairperson of the Inquiry Committee, Chief Justice Richard, Chairperson of the Inquiry Committees, sent a letter to counsel assigned to the case to communicate the directives to counsel.

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[15] Exhibit submitted as part of the preliminary argument.

[16] Exhibit submitted as part of the preliminary argument.

114. The directives dated April 17, 2020, cannot have the effect of retroactively erasing the four-month period between the appointment of Mr. Battista and the issuance of the directives, during which he worked for and under the direction of the Inquiry Committees.

115. The system established by the Inquiry Committees would raise concerns for any reasonable and informed person that the Inquiry Committee has institutional bias, as it is the Inquiry Committee's counsel, acting under its direction, who leads the evidence against the judge. The Inquiry Committees, which not only conducted a pre-inquiry and drafted the Notice of Allegations, then hear the evidence and decide on the merits of their own allegations.

116. With respect, it is unthinkable that such a situation can be tolerated by an organization composed of judges of the country's superior courts, who must be and are committed to the rules of natural justice that permeate our justice system and who ensure compliance with those rules.

117. For this reason alone, we submit that the report cannot be endorsed.

118. However, there is more.

119. In a letter dated February 7, 2020, filed with the Inquiry Committee, Mr. Battista confirmed that he met with Chief Justices Fournier and Petras at Chief Justice Fournier's office, not only to prepare the hearings, but also to make a new allegation against Justice Dugré regarding his mere comment that, in his view, Justice Dugré had a "chronic problem."

120. Mr. Battista confirmed that he met with Chief Justices Fournier and Petras on December 19, 2019, and that Mr. Battista requested the meeting. It should be reiterated that, at that time, no directive was issued concerning Mr. Battista's role and that he is an agent of and acts for and on behalf of the Inquiry Committee and on the instructions of the Inquiry Committee.

121. The Inquiry Committee members—at least through their counsel, Mr. Battista—met with Chief Justices Fournier and Petras, members of the CJC, without the knowledge of Justice Dugré and his counsel, to hear and seek additional evidence to support a new allegation against Justice Dugré, namely, a supposed chronic problem with delivering his judgments. They then formed an opinion on this additional evidence and concluded that it may lead to the judge's removal, as they made it the specific allegation 1C. However, only a duly established review panel could form such an opinion as to the sufficient seriousness of this allegation.

122. This is all the more concerning because, based on this new evidence obtained at the request of the Inquiry Committee, the Committee made allegation 1C, which it then accepted in its detailed Notice of Allegations dated March 4, 2020.

123. Any reasonable and informed person would conclude that this process leads to a reasonable apprehension of bias with respect to the Inquiry Committee.

124. In short, the inquiries conducted by the Inquiry Committees were not conducted by independent and impartial Committees. Therefore, the inquiries, the report, and the

conclusions and recommendations contained therein must be set aside. Therefore, they cannot serve as a basis for recommending the removal of the judge.

V. ADDITIONAL COMMENTS:

A. Applicable standards and rules of evidence

125. We agree with the Inquiry Committee that the evidence needs to be clear and convincing for it to accept a fact as proven.

126. Moreover, the Inquiry Committee never stated who had the burden of proving this. However, this is a key component of the rules of evidence.

127. The burden is on the Inquiry Committee, as it claims to be the investigator and must take the necessary steps to obtain all relevant evidence, both inculpatory and exculpatory.

128. To that end, the Inquiry Committee mandated Mr. Battista to present the evidence, both inculpatory and exculpatory.

129. Thus, it is erroneous to claim as the Inquiry Committee did repeatedly in its report that it may have lacked evidence on a given subject. If the Inquiry Committee was of the opinion that it lacked evidence, it needed to take the necessary steps to obtain it.

130. This is the case, for example, with respect to Justice Dugré's testimony.

131. Although the Inquiry Committee recognized that it should not draw adverse inferences from Justice Dugré's decision not to testify, it indirectly drew such inferences on several occasions.

132. The Inquiry Committee should have taken the necessary measures if it found that Justice Dugré's decision was incorrect.

VI. COMMENTS REGARDING SOME COMPLAINTS

A. The S.S. case

a) Introduction

133. At the outset, it is important to note that this is one of only two complaints that were, apparently, validly before the Inquiry Committee (subject to the arguments submitted to support the judicial review application), since it was referred to it by the Review Panel.

134. Clearly, this complaint by S.S. is insufficient in itself to justify a recommendation for removal. It is important to note that the Inquiry Committee did not conclude that this complaint is sufficient in itself to warrant the removal of Justice Dugré

135. We ask the Council to listen to the recording of the hearing (Exhibit SSP-3), as the Inquiry Committee's findings and some comments on Justice Dugré's conduct at that hearing appear to be particularly harsh and are not consistent with the evidence. These include the factual findings at paragraph 195 of the Report stating that "[d]uring all of

the exchanges that followed, the judge's attitude was harsh, even unpleasant," and at paragraph 199 of the Report, stating that "[f]rom beginning to end, his tone was unpleasant and often aggressive."

136. The judge does not claim to have behaved perfectly at that hearing. However, we are of the view that his behaviour, driven by the best interests of the child, does not merit such exaggerated comments from the Inquiry Committee, particularly in the context of mandatory pre-judicial conciliation in family matters.

137. At paragraph 200, the Inquiry Committee stated that "[i]t [was] 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" and that "[o]ne would expect a judge who sees one of the litigants before them crying to inquire into the situation...". First, there is no evidence that the judge saw this, nor indeed did Ms. S's counsel, who was sitting next to her in the courtroom. Second, Ms. S. cried during a good portion of her testimony before the Inquiry Committee when she was directly examined by the Inquiry Committee's counsel, and no member of the Inquiry Committee intervened to inquire about the situation. How can the Inquiry Committee criticize Justice Dugré for not intervening when the Inquiry Committee did the exact same thing?

138. The Inquiry Committee members also did not question Ms. S.'s credibility, although several statements in her complaint and in her testimony before the Inquiry Committee were false, as is detailed more fully below.

b) Background

139. This was an application regarding choice of school submitted by the mother, S.S., on September 7, 2018, for a six-year-old boy who was attending a school for the second year. The school year had begun. The mother and father were not married. Ms. S. was represented by female counsel, the father by male counsel. Both parents attended the first part of the hearing.

140. The hearing took place in two stages. First, it began with a mandatory pre-judicial conciliation that lasted 30 minutes. Then, there was a two-hour recess during which the parties, with the assistance of their respective counsel, negotiated an agreement and during which Justice Dugré followed up on the negotiations in order to have enough time to hear S.S.'s motion, should the negotiations be unsuccessful. Then, there was a period of approximately five minutes during which Justice Dugré approved the agreement between the parties at the request of their counsel, and at the end, counsel thanked the judge.

141. Ms. S. filed a complaint with the CJC on September 11, 2018. Several elements of her complaint are inconsistent with what actually happened at the hearing. It is important to note that Ms. S. was not in the courtroom during the second part of the hearing, when the agreement was approved by the judge, but the father attended.

142. First of all, it is important to clarify an important point. The Inquiry Committee concluded that it was not satisfied that, during the first part of the hearing, the judge conducted judicial conciliation in accordance with the law because he had not announced it.

143. However, article 604 of the *Civil Code of Québec*, applicable to common-law partners, provides as follows:

> 604. In the case of difficulties relating to the exercise of parental authority, the person having parental authority may refer the matter to the court, which will decide in the interest of the child after fostering the conciliation of the parties.

144. It is clear that an application regarding choice of school for a child involves the exercise of parental authority. Therefore, the judge had to promote conciliation of the parties before hearing Ms. S.'s motion for the choice of school.

145. At paragraph 190, the Inquiry Committee criticizes the judge for not announcing that he was conducting judicial conciliation. However, the parties' counsel, like the judge, are supposed to know the law. Mr. Laurin, counsel for the child's father, testified that during the two-hour recess during which the parties negotiated an agreement, Justice Dugré called the lawyers into the courtroom on a number of occasions to find out where they were at in order to determine whether he should set aside some time to hear Ms. S.'s application. This clearly shows that the judge conducted conciliation, which was suspended in order to leave it to the parties to negotiate and that, had the negotiations not been successful, the judge would have heard Ms. S.'s application.

146. The comments made by the members of the Inquiry Committee at paragraph 188 of the Report to the effect that "the hearing never reached a point when Ms. S. could testify" demonstrate the Inquiry Committee members' lack of understanding with respect to the process of mandatory pre-judicial conciliation in family matters. With respect, the Inquiry Committee mistakenly believes that conciliation is a standard hearing, which it is not. It is important to note that Justice Dugré, whose jurisdiction is recognized, had been holding this type of pre-judicial conciliation for almost 10 years at the time of that hearing (Exhibit D-57).

147. The recording of the hearing shows that, during the 30-minute period, the judge had a discussion with Ms. S.'s counsel to fully understand the application before him. The discussion made it clear that:

a) It was no longer an application regarding choice of school, but an application regarding a change of school, since school had already begun, and the child had attended that school the previous year;

b) The choice of school component presented that morning was part of an overall application for a change in custody of the child, among other things;

c) The issue the choice of school sought to address was in fact to solve the issue of the child's transportation, as Ms. S. had an unusual work schedule, being a prison guard.

148. The judge used humorous quips or figures of speech about putting the child up for adoption or in boarding school in an attempt to bring the parties together in the best interests of the child. Although the quips were not intended to intimidate or hurt Ms. S., they had that unfortunate effect, and the judge is deeply sorry. However, the Inquiry Committee recognizes that the judge had the best interests of the parties' child at heart.

This was the reason for the humorous quips, which the judge will no longer make from now on.

149. At some point, Ms. S. started sobbing. Her counsel requested a recess, which the judge granted.

150. It is important to note that her counsel, who was much closer to Ms. S., did not seem to have noticed this either. Why should the judge have noticed this before her counsel?

151. In addition, as noted above, Ms. S. cried during much of her examination-in-chief during the inquiry before the Inquiry Committee, and at no time did the Inquiry Committee members intervene or offer her a break, but now they criticize Justice Dugré for having done the same thing they did in order to remove him.

152. Immediately after the judge granted the request for recess, Ms. S. said the following to the father in the courtroom:

> [TRANSLATION]
>
> I should've never given you everything I gave you! Never! (See the end of the recording of the hearing, Exhibit SSP-3, and the corrected transcript, SSP-5, page 79, line 24)

153. Upon returning from recess two hours later, the parties' counsel returned to the courtroom, as did the father, but not Ms. S. They asked the judge to approve the agreement into which the parties had entered. Before approving, the judge asked the father's counsel a question to ensure that it was in the best interests of the child as required by law.

154. This agreement settled the entire case and was incorporated into the final agreement approved by Justice Turcotte on May 31, 2019. The little boy then continued to attend the same school.

155. As was noted earlier, on September 11, 2018, Ms. S. filed her complaint with the CJC.

c) Errors made by the Inquiry Committee

156. The Committee answered in the affirmative to its two allegations, which it drafted and signed on March 4, 2020. They read as follows.

i) Allegation 2A

157. 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?

ii) Allegation 2B

158. 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?

Ms. S.'s credibility

159. At paragraph 103 of the Inquiry Report, the Inquiry Committee is of the view that Ms. S. provided credible and convincing testimony as to why she cried at the hearing before Justice Dugré.

160. Ms. S. testified that one of the reasons she filed a complaint was that she had been so upset about her hearing before Justice Dugré that she had agreed to everything her former spouse had proposed (paragraph 174 of the Inquiry Report).

161. She added that she had complained because her counsel never had an opportunity to explain their views and that she was not given an opportunity to explain herself (see paragraph 175 of the Inquiry Report). She also complained that Justice Dugré had mispronounced the first name of her son ("M") at the September 7 hearing, and she found it completely disrespectful.

162. However, several elements of her written complaint dated September 11, 2018 (Exhibit SSP-1) and her testimony were false and contradicted each other for the following reasons:

a) In her written complaint dated September 11, 2018 (Exhibit SSP-1), she stated the following:

> [TRANSLATION]
>
> Justice Dugré first entered the courtroom and said loudly and clearly that it was **ridiculous** to choose a school so late after the school year had begun... (See Exhibit SSP-1).

However, this claim is false. The judge never said that it was ridiculous, and you only have to read the transcripts in Exhibit SSP-5 to see this. Moreover, Ms. S. did not testify before the Inquiry Committee that Justice Dugré had said that it was ridiculous.

b) In her written complaint dated September 11, 2018 (Exhibit SSP-1), she stated the following:

> [TRANSLATION]
>
> During the approval of said agreement, the clerks were also invited to adopt my son... I was too shaken to go back...

She testified before the Inquiry Committee that she was present when the judge allegedly offered to the clerks to adopt her son. However, not only did Justice Dugré never offer to the clerks to adopt her son, but also Ms. S. was not there when the agreement was approved, only counsel and the father were in the courtroom. When Ms. S. was questioned by the Inquiry Committee's counsel as to whether she was in the courtroom when the judge allegedly offered to the clerks to adopt her son, she replied in the affirmative:

[TRANSLATION]

Q – Explain to the Committee, in your words, the purpose of your complaint and the criticisms you have made against Justice Dugré

A – Well, basically, it is that neither of the two (2) counsel had the opportunity to express themselves in all this. We had points to make. I think we are two (2) responsible parents who, I mean, who only want the best for our child, and clearly, that day, we were not treated that way. We did not... I... We were unable to make any points or provide any explanations. It was…

First of all, the judge called my son "little M," but my son is clearly called M. It was suggested that the clerk adopt my son. It was…

Q - When you say this, ma'am, were you there when it was said or was it...

A – Yes, yes.

Q – ... something that was reported to you?

A – Yes, yes, I was there.

163. One of the main reasons for Ms. S.'s complaint is that she claims that her counsel was unable to explain her point of view. However, listening to the recording (SSP-3) or reading the transcript (SSP-5) shows that Vanessa Caron (not Stéphanie Caron as stated by the Inquiry Committee), Ms. S.'s counsel, was able to identify the real problems with her application. In any event, the mandatory pre-judicial conciliation in family matters is not intended to allow the parties to plead their case, but simply to explore the case generally so that they can then, briefly, try to settle their case. If this fails, the formal hearing of the application then takes place. The following are excerpts confirming that Ms. S.'s counsel was able to express herself and identify the real problems:

a) When the parents decided to put the child in school in Blainville, Ms. S. was on maternity leave, and at the time, there were no transportation problems related to bringing the child to school (see court transcript, Exhibit SSP-5, pages 12 and 13);

b) Ms. S. returned to work the following week (Exhibit SSP-5, page 13);

c) In the spring, it was proposed by the parties that the child be enrolled in a school halfway between the parents, because Ms. S. lived in Saint-Jérôme and her former spouse lived in Blainville, but this proposal did not work out (Exhibit SSP-5, page 13);

d) It was therefore necessary to determine whether the child would go to school in Blainville or Saint-Jérôme, but in both cases, there were inconveniences, whether he went to Blainville or Saint-Jérôme (Exhibit SSP-5, page 13);

e) The parties were unable to reach an agreement, and that is why they applied to the court (Exhibit SSP-5, pages 13 and 14);

f) The mother and father had shared custody of the child (Exhibit SSP-5, page 28);

g) If the child went to Blainville, Ms. S. would not be able to maintain the alternating weeks shared custody arrangement because she had an atypical schedule. To maintain the alternating weeks custody arrangement, the child had to attend École Prévost in Saint-Jérôme (Exhibit SSP-5, Page 28);

h) There were issues on both sides regardless of whether the child attended school in Saint-Jérôme or Blainville, but the difference was that Ms. S.'s former spouse did not work year-round, while Ms. S. worked year-round (Exhibit SSP-5, page 29);

i) On page 24, the judge said that he understood Ms. S.'s position and argument (See Exhibit SSP-5, page 33);

j) Whether the child went to school in Blainville or Saint-Jérôme, the problem was the same in terms of transportation, according to Ms. S.'s counsel. (Exhibit SSP-5, page 35);

k) Ms. S.'s counsel acknowledged that if the judge agreed with Ms. S., her former spouse would be in a bind, and if he agreed with the former spouse, Ms. S. would be in a bind (Exhibit SSP-5, page 36);

l) The judge then said that the interests and stability of the child, who has been in Blainville for three years should be prioritized (Exhibit SSP-5, page 36);

m) Ms. S.'s counsel explained that her former spouse had no problems with transportation for four months of the year because he did not work year-round (Exhibit SSP-5, page 54);

n) When the judge made his quip suggesting that the parties get back together, Ms. S.'s counsel laughed and fully understood that this was a joke (Exhibit SSP-5, page 69).

164. In light of the above, we can see why the judge followed up on the status of the negotiations while he was hearing another matter at the same time. Should the judge have explained this at the beginning of the hearing on September 7, 2018? It is important to reiterate that the parties were represented by counsel. In addition, there are no specific standards or training for mandatory pre-judicial conciliation. However, had the judge explained the process, it is likely that many problems could have been avoided.

165. The judge's conduct at that hearing cannot be the basis for the finding of misconduct made by the Inquiry Committee.

The quips

166. The Inquiry Committee criticized the judge for making certain quips during conciliation that it considered inappropriate. It is necessary to situate each quip in its specific context, but also to situate them in the broader context of conciliation.

167. First, in the overall context of conciliation, the quips are intended to inspire the parties to think about how to solve the actual problem they are facing. In this case, this problem was not related to choosing a school, but rather transportation.

168. Next, let us look at the specific context of each quip.

a) First: [TRANSLATION] “But the magic solution, I have one. My magic solution is to order the parties to get back together and raise, M... what is his name? ...” (Exhibit SSP-5 corrected, page 69) Obviously, this is a theoretical solution, but it still leads the parties to realize that it is up to them to find a solution, not the child.

b) The second was made in the following context:

[TRANSLATION]

Vanessa Caron:

“...but there are benefits, Your Honour, there are arguments that are futile because they are equally problematic.

The Court:

Okay, but let’s put him in a boarding school, let’s have him adopted, that’s the other solution I can propose, I will put the child up for adoption. Look, the parents cannot take care of him, that’s the other option. When the first one doesn’t work, and they say “Look, we don’t want to get back together...” (Exhibit SSP-5 corrected, pages 78–79).

c) In this context, the purpose of these quips was to encourage the parties to find a solution to Ms. S.’s transportation problem in the best interests of their six-year-old boy. This is what the parties did for two hours, and they found this solution in the interests of the child, which the judge approved and which, according to Mr. Laurin, settled the entire case.

169. In addition, it is clear that these are quips used by Justice Dugré to encourage the parties to meet halfway and to try to find a solution to their problem, as the judge himself stated at the hearing on September 7, 2018, where he stated, [TRANSLATION] “then if you do not want to meet halfway, you have to figure out what you want to do…” (see page 72, Exhibit SSP-5).

170. Listening to the recordings of the hearing shows that the tone used by the judge when making these quips is not serious and that this is an invitation to the parties to realize that they have better solutions available to them through negotiation;

171. Mr. Laurin, who represented the father, testified that he understood that those were quips to encourage the parties to work together and find a solution.

172. Ms. S. found this inappropriate, just as she found inappropriate Justice Dugré's calling her son "M" rather than "M" (the problem being the pronunciation of the child's first name), which she felt was [TRANSLATION] "so disrespectful," although there was absolutely nothing disrespectful about the pronunciation of the child's first name (see pages 22 and 24 of the inquiry transcripts dated April 12, 2021).

173. The Inquiry Committee put a great deal of emphasis on the quips and did not approve of them. But in this case, it is not a finding of misconduct that should be imposed on the judge, but rather a recommendation that using such quips or figures of speech is risky and should be avoided, which Justice Dugré is prepared to accept and correct.

174. In short, the quips, inspired by the best interests of the child, cannot form the basis of the finding of misconduct by the Inquiry Committee members.

175. Finally, the Inquiry Committee held the judge personally responsible for the problems Ms. S. had after this hearing. However, the Inquiry Committee is wrong. There are limits to the judge's responsibility for the actions of a party, who is also represented by counsel, over which he has no control. Ms. S., who was represented by counsel, could have requested a postponement, was under no obligation to agree to settle, and is contradicted by her own acceptance that the agreement be incorporated into the final agreement dated May 2019, which was approved by another Superior Court judge.

176. In addition, the application Ms. S. submitted that morning caused her to incur even greater risks if she had not convinced the judge that changing schools was necessary, given that in such a scenario the terms of custody could have remained the same (i.e., alternating weeks shared custody). This scenario would have had a major impact on the quality time she could have spent with her son. Therefore, it is again wrong for the Inquiry Committee to find that the parties agreed to maintain the *status quo*.

d) Conclusion

177. We respectfully submit that the Inquiry Committee erred in finding that there was misconduct in this case.

178. This does not mean that Justice Dugré does not acknowledge the Inquiry Committee's comments. However, making a finding of misconduct whenever a judge uses quips or figures of speech, in the context of pre-judicial conciliation, to encourage the parties to think is unreasonable.

179. The judge admits that he was wrong in assuming, on the one hand, that Ms. S's counsel had previously explained to her how the hearing would be conducted and, on the other hand, that counsel knew that the judge was conducting mandatory pre-judicial conciliation at the start of the hearing. He should have announced it at the beginning of the hearing.

B. The A. Case

a) Introduction

180. The complaint was not validly before the Inquiry Committee, given that it was referred to it directly by Chief Justice Joyal on October 4, 2019, without first being referred to a review panel, as required by the CJC By-laws.

181. Clearly, the letter from Associate Chief Justice Petras is insufficient in itself to justify a recommendation for removal. It is important to note that the Inquiry Committee does not conclude that this complaint is sufficient in itself to warrant the removal of Justice Dugré

182. In this case, the letter was sent to the CJC on March 27, 2019, by Associate Chief Justice Petras. On April 3, 2019, the Acting Executive Director of the CJC asked Justice Dugré to provide her with comments on the letter within 30 days (by May 3, 2019). On May 8, 2019, Justice Dugré's counsel, Magali Fournier, requested a two-week extension of the time limit, which was denied. A response was required within seven working days, and she was informed that the Vice-Chairperson of the Judicial Conduct Committee would decide on the complaint by May 17, 2019.

183. Rather than referring the letter directly to a review panel, the Vice-Chairperson of the Judicial Conduct Committee waited until October 4, 2019, to refer the letter directly to the Inquiry Committees without first going through the review panel, but accompanied it with his own allegations.

184. We submit that, since the Inquiry Committee could not legally consider this letter or the tweaks that accompanied it, the Council should not be able to take it into account either.

185. That said, although this letter is not sufficient to justify a recommendation for removal, Justice Dugré acknowledges that some comments should have been avoided and that the conduct of this hearing was not perfect, despite the ambiguity of the case put before him by Ms. M.

b) Background

186. The Inquiry Committee dealt with the case of A. at paras. 208 to 268 and 663 of its report.

187. This case concerns an application by Ms. M. for child support entitled [TRANSLATION] "Respondent's application for provisional measures and a safeguard order" (Exhibit A-7, Exhibit AP-2, sequence #14 in the docket). This interlocutory application by Ms. M. was part of a petition for divorce brought by Mr. A (Exhibit AP-6). At the hearing on April 3, 2018, for Ms. M.'s application, she was represented by counsel, Mr. Tétreault, Mr. A. was represented by Ms. Décarie, and one of the children was represented by Ms. Miele.

188. At the beginning of the hearing, which lasted 92 minutes, the judge asked counsel for Ms. M., the applicant, what was before him: an interim or provisional application. Counsel replied, [TRANSLATION] "It is as you wish, it can be, it can be either interim or

for provisional measures. In fact, what Ms. M. is asking for is child support." (Exhibit AP-5 corrected, page 32).

189. The judge then decided that an interim or safeguard application was before him, especially since Mr. A's sworn statement dated March 16, 2018 (Exhibit AP-8), to challenge this application by Ms. M., clearly states at para. 2 that Mr. A. had understood that he was facing an interim or safeguard application: [TRANSLATION] "I have read this application for a safeguard order, and I wish to object to the respondent's application for a safeguard order regarding urgency." This renders unlikely the submissions of his counsel, Ms. Décarie, to the effect that the application was at the provisional stage and that Mr. A. had the right to testify about his undue hardship. The only ground for Mr. A's objection was the lack of urgency (see also paragraph 19 of Mr. A's sworn statement).

190. In this context, the case was to be decided on the basis of the parties' sworn statements filed in evidence (Exhibits AP-7, AP-8, AP-9, AP-10), during a hearing that usually lasts 15 to 30 minutes, in accordance with the criteria applicable to an interim application.

191. The evidence summarily revealed that the purpose of the mother's interim application was to obtain child support for two minor children; that the parties ceased to live together on May 31, 2013, according to Ms. M.'s version, or May 31, 2014, according to Mr. A.'s version; that Mr. A.'s annual income was nearly three times that of Ms. M.'s; and that Mr. A. had never paid child support for the children since the parties' separated until the date of the hearing on April 3, 2018, nearly five or four years after they stopped living together, while child support is a matter of public policy.

192. Given that the judge was of the opinion that there was an urgent need, despite Ms. Décarie's submissions (Exhibit AP-5, pages 39, 72) and that the other criteria of an interim application were met, the judge assisted the parties in preparing an Aliform to determine the amount of child support. The amount of this interim child support was $330.46 per month according to the Aliform, which was attached to the hearing transcript (Exhibits AP-2 and AP-3). An order to Mr. A. to pay the interim child support was recorded in the hearing transcript (Exhibit AP-2), and the child support could be reviewed by the merits judge.

193. However, given that Mr. A. wanted to plead undue hardship in order not to pay child support for his children, but that this was not appropriate at the interim stage, as this required evidence by witnesses, which is exceptional at the interim stage, the judge used his managerial authority to set a date to hear the matter on the merits. The hearing for scheduled for a full day on October 26, 2018, so that Mr. A could make this factual argument of undue hardship at that hearing. Exhibits AP-2 (hearing transcript) and AP-5 (transcript dated April 3, 2018, at pages 182–183) confirm that Mr. A.'s right to plead undue hardship was therefore postponed to the appropriate time, i.e., at the merits hearing scheduled for October 26, 2018.

c) Procedural history

194. The path of the A. case was complicated and led to several violations of the judge's rights. Ms. Décarie, dissatisfied with the judge's decision, obtained the edited recording of the hearing and handed it over to the secretary of Justice Alary, Coordinating Judge for the District of Laval, in April or May 2018. Ms. Décarie's purpose was to ensure that

the judge would no longer sit in the district of Laval. Later, Justice Alary's office forwarded the edited recording to Associate Chief Justice Petras in September 2018. Associate Chief Justice Petras forwarded it to Executive Director Sabourin with a letter dated March 27, 2019 (Exhibit AP-1), which contained several factual errors. On April 3, 2019, the Acting Executive Director, Odette Lalumière, wrote to Justice Dugré to request his submissions within 30 days, as required by Chief Justice Joyal. This short time limit is surprising given that S.S.'s complaint dated September 11, 2018, was sent to Justice Dugré only on December 11, 2018.

195. On May 8, 2019, Norman Sabourin wrote an email to Ms. Magali Fournier, counsel for Justice Dugré, giving her an additional seven days to comment on the letter from Assistant Chief Justice Petras. The email reads as follows: [TRANSLATION] "In all these circumstances, Chief Justice Joyal considers that an additional seven working days is reasonable. He intends to decide on the action to be taken on this matter based on the information available to him on May 17, 2019." On May 15, 2019, Ms. Fournier forwarded her comments to Mr. Sabourin.

196. It is important to note that Chief Justice Joyal had established two Review Panels to review K.S. and S.S.'s complaints on March 14, 2019. He had established another one to review Mr. El Zoghbi's complaint on May 9, 2019. These three Review Panels were composed of the same five members.

197. However, effective May 17, 2019, Chief Justice Joyal did not establish a review panel to review this "complaint," nor did he refer it to one of the three Review Panels already constituted. It was not until more than four months later, on October 4, 2019, that he decided to send the complaint directly to the Inquiry Committee, which was constituted for each of the complaints by K.S. and S.S., accompanied by allegations, which he himself wrote, ignoring the context of Ms. M.'s interim application, which usually proceeds without witnesses. In his decision, Chief Justice Joyal bypassed the prerequisite process under the CJC By-laws and illegally substituted himself for a review panel.

198. On March 4, 2020, the Inquiry Committee incorporated this case into its detailed Notice of Allegations, and drafted Allegations 3A and 3B.

d) Errors made by the Inquiry Committee

199. The Inquiry Committee decided to reply in the affirmative to allegations 3A and 3B, which read as follows:

- 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?

200. The Inquiry Committee's findings regarding these allegations are unreasonable. Let me explain.

201. First, the process leading to the investigation of this complaint is illegal, unfair, and unreasonable, as the prerequisite process was not followed.

202. Second, Chief Justice Joyal exceeded his jurisdiction and acted unreasonably by forwarding his own allegations against Justice Dugré to the Inquiry Committee.

203. Third, the Inquiry Committee erred in deciding to investigate this complaint despite these fundamental flaws.

204. Fourth, the Inquiry Committee stated at para. 663 that the judge "flagrantly violated the *audi alteram partem* rule". While we do not necessarily agree with the Inquiry Committee, the fact remains that the evidence shows that the judge heard the submissions of Mr. A's counsel on the lack of urgency in an interim application; decided this application in accordance with the law; and deferred to the hearing on the merits—for which he set the date using his managerial authority—the presentation of Mr. A's additional factual argument based on undue hardship.

205. The Inquiry Committee did not take into account and did not even mention the testimony of Mr. Centomo, an expert in Quebec civil law, more specifically, family law procedure (transcript dated June 28, page 91).

206. According to this expert—whom the Inquiry Committee disregarded without saying why—it is not only acceptable for a judge to use their managerial authority to postpone an argument to a later stage, but it is even desirable that they do so as the case may be. Justice Dugré did so with respect to the undue hardship that Ms. Décarie wanted to raise at that hearing by postponing this argument to October 26 (transcript dated June 28, page 148 *et seq*.).

207. In any case, whether or not there was a violation of the *audi alteram partem* rule, it is not a ground for removal or even a sufficient ground for misconduct.

208. The Inquiry Committee also failed to take into account that none of the people who testified in this case considered the judge's conduct to be serious enough in itself to seek his removal:

a) Ms. Décarie simply wanted him not to return to the Laval District;

b) Justice Alary also wanted him not to return to the Laval District;

c) Justice Petras acknowledged that this complaint was not sufficient in itself to seek the removal of a judge (April 13, page 47) and that it was only at the request of Justice Fournier that she sought to obtain as many complaints as possible against Justice Dugré by contacting some counsel and coordinating judges in order to strengthen the complaint file already produced (April 13, pages 12, 31).

209. Therefore, the Inquiry Committee should never have been seized with the letter from the Honourable Justice Petras or the accompanying edited version, which contained obvious errors and even on its face established that it was produced only to create a cumulative effect, let alone the allegations of Chief Justice Joyal, sent directly to the Inquiry Committees.

e) Conclusions

210. Accordingly, the Inquiry Committee's finding must be set aside, and Allegations 3A and 3B must be answered in the negative.

211. Listening carefully to the recordings of the hearing shows that the hearing could have been more orderly, but that the judge's conduct cannot serve as the basis for a finding of misconduct in this case.

C. <u>The Gouin case</u>

a) Introduction

212. This complaint was referred directly by the Executive Director of the CJC to the Inquiry Committee on November 13, 2019, without the Executive Director of the CJC having first submitting it to the Vice-Chairperson of the Judicial Conduct Committee for referral to a Review Panel, if appropriate.

213. Thus, this complaint was not validly before the Inquiry Committee, which should not have considered or investigated it.

214. Clearly, Mr. Gouin's complaint was insufficient in itself to justify a recommendation for removal. It is important to note that the Inquiry Committee did not conclude that this complaint was sufficient to warrant the removal of Justice Dugré

215. We therefore respectfully submit that the Council should not take this complaint into consideration in its report to the Minister of Justice.

b) Background

216. The chronology of this case is as follows:

a) The trial ended on November 30, 2017;

b) On November 2, 2018, Mr. Gouin submitted the entire trial court file to the Court of Appeal with his brief, which attacked the judge's conduct and impartiality;

c) On September 6, 2019, the CJC issued a news release announcing an investigation of the judge;

d) On September 26, 2019, Mr. Gouin filed a complaint against the judge with the CJC that essentially repeated the same grounds as those submitted in support of his appeal;

e) On November 13, 2019, Executive Director Sabourin forwarded Mr. Gouin's complaint directly to the already established Inquiry Committees;

f) The appeal was heard on January 22, 2020, by Madam Justice Duval Hesler, Chief Justice and member of the CJC who replaced Dutil J., Hamilton J., and Sansfaçon J.;

g) On January 24, 2020, the Court of Appeal upheld the judgment of Justice Dugré, except for a sum of $2,000.

217. The Court of Appeal made an in-depth analysis of the entire case under appeal (GP-19, 2020 QCCA 100, para. 51). It concluded that the evidence presented by Mr. Gouin was incomprehensible. It also rejected all Mr. Gouin's arguments in support of his application regarding the judge's impartiality.

c) Procedural history

218. On November 13, 2019, the Executive Director forwarded Mr. Gouin's complaint directly to the Inquiry Committee. The Executive Director's decision is void because he had neither the authority nor the jurisdiction to do so, it is unfair and unreasonable, and because he thus bypassed the pre-requisite process. The Inquiry Committee therefore could not hear this complaint. The conduct of the investigation does not change that.

d) Inquiry Committee's errors

219. The Inquiry Committee dealt with this complaint at paras. 314 to 357, and 664 of its report. It replied in the affirmative to the two allegations arising from this complaint (allegations 5A and 5B), which read as follows:

- Allegation 5A: Did Justice Gérard Dugré fail in the proper execution of his office in the hearing that he presided over on November 28, 29, and 30, 2017, in the Gouin case (*Karisma Audio Post Vidéo et film inc. v. Morency* #500-17-076135-139) in his conduct and comments during that hearing?

- Allegation 5B: Did Mr. Justice Gérard Dugré fail to show honour and dignity in the hearing that he presided over on November 28, 29, and 30, 2017, in the Gouin case (*Karisma Audio Post Vidéo et film inc. v. Morency* #500-17-076135-139) in his conduct and comments during that hearing?

220. The mistakes made by the Inquiry Committees are numerous, palpable, and overriding. The following is a non-exhaustive list:

a) At para. 321, Mr. Gouin makes a palpable error. The judge did not ask this question to Ms. Gélinas, but rather Mr. Morency's counsel, Mr. Roch: transcript dated November 28, 2017, pages 43–44, Exhibit GP-13 corrected;

b) The Inquiry Committee failed to point out that Mr. Gouin's testimony was riddled with errors. For example, at para. 325, he claims that his complaint was filed as a result of the appeal pleadings. However, that is not correct. His complaint was filed in September 2019, but the appeal pleadings were held on January 22, 2020: see Exhibits GP-1 and GP-19;

c) The almost two-year delay in filing a complaint demonstrates that his complaint was not serious enough, as he himself did not take care to file it within a reasonable amount of time (see Review Panel's report in El Zoghbi, dated August 30, 2019);

d) At para. 350, the Inquiry Committee makes a palpable and overriding error in stating that Justice Dugré [TRANSLATION] "had unduly intervened". It was not the unanimous opinion of the Court of Appeal, which conducted a thorough analysis of the entire case. The judge's interventions were justified by the fact that he was trying to understand Mr. Gouin's evidence, which ultimately proved incomprehensible to both the judge and the three judges of the Court of Appeal: Exhibits GP-18, para. 40; GP-19, para. 51. In short, the Inquiry Committee criticizes the judge, *a posteriori*, for intervening in an attempt to understand the evidence presented to it by Mr. Gouin, a criticism that is patently unreasonable;

e) At para. 354, the Inquiry Committee makes a particularly troubling remark. Since when does a judge not have the right to interrupt a counsel during their argument?

f) At paras. 356 and 664 of its report, these passages in the Inquiry Committee's reasons are patently unreasonable, as they go against the preponderance of evidence and, above all, the conclusion of the Court of Appeal, which conducted a thorough analysis of the same case;

g) Moreover, the Inquiry Committee suggests that Justice Dugré trivialized violence against women, when this was not the case, and above all, was certainly not his intention.

221. In the end, the Inquiry Committee's affirmative response to allegations 5A and 5B was patently unreasonable.

e) Conclusions

222. In short, a reasonable and informed person would have concluded that Mr. Gouin did not complain because the judge's conduct was seriously problematic, but rather because he wanted revenge for losing his case. Of course, it is easy for the Inquiry Committee to criticize, after the fact, the conduct of the judge who, in the heat of the moment, tried his best to understand incomprehensible evidence, as the Court of Appeal also found after conducting a thorough analysis of the same case.

223. Mr. Gouin testified and certainly did not appreciate the judge's conduct. His counsel at the hearing, Jean-François Hudon, did not testify.

224. The other individuals who attended the hearing—Mr. Morency and his spouse, Ms. Gélinas; Mr. Morency's counsel, Steven Roch; and the Clerk, Ms. Dumont—all testified during the investigation. These individuals did not witness inappropriate conduct by the judge. The judge's comments were explained and put in context.

225. Moreover, the three judges of the appeal panel, reasonable highly knowledgeable individuals, having analyzed the same grievances as those raised in Mr. Gouin's complaint, were unable to find that he was biased.

226. Mr. Gouin's complaint did not contain sufficiently serious elements to warrant the judge's removal. Therefore, it should not have been investigated. The direct referral of this complaint to the Inquiry Committee bypassed the pre-requisite process that was required. The conduct of the investigation does not change that.

227. That said, Justice Dugré was sensitive to the impression he may have given by making certain remarks at that hearing. He took note of this and promised to adjust his conduct accordingly.

D. The S.C. case

a) Introduction

228. Again, this is a complaint that was not validly before the Inquiry Committee, as it was referred directly to it by the Executive Director of the CJC on November 13, 2019, without first referring it to the Vice-Chairperson or Chairperson of the Judicial Conduct Committee. Again, the Inquiry Committee did not conclude that these findings with respect to this complaint were sufficiently serious to warrant the removal of Justice Dugré

229. We respectfully submit that the Council should not consider this complaint or the findings of the Inquiry Committee.

b) Background

230. On April 11, 12, and 13, 2018, the judge presided over a family case between common-law partners, the applicant Ms. F., represented by Ms. Vallant, the respondent Mr. S.C., who insisted on representing himself, as was his right, and the two children of the parties, represented by Andrée Roy. At the end of the trial, late on Friday, April 13, the judge delivered his judgment from the bench, ruling on the many applications of the parties. The trial lasted about 16 hours. It took approximately one hour to read the reasons for the judgment, and they were transcribed following the hearing.

231. On October 3, 2019, Mr. S.C. filed a complaint with the CJC about the trial presided over by the judge in April 2018, more than 17 months after the trial (Exhibit SDC-1).

232. On November 13, 2019, the Executive Director of the CJC, Mr. Sabourin, forwarded Mr. S.C.'s complaint directly to the Inquiry Committees, already established on August 30, 2019, thus bypassing the established pre-requisite process.

c) Inquiry Committee's errors

233. The Inquiry Committee erred in several respects, palpably and in an overriding manner, in its analysis of the evidence. It is not necessary for the purposes of this case to list all of them, but the following are some examples of them:

a) The Inquiry Committee made a palpable and overriding error when it claimed that the judge criticized S.C. for not having included the buildings in its assessment, as the judge criticized S.C. for not having indicated the value of the buildings, either directly or through the value of the shares of the companies that owned the buildings. This error was determinative because the Inquiry Committee seems to have inferred from it that the judge misunderstood the case because of his interventions, although he had understood the problem perfectly well, precisely because of his interventions;

b) The Inquiry Committee failed to consider the fact that S.C. was never able to demonstrate what he was unable to submit certain pieces of evidence, either through cross-examination or through additional witnesses he would have liked to have appeared before the court. In short, the Inquiry Committee did not consider the fact that all the evidence was submitted, and that the complainant was unable to demonstrate that any of his evidence had not been heard, despite the judge's interventions;

c) The Inquiry Committee failed to consider that in a hearing in which a party represents themselves, in a family case, for which there are criminal charges brought against the person who represents themselves, the judge must be more interventionist;

d) With respect to the remarks of Justice Dugré, they were found to have been insufficient by the Court of Appeal of Quebec to disqualify him;

e) Without saying that he would repeat such remarks, having understood that they can be misinterpreted, the judge submitted that a careful listening of the recordings of the hearing demonstrated that the tone the judge used when making the remarks for which he was criticized by the Inquiry Committee was a humorous one;

f) Any reasonable person would conclude that the judge made those comments to make S.C. realize that he cannot breach orders made by the court and that serious consequences may ensue;

g) In addition, the 17-month period that elapsed before Mr. S.C. filed his complaint with the Council confirms that the complaint was not sufficiently serious and should not have been investigated, let alone contribute to the first recommendation of the Inquiry Committee;

h) Finally, Mr. S.C. informed the Inquiry Committee's counsel by email that he was withdrawing his complaint, thereby showing that the subject did not consider the judge's conduct to be sufficiently serious to pursue his case.

d) Conclusion

234. We submit that the Inquiry Committee's finding regarding these two allegations was unreasonable in light of the evidence before it.

235. That said, Justice Dugré was sensitive to the impression he may have made by making certain remarks at that hearing. He took note of this and will adjust his conduct accordingly.

236. The judge could probably have shown more empathy towards Mr. C. However, the totality of the circumstances made this trial difficult. As for the powerful and surprising metaphor regarding complying with court orders, it was inappropriate.

E. The K.S. case

a) Allegation 1A

i) Background

237. Allegation 1A reads as follows:

> Did Justice Gérard Dugré fail in the due execution of his office by delivering judgment in K.S. (*J.B. v. 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?

238. Although the Inquiry Committee, at paragraph 543 of the report, replied in the affirmative to this question, it did not conclude that this failure on the part of Justice Dugré was sufficient in itself to justify his removal. In addition, only allegation 1C served as the basis for the recommendation for removal, as indicated at paragraph 686 of the report.

239. From the outset, it can be noted that this allegation was based on two legal provisions: s. 65(2)(c) of the *Judges Act*, RSC 1985, c. J-1, and art. 324 of the *Code of Civil Procedure* (CCP), CQRL, c. C-25.01.

240. An in-depth analysis of art. 324 of the CCP reveals that this legal provision is not one that pertains to ethics and cannot be so constitutionally. The province cannot set a standard of ethics for federal judges.

241. This is an administrative mechanism, established by the Quebec legislator, to allow *the parties* to obtain their judgment in a case, when the time limit prescribed by the first paragraph of that article has expired, by the intervention of the Chief Justice with the judge deliberating on the case. This administrative mechanism has the advantage of not informing the judge which of the parties has requested a judgment. As will be seen, the evidence also revealed, through an admission, that this mechanism was also applied *before* the advisement period had expired. Moreover, contrary to what is alleged, art. 324 does not provide for an exemption from the Chief Justice.

242. Are the time limits provided in the first paragraph of art. 324 imperative or indicative?

243. These time limits are only indicative. A reading of the first and fourth paragraphs of this article, in light of the relevant rules of interpretation and constitutional imperatives, makes it easy to irrefutably conclude that these time limits are merely indicative. Therefore, making a judgment after the expiry of these time limits is not a breach of duty. This was recognized on December 6, 2021, by the Inquiry Committee's counsel: [TRANSLATION] "Therefore, in our opinion, article 324 does not provide for an imperative time limit…" (Transcript dated December 6, 2021, at pages 130–131). Moreover, it would be very surprising if this were not the case because, despite the expiry of the time limits provided for in this article, the judge does not become *functus officio*, and his judgment remains perfectly valid.

244. Thus, once properly interpreted, it is understood that this administrative mechanism is provided for the benefit of the parties.

245. First, it should be noted that in Quebec, the parties to a dispute control the course of their proceeding (art. 19 of the CCP).

246. Second, it is clear that art. 324, and the time limits it provides, were adopted "for the benefit of the parties," as expressly mentioned in its first paragraph.

247. Finally, the fourth paragraph of the article 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 words "on a party's application" are used, and the evidence confirms that Justice Dugré has never been removed from a case, he has rendered judgment in all the cases before him.

248. But what does the phrase "chief judge, on their own initiative" mean? Chief Justice Fournier testified during the investigation that he does not consult with the parties before sending a notice of "delay" to the deliberating judge, nor does he need to receive an [TRANSLATION] "application from a party" beforehand (transcript dated June 15, 2021, page 8). Moreover, in addition to the sacrosanct nature of deliberation and the particularly serious and harmful effect that such an opinion may have on the deliberating judge, and without the parties being informed of it, the position of Chief Justice Fournier is clearly and patently wrong in law. The following is what the Quebec Court of Appeal wrote about the meaning and scope of an authority that can be exercised "on their own initiative":

> [TRANSLATION]
>
> We must not lose sight of the fact that this authority to act on one's own initiative does not exempt the court from complying with the *audi alteram partem* rule. The Court reiterated this principle in *Palardy v. Quebec (Deputy Minister of Revenue)*: "while acknowledging the inherent authority of the Superior Court to act *proprio motu*, ... this cannot exempt the court from meeting the requirements of the *audi alteram partem* rule beforehand." Art. 17, para. 2 C.C.P. expressly states that: "the court, even on its own initiative, must uphold the adversarial principle and see that it is adhered to until the judgment and during execution of the judgment." [*L.M. v. J.M.*, 2019 QCCA 2185 (CanLII), para. 21]

249. The application of art. 324 is therefore fundamentally dependent on the *will of the parties*, not that of the Chief Justice.

250. Therefore, if the Chief Justice can oversee the judges' work, fundamental public order considerations apply when a judge deliberates on a case where parties are involved.

251. It is important to note that prior to K.S., there had been a clear practice regarding the application of art. 324 of the CCP and its predecessor, art. 465 of the *Code of Civil Procedure*, CQRL, c. C-25.

252. When a party sought judgment in a case under consideration, the party or parties contacted the Chief Justice, the Chief Justice contacted the judge, and the judgment was issued. A simple and effective mechanism, without the judge knowing who asked for a judgment to be issued. In the case of Justice Dugré, since his appointment in January 2009, this mechanism has been applied quickly and effectively seven times.

253. Six times after the expiry of the indicative time limits of the first paragraph of art. 324, and the judgment was delivered within the following time limits: Exhibit JC-19 (Uniprix, within three days); Exhibit JC-39 (Youri Dominique, within the same day); Exhibit JC-46 (trustee, within five days); Exhibit KSP-30 (K.S., within 12 days, the case at hand); Exhibit JC-58 (I-D Foods, within 45 days); Exhibit JC-62 (9213-1705 Québec inc., within seven days).

254. Once *before* the expiry of the indicative time limit in the first paragraph of art. 324, and judgment was issued eight days after the Chief Justice's request at the request of the parties (admission in lieu of Exhibit D-74, *TBM Holdco Ltd v. Desrosiers*, 2014 QCCS 5997).

255. During the investigation, Chief Justice Fournier testified that requests to issue judgment, at the request of a party, made to judges who deliberated other than Justice Dugré, had needed several months before the judgment was issued (transcript dated June 15, 2021, page 20).

256. For these reasons, the Inquiry Committee could not conclude that allegation 1A was proven as it was related only to article 324 of the CCP.

257. However, there is more. The Inquiry Committee made errors in reaching its conclusion, on which it is now important to focus.

ii) Inquiry Committee's errors

258. The Inquiry Committee's reasons in relation to this allegation are set out at paras. 460 to 542. These reasons contain several errors of law as well as several palpable and overriding errors of fact.

259. In light of the above, we will note only a few. But before doing so, some preliminary remarks should be made.

260. On February 16, 2018, at 4:43 p.m., when the judge took the case of K.S. under consideration, he was a judge with more than nine years of experience. His clerk Ms. Dumont also had a great deal of experience since her arrival in June 2011.

261. That is why she drew up the minutes of that hearing (Exhibit KSP-6), the conclusions of which read as follows:

> [TRANSLATION]The court has before it the submissions sought from the defendant (amended on January 25, 2018) and the submissions sought from plaintiff dated January 4, 2018.
>
> The court declared the *Defendant's motion for Immediate Sale of the Family Residence* groundless.

…

THE COURT:

TAKES the matter under consideration;

EXTENDS the orders made by the Hon. Collier on June 14, 2017, to be valid until the judgment of the undersigned;

ORDERS the parties to comply with it.

Signed By The Honourable Gérard Justice Dugré J.S.C.

End of hearing

Case under consideration

File at the judge's office

Signed Marie J.H. Dumont, g.a.c.s

262. The minutes of the hearing are an authentic act that makes proof of its content (art. 2814 (3) CCQ).

263. These minutes are important not only because of what they state, but also because of what they do not state.

264. First, they state that the case was taken under consideration. Therefore, as of that date, these are the rules governing the consideration that apply.

265. Second, they state that the parties continue to be governed by the judgment of Collier J. on an interim order until the judgment of Justice Dugré

266. However, they do not state that Justice Dugré will issue judgment on a specific date or that he has committed to doing so. They also do not state that the judge made a decision that there was an emergency.

267. However, they state that the court declared that K.S.'s motion to sell the family residence was groundless. This is what the court did in its judgment on November 27, 2018, at para. 114 of the report (Family Law – 182482, 2018 QCCS 5111 (CanLII)).

268. Since the judge was ruling on the merits on the corollary relief in the divorce and the custody and child support issues were settled, the indicative time limit for judgment was six months.

269. The Inquiry Committee made a palpable error of law in challenging the court over a "commitment" it allegedly made during the hearing, before the case was taken into consideration. This is what the Court of Appeal of Quebec recently reiterated: [TRANSLATION]

a) The judge's comments during the proceedings do not bind him during his deliberation: "However, the comments judges make during a hearing do not bind the judge at the time of issuing judgment12." para. 25, *Maison Lapierre inc. v. Pareclemco inc.*, 2022 QCCA 490. Note 12 of that decision states:

"See in this regard *M.R. v. Hall*, 2021 QCCA 826, where the Court, citing *R. v. Giroux*, 2007 QCCA 1670, wrote the following:

[26] … This allows, where necessary, to further inform the debate and to give the parties, or witnesses, an opportunity to respond to a question by the judge, or to a proposal that the judge makes, without these reflections and comments made in the heat of the moment in court constituting a final opinion binding the judge for the purposes of his deliberation, let alone a statement equivalent to judgment. As our colleague Doyon J. rightly pointed out, although in other circumstances:

> [10] …Of course, a judge cannot be faulted for having deliberated and issued a judgment that proved to be different from some of the comments made during the hearing. If he could be criticized, serious consideration should be given to the meaning and scope of the deliberation."

b) In short, if the court had made a commitment, it would have been recorded in the minutes of hearing. In any case, it is not binding on the deliberation of the court, which may change his mind.

c) The parties and their counsel had several means to force the judge to act if they considered that the court had made a commitment and that there was an emergency. Re-submit the application by sending a new notice of presentation served on Mr. Litvack. Request discharge of the consideration under articles 25, 49, and 323 of the CCP. Contact the Chief Justice under art. 324 of the CCP as did Chief Justice Rolland in *TBM Holdco Ltd*.

270. The only possible conclusion was that after February 16, 2018, there was no emergency, and the allegations of so-called emergency by K.S.'s counsel were contested both in terms of form and substance.

271. As for Mr. K.S., he applied to the CJC on August 31, 2018, and clearly identified the case. The evidence does not show that the Executive Director of the CJC immediately advised him that he had to apply to the Superior Court to obtain the judgment, or specifically to Chief Justice Fournier, or that he immediately contacted him to advise him that a party to a clearly identified case of his court wanted to obtain a judgment.

iii) Conclusions

272. It is clear that the Inquiry Committee's finding on this allegation was ill-founded and should not be endorsed by the Council.

273. In addition, this allegation (1A) formed the basis for allegation 1C, in which the Inquiry Committee felt it had the authority to investigate all of the judgments issued by Justice Dugré since his appointment in 2009, following a mere comment by Chief Justice

Fournier in his letter dated January 28, 2019 (Exhibit JC-1). Chief Justice Fournier admitted in his testimony that he did not think it appropriate to file a formal complaint, which the Inquiry Committee did not take into account in its analysis of allegation 1C.

b) Allegation 1B

i) Background

274. Allegation 1B reads as follows:

> - Did Mr. Justice Gérard Dugré fail in the proper execution of his office by failing to respond to a party's correspondence in the K.S. case? (*J.B. v. K.S.* #500-12-327801-159), reminding him of the urgency of rendering judgment in light of his commitment to do so quickly?

275. In light of the forgoing remarks, we will be brief.

276. Again, although the Inquiry Committee found that Justice Dugré failed in the proper execution of his office by failing to respond to a party's correspondence, the Inquiry Committee did not find that this allegation was in itself serious enough to warrant the removal of Justice Dugré and did not cite any cumulative effect in this regard.

ii) Justice Dugré's position

277. Justice Dugré believed that since he was under advisement, he did not have to respond to a party's correspondence, especially since Ms. B.'s counsel had objected to the email from Mr. K.S.'s counsel requesting that the judgment be issued, as appeared in the email dated April 5, 2018 (Exhibit KSP-72):

> "Dear Mr. Justice Dugré,
>
> We object to the herein below e-mail addressed to you from Me Ivan Caireac on March 27th, 2018, and the manner in which Me Caireac is proceeding. Considering that the proof is closed, and this matter is under advisement by the Court, without any admission whatsoever, we will not be responding to the allegations made in the e-mail below, which we view as a continuous attempt by Defendant to misleadingly colour the file against our client.
>
> Our client maintains her position with respect to the conclusions sought before the Court.
>
> Respectfully Yours,
>
> Stewart Litvack"

278. At paragraph 512 of its reasons, the Inquiry Committee considered that it had clear and convincing evidence that Justice Dugré had committed to rendering judgment quickly given the urgency of the situation. This finding contains an error of law and a palpable and overriding error of fact. The excerpt reproduced at paragraph 513 of the inquiry report shows that Justice Dugré stated that he understood that the judgment should be delivered quickly and that it "should" be done the following week and said, "I will do it very short" in reference to the length of the judgment. Finally, the judge also said,

"hopefully next week you'll get something off my desk." This is not a commitment to deliver judgment, but Justice Dugré admitted that his remarks caused KS to expect that he would deliver a judgment the following week.

279. On the other hand, immediately after that hearing, Justice Dugré worked to prepare the judgment, but he had a health problem (a tooth infection). When this health problem was resolved, he received other important assignments that unfortunately delayed him and prevented him from finalizing the judgment.

280. Justice Dugré took note of the Inquiry Committee's report on Allegation 1B and will ensure that, in future, when the judge takes a case under advisement, after stating that he will attempt to deliver a judgment quickly, he will notify the parties as soon as he realizes that he is unable to do so.

iii) Conclusions

281. We respectfully submit that this complaint should have been dismissed by the Inquiry Committee.

c) Allegation 1C

i) Background

282. Allegation 1C reads as follows:

> Does the conduct of Justice Dugré demonstrate a chronic problem in rendering judgment and, if so, has Justice Dugré otherwise become unable to exercise his functions?

283. The Inquiry Committee responded in the affirmative to this allegation and concluded that this allegation, in itself, was sufficient to recommend the removal of Justice Dugré

284. For the following reasons, not only has procedural fairness been seriously and clearly breached, but it must be concluded that this response was wrong and that a negative response to this allegation was required.

285. First, it is important to remember that the Inquiry Committee itself drafted its 1C allegation, included it in its notice required by statute, signed by the members on March 4, 2020, and investigated it, and finally concluded that its allegation was, in its view, proven and even sufficient to warrant a recommendation for removal.

286. For that reason alone, the recommendation for removal should not be endorsed by the Council, but there is obviously more.

287. First, we can see that this allegation is too general in nature by omitting the "due" requirement required by law.

288. Second, this allegation does not refer to any of the subparagraphs of s. 65 (2) of the *Judges Act*, contrary to Allegation 1A, which specifically reads "failed in the proper execution of his office." This allegation is therefore, on its face, deficient in light of s. 65(2) of the *Judges Act*, which states the following:

(2) Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of

(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, (emphasis added)

289. Justice Dugré was never informed of the grounds for allegation 1C made by the Inquiry Committee. If he had been, he would have presented the relevant evidence to counter this ground with respect to each of the judgments at issue. He was deprived of that fundamental right. That was a serious and fundamental breach of procedural fairness.

290. Moreover, the allegation does not even claim that the issue was the time it took to deliver judgment, let alone a reasonable time to deliver judgment. Justice Dugré was criticized for being unable to deliver judgment, to which Justice Dugré responded and was able to establish that he delivered many judgments, and even many good judgments.

291. It was in his argument that Mr. Battista first indicated that allegation 1C was based on the grounds of reasonable promptness.

292. Never before had it been indicated that Justice Dugré had a chronic problem to deliver judgment with reasonable promptness. At most, it was suggested, although never formally in the Notice of Allegation, that he had a chronic problem in meeting the indicative time limits set out in article 324 of the CCP.

293. Therefore, in his defence, Justice Dugré first presented evidence in response to the allegation as it was worded, namely, that he had no chronic issues rendering judgment.

294. This evidence was unequivocal, as it was formally established that Justice Dugré had delivered more judgments than all of those analyzed by the judges during the hearing.

295. Justice Dugré then demonstrated, legally, that article 324 of the CCP had been complied with in all the cases for which he had made the decision under advisement, as evidenced by our comments above.

296. It is probably because of his realization that art. 324 of the CCP was of no help to support this allegation that the Inquiry Committee's counsel, on December 6, 2021, the day of his submissions, after the evidence was closed, backtracked and relied on the ethical principle of "reasonable promptness."

297. However, as soon as the investigation began and subsequently, Justice Dugré, as was said, limited his evidence on this allegation to what was necessary to demonstrate that it had not been proven, even in light of art. 324 of the CCP.

298. It is for this reason that one of Justice Dugré's counsel objected to this fundamental change to allegation 1C, given that this ethical principle is a different basis which required substantial additional evidence and a new notice of allegation.

299. The Inquiry Committee overruled this objection from the bench, with little concern for the resulting breach of procedural fairness.

300. It is important to note that on March 20, 2020, just days after the Inquiry Committee signed the Notice of Allegation, on March 4, 2020, the Supreme Court of Canada determined the nature of the ethical principle of reasonable promptness, the nature of the time limit, and its consequences. The following is what Moldaver J. wrote for the majority of eight Justices:

> [64] The significance of this six-month guideline notwithstanding, it is not a determinative measure of constitutionality. Simply showing that this guideline has been exceeded will not, in itself, establish a breach of s. 11(b). Indeed, the *Ethical Principles for Judges* produced by the CJC is "advisory in nature" (p. 3). The statements and principles therein "are not and shall not be used as a code or a list of prohibited behaviours" and "[t]hey do not set out standards defining judicial misconduct" (p. 3). Moreover, the CJC's guideline acknowledges the inherent case-specific and judge-specific nature of the balance between the considerations of the need for timeliness, trial fairness, and practical limitations. (*R. v. K.G.K.*, 2020 SCC 7 (CanLII))

301. Therefore, there is no doubt now that:

a) The principle of reasonable promptness does not impose a duty, but is merely advisory in nature;

b) It does not list prohibited behaviour;

c) It suggests a timeline.

d) It does not set out an ethical standard.

302. This timeline recognizes the intrinsic nature of each case and each judge to balance various considerations.

303. In addition, *K.G.K.*, which was rendered in a criminal context in which a person's freedom was at stake, confirms that a judgment delivered within nine months is delivered within a reasonable time. It also confirms that judges have the presumption of judicial integrity when deliberating and delivering judgment.

304. Ultimately, the principle of reasonable promptness cannot be the basis for this allegation. In addition, the 9-month and 11-day time limit to deliver judgment in the K.S. case was clearly reasonable—a judgment whose operative part included 50 fiercely-debated conclusions, and the presumption of judicial integrity was not refuted in the investigation.

305. Furthermore, it is important to note that the mere fact that a judgment is delivered after the expiry of the six-month timeline, provided for in art. 324 of the CCP and, on the

mere recommendation of reasonable promptness, does not, in itself and *ipso facto*, constitute a "breach" as confirmed in this article 324 of the CCP, which is not an ethical rule, and this recommendation, which does not set out a standard defining judicial misconduct (*K.G.K.*, 2020 SCC 7, para. 64).

306. With respect to the incomplete allegation 1C, it is doubtful that the ground set out in section 65(2)(c) can be raised, since the six-month timeline is only "indicative," and it is probably for this reason that the Inquiry Committee did not specifically refer to this in its allegation 1C, in addition to the problem resulting from the extent of the evidence needed to prove this breach. However, even assuming that this ground could have been raised by the Inquiry Committee as to the time limit for delivering judgment, in the end, it is indisputable that the only evidence, perhaps on the record of the investigation, is that the judge allegedly committed only one breach of 1 of his 416 published judgments, delivered since the beginning of his appointment in January 2009, namely, the judgment in the case of K.S. delivered 9 months and 11 days after the matter was taken under advisement, but only 12 days after the request of Assistant Chief Justice Petras.

307. With respect to the list of cases taken under advisement obtained from Justice Dugré's assistant by the Inquiry Committee's counsel, this list is incomplete, wrong in several respects, was prepared by the judge's assistant for the purpose of her work, and it does not show the exact length of each advisement, which varies according to the circumstances of each case, or any kind of failure. The Inquiry Committee was wrong to rely on this list and to attach it to its report, despite the numerous warnings made and repeated by the judge's counsel.

308. As for the delay in issuing all the other judgments rendered by the judge since 2009, there is no evidence that the delay in issuing each judgment constituted a "breach" of any kind, let alone a breach of a "duty" of the office of Justice Dugré, if in fact the Inquiry Committee had the right to review the other judgments on account of K.S.'s complaint. which concerned only one judgment.

309. Furthermore, such evidence would have required a review of all of the circumstances surrounding the delay in delivering each judgment accurately identified, including an analysis of the complexity of each case, the will of the parties and their counsel in each case, and the workload of the judge during the specific deliberation period for each judgment in question. However, not one iota of this essential evidence was submitted by the Inquiry Committee's counsel, who had the burden of proving this allegation of the Inquiry Committee, except in part for the delay in rendering the judgment in the K.S. case.

310. With respect to Mr. Morin's complaint, which was not the subject of the early screening process provided for in the By-Laws and was filed more than five years after the judgment was rendered, the Inquiry Committee did not consider it to have been proven.

311. That the Inquiry Committee, on December 6, 2021, after the investigation was completed, informed Justice Dugré that it would rely on the recommendation of reasonable promptness to justify its allegation 1C, does not correct, and cannot correct, this fundamental breach of procedural fairness and this fundamental flaw affecting this allegation and the notice given to the judge on March 4, 2020.

312. That said, we may also wonder whether the Inquiry Committee had the authority to retroactively review all of the judgments rendered by the judge since 2009, following the brief comment of Chief Justice Fournier, as set out in a complaint by K.S., who criticized the judge for the 9-month and 11-day time period he took to render a judgment in his case.

313. Furthermore, the following facts clearly and unequivocally confirm that Justice Dugré has no problem delivering judgment, and even less a chronic problem, and has clearly not "become incapacitated or disabled" from the due execution of his office.

314. First, since his appointment in January 2009, until February 2021, Justice Dugré has rendered 416 judgments which have been published by the Société québécoise d'information juridique. Of those 416 judgments, 170 were deemed important by the editors of Soquij, a statutory body. Three of those judgments were upheld by the Supreme Court of Canada.

315. Second, since his appointment, the judge has received four complaints, relating to the delay in rendering judgment, that were filed with the CJC.

a) The first one was filed by Chief Justice Rolland in 2010. The merits of that complaint have never been reviewed or confirmed by a CJC Inquiry Committee.

b) The second one, again flied by Chief Justice Rolland in 2014. The merits of that complaint have never been reviewed or confirmed by a CJC Inquiry Committee.

c) The third complaint was filed by Mr. François Morin on September 26, 2019 (following the press release issued by the CJC on September 6, 2019), concerning a judgment rendered on January 24, 2014, which was referred directly by the Executive Director of the CJC to the Inquiry Committee, which did not find it useful to rule on it as a separate complaint.

d) The fourth complaint filed by Mr. K.S. on August 31, 2018, in respect of a judgment rendered on November 27, 2018, within 9 months and 11 days, which was the subject of allegations 1A and 1B addressed by the investigation report.

316. Despite these four complaints, the judge has continued to issue an average of 34 judgments each year, which are published annually, since January 2009.

317. Third, since his appointment in January 2009, the judge has been the subject of seven interventions by the Chief Justice at the request of one or more parties, for the judge to render judgment under art. 324 of the CCP (formerly, art. 465 of the CCP). For ease of reference, the results of each of those interventions are as follows:

- Six times *after* the expiry of the indicative timelines of the first paragraph of art. 324 of the CCP, and the judgment was rendered within the following time limits: Exhibit JC-19: *Uniprix*, 2013 QCCS 6251, upheld by 2017 SCC 43; within three days); Exhibit JC-39: *Youri Dominique*, 2016 QCCS 4236; time limit, same day; Exhibit JC-46: *Trustee*, 2017 QCCS 268 and 2017 QCCS 272; within five days; Exhibit KSP-30: *K.S.*, 2018 QCCS 5111; within 12 days; Exhibit JC-58: *I-D Foods*, 2018 QCCS 3321; within 45 days;

Exhibit JC-62: *9213-1705 Québec inc.*, 2018 QCCS 3186; within seven days. In addition, Chief Justice Fournier confirmed in his testimony that similar requests made to other judges took several months before being met (transcript dated June 5, 2021, at page 20).

- Once *before* the expiry of the indicative time limit in the first paragraph of art. 324, and judgment was issued eight days after the Chief Justice's request at the request of the parties (admission in lieu of Exhibit D-74, *TBM Holdco Ltd v. Desrosiers*, 2014 QCCS 5997).

318. Fourth, the judge was never removed from a case by the Chief Justice.

319. Fifth, there have been at least three instances where very urgent circumstances required that a complex judgment be rendered immediately despite the late hour: (1) *A.D. v. Tribunal administratif du Québec*, 2010 QCCS 3982, Exhibit D-80; (2) *Constructions Lavacon inc. v. Icanda Corporation*, 2015 QCCS 4543, Exhibit D-81; (3) *Centre Hospitalier de l'Université de Montréal* v. *K.D.*, 2019 QCCS 7, Exhibit D-84.

320. Justice Dugré not only favours the six-month timeline, but also the will of the parties, the quality of justice to which those who appear in court must have access, the nature and difficulty of the case, the circumstances surrounding the advisement period, the presumption of judicial integrity and, of course, he takes into account his workload and practical constraints.

321. As the above demonstrates, since January 2009, Justice Dugré has managed to render a very large number of judgments, and important judgments, while having received essentially only one complaint from one party for the time taken to render judgment, namely that of Mr. K.S.

ii) Inquiry Committee's errors

322. In light of the above, we will limit ourselves to identifying the most palpable and overriding errors among the many errors made by the Inquiry Committee in its reasons in support of its allegation 1C at paragraphs 544 to 652 of its report.

323. Before proceeding, it is important to remember the following question: Since the six-month timeline set out in the recommendation of reasonable promptness is an indicative time limit, it is not an ethical standard, and does not set out prohibited behaviour, what is the breach of professional ethics of the judge who renders judgment after the indicative six-month timeline? The Inquiry Committee did not allege any specific error, nor did it prove any. It found that the judge simply became incapacitated or disabled from performing his duties. As a result, Justice Dugré would have suddenly become "incapacitated of disabled" following Chief Justice Fournier's remarks to the Executive Director of the CJC on January 28, 2019 (Exhibit JC-1).

324. Here are some of those errors:

a) At para. 571 of the report, the Inquiry Committee reported the testimony of the judge's assistant that the list of cases taken under advisement was apparently complete. However, Exhibit D-52 confirms that Justice Dugré has rendered 416 judgments, while the Assistant's list of cases taken under advisement contains

185 entries only. It is therefore obvious that this list was incomplete. It is important to remember that the judge wanted to produce as evidence all of his 416 judgments, which was denied on the grounds that the Inquiry Committee was able to consult all these judgments on the Soquij website.

b) In any case, since this list of 185 entries only contains 99 judgments rendered after the six-month timeline, there is no evidence that the other 317 judgments rendered by Justice Dugré were rendered after that period. Thus, it is completely wrong to claim that 60% of Justice Dugré's judgments were rendered more than six months after the cases were taken under advisement. In fact, it would be rather 24% of Justice Dugré's judgments that were apparently rendered six months after being taken under advisement, which compares favourably with some of the judges that were reviewed in the Ouellet report and in Exhibit D-28.

c) With regard to the period after September 13, 2019, when upcoming assignments were suspended, the judge had more time to draft better judgments, for the benefit of the parties, and none of them complained. It was also possible for each of them to ask, as before, for the judgment to be delivered through art. 324 of the CCP, which none of them saw fit to do. Of course, at that time, the judge was not in the best conditions to render judgment: first, because of the investigations that targeted him, but also, shortly after, the pandemic and the health constraints also came into play. Moreover, the Inquiry Committee overlooked this information, but all court delays, including those provided for in article 324 of the CCP, were suspended for more than five months.

d) At para. 649 of its reasons, the Inquiry Committee concluded that the judge's assertion that he rendered at least as many judgments within the prescribed time limits as his colleagues was not supported by the evidence. That was a palpable and overriding error.

i) According to the evidence submitted (D-28 and D-52) to the Inquiry Committee, Justice Dugré delivered 317 judgments within the six-month timeline, while the evidence shows that:

(1) Judge 1 delivered 216 judgments within 185 days;

(2) Judge 2 delivered 164 judgments within 185 days;

(3) Judge 3 delivered 238 judgments within 185 days;

(4) Judge 4 delivered 273 judgments within 185 days;

(5) Judge 5 delivered 179 judgments within 185 days;

(6) Judge 6 delivered 74 judgments within 185 days;

(7) Judge 7 delivered 121 judgments within 185 days;

(8) Judge 8 delivered 165 judgments within 185 days;

(9) Judge 9 delivered 118 judgments within 185 days; (as it appears from D-28).

(10) This is an average for these nine judges of 172 judgments, while Justice Dugré delivered 317 judgments within 185 days or less.

ii) Even if it was assumed that the judges analyzed had rendered all their judgments within six months, Justice Dugré would still have delivered more judgments than they did:

(1) Judge 1: appointed in 2009: 217 judgments (53 of which were selected);

(2) Judge 2: appointed in 2008: 165 judgments (80 of which were selected);

(3) Judge 3: appointed in 2009: 239 judgments (82 of which were selected);

(4) Judge 4: appointed in 2009: 273 judgments (103 of which were selected);

(5) Judge 5: appointed in 2009: 186 judgments (81 of which were selected);

(6) Judge 6: appointed in 2013: 105 judgments (50 of which were selected);

(7) Judge 7: appointed in 2007: 154 judgments (55 of which were selected);

(8) Judge 8: appointed in 2013: 203 judgments (44 of which were selected);

(9) Judge 9: appointed in 2009: 152 judgments (58 of which were selected).

(10) This adds up to an average of 188 judgments per judge, assuming that all judgments of each of these judges were rendered within 185 days or less.

iii) To be sure that he could support this argument, Justice Dugré took care to add statistics for more judges:

(1) Mr. Justice Kirkland Casgrain: appointed in 2003, five years before Justice Dugré, 289 judgments, 51 of which were selected;

(2) Mr. Justice Jean-Pierre Chrétien, appointed in 2000, nine years before Judge Dugré, 247 judgments, 77 of which were selected;

(3) Mr. Justice Marc de Wever: appointed in 2002, seven years before Justice Dugré, 168 judgments, 76 of which were selected;

(4) Mr. Justice Luc Lefebvre, appointed in 1999, 10 years before Justice Dugré, 327 judgments, 157 of which were selected;

(5) Mr. Justice André Roy, appointed in 2004, four years before Justice Dugré, 327 judgments, 142 of which were selected;

(6) Madam Justice Christiane Alary: appointed in 2005, four years before Justice Dugré, 300 judgments, 112 of which were selected;

iv) Justice Dugré therefore rendered more judgments within the six-month timeline than all the judges reviewed.

v) If, despite all this, the Inquiry Committee was of the opinion that he did not have sufficient evidence, it was up to it to complete it.

e) Furthermore, the Inquiry Committee made a palpable and overriding error in its conclusion on the systemic problem encountered by judges in order to render judgment within the time limits provided for in the Code of Civil Procedure;

i) In this context, the Inquiry Committee accepted the testimony of Justice Fournier when he stated that Justice Dugré was a separate case and clarified that they had no reason to set that testimony aside.

(1) Of course, that testimony was not the best evidence, but in addition, the Inquiry Committee had excellent reasons to set it aside.

(2) First, Justice Fournier admitted, after being asked for evidence of the files he held on the judges, that in fact he only had one file on Justice Dugré

(3) Therefore, how could he testify that Justice Dugré was a separate case when he had no files on other judges.

(4) More importantly, there is Me Ouellet's analysis, which showed that out of nine judges, only one had been able to render all of those judgments in less than six months, which in turn demonstrates a systemic issue.

(5) Of course, the evidence is not perfect, and it took an investigation of all the judges in order to know for sure; however, with a sample of 10 judges (Justice Dugré and the other nine judges reviewed), the evidence is clear that few judges are able to meet the deadlines set out in the *Code of Civil Procedure*.

(6) It is recognized by the Chief Justice that:

1. The Superior Court is facing a workforce crisis;

2. That he does not consider short time limits, as it is too difficult for a judge to comply with;

3. That the workload of each judge varied, but that in his view, it ended up being equivalent, while it is obvious that a judge who sits in one division his entire life, will probably have a smaller workload than a judge who sits in several divisions.

ii) In any event, the Inquiry Committee erred in requiring Justice Dugré to prove the systemic issue. Justice Dugré raised an issue, for which he demonstrated *prima facie* evidence. If the Inquiry Committee wanted complete evidence to be satisfied, it had the authority to do so. On the contrary, Justice Dugré had to contend with objections raised by the Superior Court to the evidence he attempted to submit, objections that

resulted in admissions and an analysis, albeit incomplete, sufficient to establish that there was a systemic issue.

f) Again, the Inquiry Committee erred in imposing the burden on the judge to establish that it was because of this issue that he took more than six months to deliver some judgments. It is obvious that the purpose of that evidence was to establish that the system created n issue in itself.

g) The Inquiry Committee made a serious, palpable, and overriding error in using statistics based on the table prepared by Marie Dumont.

i) As demonstrated at the hearing, the first of these errors is that it was not, on its face, complete. Thus, all the statistics used by the Inquiry Committee were distorted.

ii) Moreover, according to the evidence available to the Inquiry Committee, there were not 110 judgments that had taken more than six months, but 99 (if 185 days are calculated as it was for the other judges).

h) The Inquiry Committee made a palpable and overriding error when it concluded that the presumption of integrity was reversed by the mere establishment of the number of judgments that have been rendered more than six months after being taken under advisement. This presumption of integrity should have been set aside, judgment by judgment, and not as lightly as the Inquiry Committee did. It is useful to remember this, but the Inquiry Committee claims to be inquisitorial, so it could have obtained the evidence that it wished to obtain had it requested it.

i) It is particularly troubling to note the thinness of the evidence which the Inquiry Committee found sufficient to set aside this presumption, considering that the only evidence that was submitted, even in the case of KS, was that the cases were important, raised complex issues, deserved a well-reasoned judgment, as the testimony of the 28 counsel, and even KS, demonstrated.

j) The Inquiry Committee erred in a palpable and overriding way by claiming that Justice Dugré sat for 30 fewer days than what was required for 2017/18, as well as for 2018/19, when he did not have in hand all of the sitting days for either of those two years.

k) At para. 652 of its report, the Inquiry Committee considered nine elements to have been proven. However, several of these elements had already been brought to the CJC's attention in 2010 and 2014. However, none of them, individually or collectively, was found to be serious enough to constitute an Inquiry Committee to determine the merits of Chief Justice Rolland's allegations.

325. Finally, in all of its grounds for the so-called "chronic problem," paras. 544 to 653, the Inquiry Committee did not identify any specific breach of professional ethics that justified its conclusion and recommendation.

iii) Conclusions

326. The process of investigating 1C allegation was unfair, causing serious injury to the judge. Moreover, the Inquiry Committee's decision and recommendation were patently unreasonable, given that, with regard to the time limit for rendering judgment, the evidence in the inquiry report proved only one "failure in the proper execution of his office," regarding only one judgment, namely the one delivered in the case of K.S. For the many other judgments rendered by Justice Dugré, 416 of which have been published, there was no evidence that the time taken for deliberation for each judgment constituted a breach, let alone a breach of the "duties" of his office.

327. The Inquiry Committee's decision that its allegation 1C was proven was wrong and must be set aside. Therefore, the recommendation based on it must meet the same fate.

VII. RESPONSE TO THE "RECOMMENDATION" CHAPTER

328. The Inquiry Committee wrote a chapter entitled "Recommendation." Without limiting the generality of the foregoing, we will respond to it briefly.

A. Cumulative effect of the misconduct

329. The Inquiry Committee concluded that it was entitled to rely on the cumulative effect of the misconduct to underpin each of its recommendations.

330. This Inquiry Committee finding is wrong in law, as explained above.

331. The three early screening reports on the S.S., K.S., and El Zoghbi complaints, dated August 30, 2019, confirmed that there was no cumulative effect between complaints or misconduct that may have arisen therefrom.

332. Moreover, this cumulative effect was artificially and unfairly created, particularly by the fact that the case of A. was selected by Chief Justices Petras and Joyal from September 2018 to October 4, 2019, and then sent directly to the Inquiry Committee, thereby bypassing the early screening process, as well as by the forwarding of four (4) complaints by the Executive Director directly to the Inquiry Committee.

333. In short, the Inquiry Committee cannot rely on a so-called cumulative effect of complaints or misconduct arising therefrom.

B. Misconduct in the courtroom

334. The Inquiry Committee, at para. 657 of its report, expressed the opinion that it is appropriate to analyze the allegations related to Justice Dugré's conduct in the courtroom (allegations 2A, 2B, 3A, 3B, 5A, 5B, 6A, and 6B) together and to make a joint recommendation in that regard.

335. From the outset, it is important to put the facts in a reasonable perspective. The Inquiry Committee stated that it had listened to 46 hours of recordings of hearings presided over by the judge. From this total, it is necessary to deduct 2 hours and 24 minutes from the K.S. case and 9 hours and 45 minutes from the LSA case for which the

complaint was not accepted. This recommendation by the Inquiry Committee is therefore based on a listening of 35 hours of audio recording. However, none of the members personally attended any of the four hearings presided by Justice Dugré

336. During the period from January 2009 to September 2019, when his upcoming assignments were suspended, Justice Dugré presided over a total of approximately 5,460 hours of hearings.

337. During this period, no inquiry report identified any problem with the conduct of Justice Dugré during these hearings.

338. The Inquiry Committee did not at all take into account that, during this nearly 10-year period, Justice Dugré saved the parties and the Quebec judicial system more than 5.4 years of judge days, while fulfilling all of his annual assignments.[17]

339. It is also important to note that the Committee's comments, at para. 671, were unjustified, patently unreasonable, and clearly abusive, because not only did they have no basis in the complaints or evidence, but they were contradicted by the clearly preponderant and convincing evidence.

340. If the judge's conduct had been as abhorrent as the Inquiry Committee now claimed, after the fact, it is clear that all those present would have reported him unanimously, quickly, and publicly. However, that not the case.

341. The Inquiry Committee erred by relying on the cumulative effect related to S.S.'s complaint to make its recommendation.

342. In the case of A., in addition to the fundamental problems affecting the CCM's handling of this complaint, all of the evidence submitted in this case confirmed that this complaint could not in itself justify, in whole or in part, the Inquiry Committee's recommendation.

343. Mr. A, the children's father, did not testify. Ms. Miele, counsel for one child, who attended the hearing, a reasonably well-informed person, did not find such a marked difference in the judge's conduct that would have justified a complaint on her part. In fact, she did not complain. Finally, Ms. M., the children's mother, the applicant at the hearing, testified at the inquiry, and she did not notice anything inappropriate or objectionable in the judge's behaviour at the hearing.

344. Again, this "complaint," considered in context, and the evidence as a whole, did not allow the Inquiry Committee to rely on it to justify its recommendation, in whole or in part.

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[17] 272 days by his judicial conciliations, para. 134 of the report, Exhibit D-57; 357 days by his informal settlement conferences, para. 133 of the report, Exhibit D-55, a total of 629 days divided by 116 judge days/year, thus 5.4 years judge days saved to the parties and the judicial system, in addition to allowing the parties to choose their own resolution to their dispute.

345. In the Gouin case, the hearing lasted three days, for a total of approximately 15 hours. Mr. Gouin lost his claim for $134,000 in the case, both before Justice Dugré and on appeal, except for $2,000.

346. After his appeal failed, Mr. Gouin then decided to attack Justice Dugré personally. The entire case was filed with the Court of Appeal. The Court of Appeal confirmed in its reasons that it conducted a thorough analysis of the case (2020 QCCA 100, para. 51).

347. The three judges of the Court of Appeal, Chief Justice Duval Hesler, a member of the CJC, Justice Hamilton and Justice Sansfaçon, did not find any grounds for declaring the judge biased.

348. Although the Court of Appeal's decision does not bind the Inquiry Committee, an essential fact remains: The three judges of the Court of Appeal are clearly reasonable and very well-informed individuals because they thoroughly reviewed Mr. Gouin's case. However, they dismissed his grievances and were unable to conclude that the judge was biased through his comments and conduct at the trial. How could the Inquiry Committee now rely on the judge's conduct during this hearing in an attempt to justify, in whole or in part, a recommendation to remove the judge? The answer is self-evident.

349. The three judges of the Court of Appeal of Quebec, who heard Mr. S.C.'s appeal, —all those who had heard Mr. Gouin's appeal—, necessarily analyzed the judge's comments and conduct in order to decide the bias argument, using a test similar to that applied by the Inquiry Committee, that of the reasonable and well-informed person. Therefore, even if the Inquiry Committee was not strictly bound by the Court of Appeal judgment, the Inquiry Committee could not rule it out entirely, as there was a clear overlap.

350. That judgment has the authority of *res judicata* with respect to the judge's comments and conduct in relation to his impartiality, as does the Court of Appeal's judgment dismissing Mr. S.C.'s appeal.

351. However, there is more. Mr. Roch, counsel for respondent Mr. Morency, Mr. Morency himself and his spouse, Ms. Gélinas, all attended the hearing presided over by Justice Dugré. All three of them testified during the investigation. None of them noted conduct abhorrent or objectionable to the point that it should have been publicly denounced. Yet these three individuals are also reasonable and well-informed members of the public.

352. The Inquiry Committee made a palpable and overriding error in giving precedence to the strictly audio recording of the testimony of the three individuals present. The Inquiry Committee erred by relying on the cumulative effect of Mr. Gouin's complaint to justify its recommendation.

353. In the case of S.C., the trial lasted three days, for a total of approximately 18 hours. Mr. S.C. represented himself, without the assistance of a counsel, despite Justice Dugré's advice at the beginning of the hearing.

354. On February 28, 2019, the Court of Appeal dismissed Mr. S.C.'s appeal and fully upheld Justice Dugré's judgment: Family law – 19326, 2019 QCCA 378. Justices Morissette, Gagnon, and Gagné were the appeal judges.

355. While it is true that the Court of Appeal's decision did not bind the Inquiry Committee, the fact remains that these three judges are reasonable individuals who were very well-informed about the case of Mr. S.C., who was represented on appeal by counsel. These three judges clearly found the statements surprising but clearly insufficient to find that the judge was biased relying on those comments. However, how could those same statements now warrant the judge's removal?

356. The comments in the Gouin case apply *mutatis mutandis* to the case at hand.

357. If we add to these three judges the testimony of Ms. Vallant, counsel for the mother of the children, applicant at the trial, and Ms. Roy, counsel for the children, who were present throughout the trial, it is clear that the Inquiry Committee erred in preferring the audio recording to those two testimonies.

358. The Inquiry Committee has in fact brought together value judgments that represent only their personal opinion, but there is nothing in the evidence that warrants the removal of a judge.

359. In short, the Inquiry Committee\s recommendation should not be endorsed in the circumstances.

C. Time limit for rendering judgment

360. The Inquiry Committee relied on Mr. K.S.'s complaint, but more specifically on allegation 1C, to make its second recommendation for removal because on June 9, 2022, Justice Dugré allegedly became incapacitated or disabled from the due execution of the office of judge. This recommendation was unfair and unreasonable and should not be endorsed by the Council in the circumstances.

361. First, Mr. K.S.'s complaint concerned only one judgment, that which was delivered on November 27, 2018 (2018 QCCS 5111). The Inquiry Committee claimed that Justice Dugré failed in the proper execution of his office by rendering judgment in this case 9 months and 11 days after the matter had been taken under advisement.

362. Then, the Inquiry Committee faulted the judge for failing to reply to correspondence from only one of the parties, although this it was a contentious and hotly contested case, where both parties were represented by counsel.

363. Those two allegations, although accepted, were not part of the basis for the recommendation for removal, as it was based solely on the so-called "chronic problem."

364. Following Chief Justice Fournier's comment in his letter dated January 28, 2019, commenting on K.S.'s complaint, the Inquiry Committee initiated an investigation into all of the judgments rendered by the judge since his appointment in January 2009.

365. This recommendation is therefore also based on a form of cumulative effect, i.e., a summation of judgments rendered more than six months after the cases were taken under advisement. This cumulative effect is as prohibited as the cumulative effect used in the recommendation on conduct.

366. As for allegation 1C, it was an incomplete allegation that has not been proven and was unfair. It therefore cannot be used as a basis for the Inquiry Committee's recommendation.

367. From the outset, it is important to note that the Inquiry Committee had neither the authority nor the right to retroactively review all of judgments rendered by the judge since his appointment in January 2009, as he had received no complaints and K.S.'s complaint could not be used as a reason to justify such an investigation.

368. Moreover, apart from the judgment in the case of K.S., there is no evidence that another judgment, delivered beyond the six-month timeline, constituted a failure in the proper execution of his office.

369. As the Supreme Court pointed out in *K.G.K.*, 2020 SCC 7, para. 64, the recommendation of reasonable promptness suggests an indicative time limit, does not constitute a standard of ethics, does not set out prohibited behaviour, and depends in particular on practical constraints.

370. The time required to render judgment in a given case depends on a host of circumstances that must be carefully analyzed and weighed before accusing the judge of any breach. However, in the case at hand, the Inquiry Committee did not have the necessary evidence to carry out this analysis and the proportionate balancing of all the relevant circumstances surrounding the delivery of each of the 416 published judgments issued by Justice Dugré

371. Prior to Mr. K.S.'s complaint, on August 31, 2018, the judge delivered 334 judgments published by Soquij. Those judgments were not, alone or collectively, the subject of any investigation report informing the judge that the delay in rendering one or more of those judgments was a breach of the duties of his office.

372. Following Mr. K.S.'s complaint, the judge issued 82 judgments published by Soquij, none of which were the subject of a complaint by those who appeared in court regarding the time it took for their delivery.

373. Therefore, the Inquiry Committee's report was the first report informing the judge that the delay in rendering some of his judgments—since more than 300 judgments were rendered within six months, which compares favourably with the judgments rendered by the judge's contemporaries—could be problematic, despite the absence of a complaint from litigants who were party to those proceedings.

374. In making this second recommendation, the Inquiry Committee acted outside its jurisdiction, breached procedural fairness, and acted unreasonably in contravening the legal and factual constraints to which it was subject.

375. Accordingly, we respectfully submit that the Council should not endorse any of the recommendations made by the Inquiry Committee and that it should recommend that the Minister of Justice not remove Justice Dugré

VIII. CONCLUSION

376. In short, we respectfully submit that the Council should not endorse the two recommendations of the Inquiry Committee. The Council should instead recommend that the Minister of Justice not remove Justice Dugré

377. Justice Dugré has taken careful note of the criticisms made by the Inquiry Committee and will adjust his conduct in the future to avoid creating the kind of situation that led to this investigation.

378. Justice Dugré also offered his sincere apologies to those who might have been offended by his conduct.

RESPECTFULLY SUBMITTED.

Signed at Montréal, July 10, 2022

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Senior counsel for the Honourable Justice Gérard Dugré, j.c.s.

ANNEX A

From: Daviault, Charles
To: Suns[redacted]
Cc: Audette, Ronald
Subject: Letter from the Honourable Gérard Dugré
Attached: Letter to Ms. S[redacted]S [redacted]dated [redacted]July 6, 2022(52235081.1).pdf

Hello, Ms. S.[redacted],

Attached is a letter addressed to you by Mr. Justice Gérard Dugré.

Yours sincerely,

Charles Daviault
Associé Partner
Tel: +1 514-392-9566
charles.daviault@gowlingwlg.com

Gowling WLG (Canada) LLP
1, Place Ville Marie, Suite 3700
Montréal, QC H3B 3P4
Canada

gowlingwlg.com

BY EMAIL

Montréal, July 6, 2022

Ms. S[redacted]S [redacted]

Subject: Complaint to the Canadian Judicial Council

Ms. S[redacted],

This letter is further to the complaint you made against me about my conduct at the hearing I presided over in your presence on September 7, 2018.

First of all, I would like to offer you my sincerest apologies.

I see that some of the comments I made hurt you. Although they were an invitation to the parties to find a solution to the problems they presented to the court, I was deeply moved to find that my remarks had unfortunately not had the effect I had hoped for, quite the contrary.

I assure you that I am learning from these events and that such comments will no longer be made given the negative impressions they may leave.

Yours sincerely.

Gérard Dugré, j.c.s.

GD/md

From:	Daviault, Charles
To:	cdecarie@avocatedecarie.com
Cc:	Audette, Ronald
Subject:	Letter from the Honourable Gérard Dugré
Attached:	Letter addressed to Ms. Décarie dated July 6, 2022(52235230.1).pdf

Dear colleague:

Attached is a letter addressed to you by Justice Dugré

Thank you,

Charles Daviault
Associé Partner
Tel: +1 514-392-9566
charles.daviault@gowlingwlg.com

Gowling WLG (Canada) LLP
1, Place Ville Marie, Suite 3700
Montréal, QC H3B 3P4
Canada

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BY EMAIL

Montréal, July 6, 2022

Chantal Décarie
2810, Saint-Martin Blvd. East, Suite 104
Laval, QC H7E 4Y6

Subject: Complaint to the Canadian Judicial Council

Ms. Décarie,

This letter is further to the hearing on April 3, 2018, in which you participated as counsel for the applicant and for which you delivered the recording to Madam Justice Alary's assistant.

I was able to see that what happened in the hearings I presided over in your presence in Mr. A's case caused discomfort and misunderstanding.

I practiced law for almost 28 years before being appointed a judge to the Superior Court, so I can imagine how unpleasant and frustrating it can be for a counsel to complete a hearing with the feeling that of not having adequately represented a client. I would also like to assure you that the comments I made and the way in which I conducted the hearing were motivated by what I thought was best for the parties and their case.

While my conduct was certainly not intended to deprive you of the opportunity to represent your client adequately, I note that this is unfortunately the impression that has emerged. I am sincerely sorry for this, and I can assure you that I am learning the appropriate lessons from these events and that such a situation will not be repeated in a courtroom over which I preside.

Yours sincerely,

Gérard Dugré, j.c.s.

GD/md

From: Daviault, Charles
To: S[redacted]c[redacted]@gmail.com
Cc: Audette, Ronald
Subject: Letter from the Honourable Gérard Dugré
Attached: Letter to Mr. S[redacted]C[redacted]dated July 6, 2022(52235126.1).pdf

Hello, Mr. C[redacted],

Attached is a letter addressed to you by Justice Dugré Yours sincerely,

Charles Daviault
Associé Partner
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charles.daviault@gowlingwlg.com

Gowling WLG (Canada) LLP
1, Place Ville Marie, Suite 3700
Montréal, QC H3B 3P4
Canada

gowlingwlg.com

BY EMAIL

Montréal, July 6, 2022

Mr. S[redacted]C[redacted]

Subject: Complaint to the Canadian Judicial Council

Mr. C[redacted],

This letter is further to the complaint you made about my conduct at the hearings I presided over in your case.

I was able to see that some of the comments I made upset you, although that was not my intention.

The awkward remarks for which you criticize me and that I made in the courtroom were certainly not meant to intimidate or humiliate you. That said, they have been perceived as such, and I am drawing the lesson from your complaint that such remarks should not be made, let alone by someone with authority such as that entrusted to me. There is no room for misperception for a judge before those who appear in court.

I therefore offer my sincerest apologies.

Yours sincerely,

Gérard Dugré, j.c.s.

GD/md

From:	Daviault, Charles
To:	mgkarisma@gmaill.com; mgouin@karisma.ca
Subject:	Letter from the Honourable Gérard Dugré
Attached:	Letter to Mr. Marcel Gouin dated July 6, 2022(52235205.1).pdf

Hello, Mr. Gouin,

Attached is a letter addressed to you by Justice Dugré Yours sincerely,

Charles Daviault
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The Honourable Gérard Dugré
Judge of the Superior Court of Quebec

BY EMAIL

Montréal, July 6, 2022, Mr. Marcel Gouin

Subject: Complaint to the Canadian Judicial Council

Mr. Gouin,

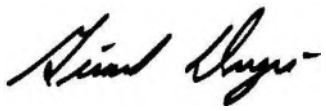
This letter is further to the complaint you made against me to the Canadian Judicial Council.

I was able to see that some of the comments I made in the courtroom upset you. I assure you that this was not my intention and that these comments were meant to be an attempt (a very clumsy one, I admit) to relax the tense atmosphere that often reigns in a courtroom.

That said, such statements have no place in a courtroom. The evidence shows that they caused you to feel discomfort, and that was wrong.

In this regard, I offer my sincere apologies and assure you that the appropriate lessons have been learned by the undersigned.

Yours sincerely,



Gérard Dugré, j.c.s.

GD/md

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