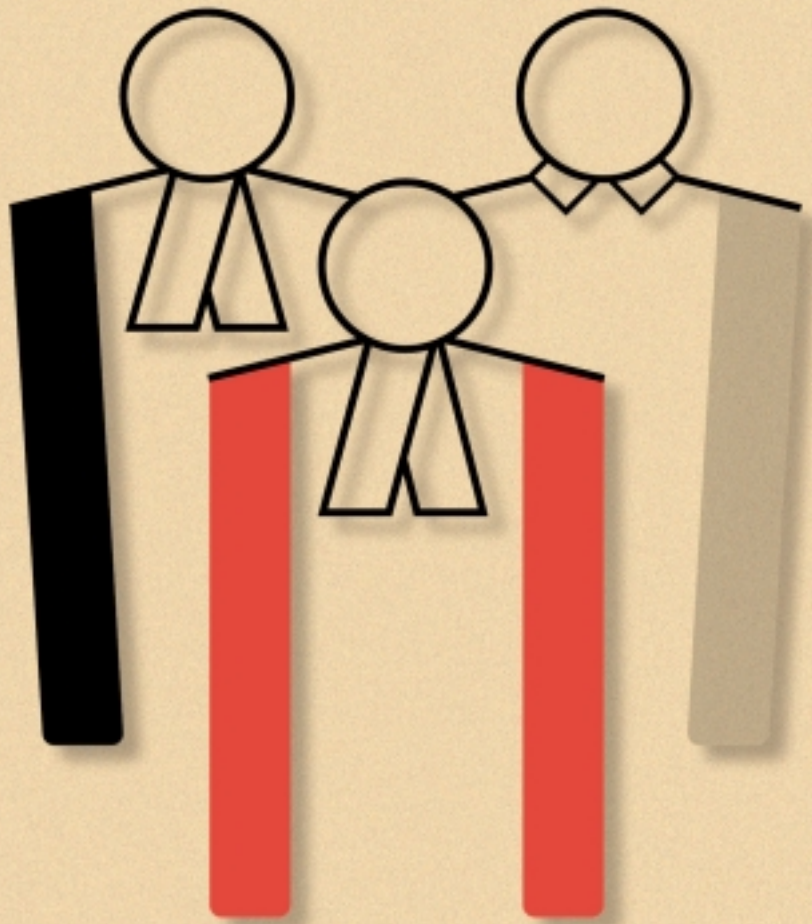


Activity Report 2000•2001



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la magistrature
du Québec

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Activity Report

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Message from the President

The Conseil de la magistrature (the Council) is pleased to present its activity report for the 2000-2001 budgetary year. This document deals with the main activities carried out by the Council to fulfill the two principal mandates conferred on it by law: ensure compliance with judicial ethics, and ensure that judges have the appropriate tools to maintain and develop their skills.

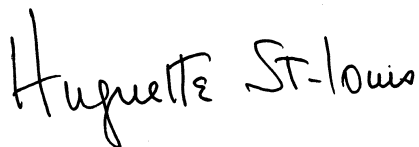
The Council's principal mandate is to ensure compliance with judicial ethics. To this end, it is called upon to examine any complaint relating to a judge's conduct. It determines whether the judge complied with the rules and duties imposed on him by the law and the relevant code of ethics.

Like many other organizations and institutions, the judiciary has, over the past few years, started adopting new technologies in order to upgrade its equipment and tools to accomplish its mission in the best way possible. For the Council, this has meant questioning how legal information is accessed, and expressing a greater concern for training needs in this regard. This modernization is another example of the efforts the Council makes to ensure that judges have the proper documentation to perform their duties, by providing them with modern, fast and efficient services.

The Council has obtained a third-party opinion and consulted with the parties most affected by this issue, namely, the judges. Finally, the Council has formed a committee whose basic role is to propose concrete measures as well as a realistic timetable to ensure that the transition to these technologies is as smooth as possible. This committee should submit its recommendations over the next few weeks.

I am aware that such changes must be phased in gradually, and that this will require a great deal of time, since the changes must be supported by structured training programs adapted to the functions of a judge. However, I remain convinced that the judiciary will take up this challenge with enthusiasm.

In closing, I would like to thank the Council members and staff for their considerable support in helping the Council fulfill its mandate. I particularly want to commend the members who recently completed their mandate, for their devotion, availability and remarkable contribution.



Huguette St-Louis
Chief Judge of the Court of Québec
President of the Conseil de la magistrature

Québec City, Novembre 2001

Table of Contents

1	Introduction of the Conseil de la magistrature	7
1.1	Jurisdiction	7
1.2	Composition of the Council and Appointment of Members	8
1.3	Operating Structure	9
1.4	Financing Method	10
2	Training and Continuing Education	11
2.1	Legal Documentation	11
2.2	Training and Continuing Education Activities Organized by the Courts and Tribunals	11
2.2.1	Court of Québec	12
2.2.2	Human Rights Tribunal	13
2.2.3	Professions Tribunal	14
2.2.4	Labour Court	15
2.2.5	Municipal Court of Laval	16
2.2.6	Municipal Court of Montreal	16
2.2.7	Municipal Court of Québec City	17
2.2.8	Municipal Courts of Québec	18
2.3	Other Training and Continuing Education Activities	19
2.3.1	Specialized Training in Criminal Matters for Newly Appointed Judges	19
2.3.2	Second Language Courses	19
2.3.3	Participation in External Symposiums	20
2.3.4	Visiting Trainee Judge	20
3	Ethics	23
3.1	Code of Ethics	23
3.2	Complaints Process	23
3.3	Confidentiality of the Complaints Process	25
3.4	Statistics	26
3.4.1	Complaints Received Since the Creation of the Council	26
3.4.2	Data for the 2000-2001 Budgetary Year	26
3.5	Decisions of the Council	29
3.5.1	Decisions of the Council at the Examination Stage	29
3.5.2	Inquiry Committee Reports	32

4	Administrative Activities	43
4.1	Enquiries	43
4.2	Publications	43
4.3	Complaints Process	43
4.4	Training and Continuing Education	43
4.5	Hosting Session for Newly Appointed Judges of the Court of Québec	44
5	Specific Files	45
5.1	Process of Judicial Ethics Dealing with Complaints	45
5.2	Functions or Activities Incompatible with the Office of Judge	46
5.3	Rules of Procedure for Examinations and Inquiries	46
5.4	Legal Documentation	46
5.5	Second Language Courses	47
5.6	Adjustments to the Council's Training and Continuing Education Budget	48
5.7	Development of a Complaints Data Bank	48
5.8	Development of a Minutes Database	48
APPENDIX 1	Members and Staff of the Conseil de la magistrature as at March 31, 2001	49
APPENDIX 2	Jurisdiction of the Conseil de la magistrature	50
APPENDIX 3	Internal By-Laws of the Conseil de la magistrature	60
APPENDIX 4	Members of the Executive Committee as at March 31, 2001	64
APPENDIX 5	Criteria for Selecting Judges to Participate in External Symposiums	65
APPENDIX 6	Codes of Ethics	67
APPENDIX 7	Summary of Complaints Handled Since 1979	70
APPENDIX 8	Regional Origin of Complaints	72

1 Introduction of the Conseil de la magistrature

The Conseil de la magistrature was created in 1978 in accordance with the *Courts of Justice Act* and the *Code of Civil Procedure and instituting the Conseil de la magistrature* (Chapter T-16 of the Revised Statutes of 1977).

The *Act instituting the Conseil de la magistrature* was proclaimed on July 19, 1978. As at March 31, 2001, the Act stipulated that the Council shall consist of 15 members, plus a lawyer who acts as Secretary, assisted by three additional employees. The list of Council members and staff is presented in Appendix 1.

The head office of the Council is located at the Palais de justice in Québec City, with other offices at the Palais de justice in Montreal.

1.1 Jurisdiction

The Council's jurisdiction is granted under the *Courts of Justice Act*. The pertinent sections are listed in Appendix 2.

The Council's functions are as follows :

- ◆ to organize continuing education programs for judges;
- ◆ to adopt a judicial code of ethics;
- ◆ to receive and examine any complaint lodged against a judge;
- ◆ to conduct an inquiry when requested by the Minister of Justice, with the goal of determining the permanent incapacity of a judge or the end of such incapacity;
- ◆ to confirm or annul the recommendation of the Chief Judge of the Court of Québec concerning the modification of a judge's appointment regarding his place of residence or to confirm or annul his decision of transferring the judge to another division;
- ◆ to promote the efficiency and uniformization of procedure before the courts;
- ◆ to receive suggestions, recommendations and requests regarding the administration of justice, to study them and to make the appropriate recommendations to the Minister of Justice;
- ◆ to cooperate with any body pursuing similar purposes outside Québec.

With respect to continuing education and ethics, the Council has jurisdiction over all provincially appointed judges, namely, the judges of the Court of Québec, the judges of the Human Rights Tribunal, the judges of the Professions Tribunal, the judges of the Labour Court and the judges of Municipal Courts. As at March 31, 2001, about 400 judges were under the jurisdiction of the Council.

As for Justices of the Peace, who have extensive judicial powers, the Council has jurisdiction over ethical matters only. However, the government provides the Council with the necessary funds for the purchase of legal documentation.

1.2 Composition of the Council and Appointment of Members

The Council is composed of the following 15 members :

- ❖ the Chief Judge of the Court of Québec;
- ❖ the Senior Associate Chief Judge of the Court of Québec;
- ❖ the three Associate Chief Judges of the Court of Québec;
- ❖ one of the Chief Judges from the Municipal Courts of Laval, Montreal, or Québec City;
- ❖ one judge chosen among persons exercising the functions of Chief Judge of the Labour Court, President of the Human Rights Tribunal or Chairman of the Professions Tribunal¹;
- ❖ the Chief Judge of the Municipal Courts, other than those of Laval, Montreal, or Québec City;
- ❖ two judges chosen among the judges of the Court of Québec or the Municipal Courts of Laval, Montreal, or Québec City and appointed upon the recommendation of the Conférence des juges du Québec;
- ❖ one judge chosen among the judges of the Municipal Courts other than those of Laval, Montreal, or Québec City and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
- ❖ two lawyers appointed upon the recommendation of the Barreau du Québec;
- ❖ two persons who are neither judges nor lawyers.

The Chief Judge, the Senior Associate Chief Judge, the three Associate Chief Judges of the Court of Québec and the Chief Judge of the Municipal Courts of Québec are all ex-officio members of the Council. The other members are appointed by the Government of Québec for a term of no more than three years. At the end of their mandate, these members remain in office until they are replaced or re-appointed.

As stipulated in the *Courts of Justice Act*, the Chief Judge of the Court of Québec is the President of the Council and the Vice-President of the Council is elected by the Council among its members.

Finally, the members of the Council who are not full-time judges do not receive a remuneration. Nevertheless, all members have the right to be reimbursed for expenses incurred in exercising their functions and as determined by the Government.

1. Section 172 of the Act to amend the *Labour Code, instituting the Commission des relations de travail and to amend other legislative provisions* (c. 26 of the 2001 acts) amends section 248 of the *Courts of Justice Act* concerning the composition of the Council. This amendment became necessary following the abolition of the Labour Court and states that a member of the Council is selected from one of the persons holding the position of President of the Human Rights Tribunal or the Professions Tribunal. This provision will come into force on the date set by the government. At the time this report was published, the provision was not yet in effect.

1.3 Operating Structure

The members of the Council do not act on a full-time basis. They meet approximately once every five weeks upon notification by the President. During their meetings, the members examine complaints and any other matters brought to their attention. The quorum of the Council is eight members, including either the President or the Vice-President. The Council can hold its meetings in camera anywhere in Québec. Over the past year, the Council met ten times.

The Council may adopt regulations for its internal governance or to create committees and determine their functions. The Council has adopted a set of internal by-laws that generally govern the administration and operation of the Council. The internal by-laws are reproduced in Appendix 3.

These regulations notably allow for the creation of an Executive Committee composed of five members, including the President and the Vice-President of the Council. The members are appointed by the Council for a term that it determines. The list of Executive Committee members is reproduced in Appendix 4.

The Executive Committee has the following mandate :

- ◆ to examine questions brought before it and to execute the mandates entrusted to it by the Council and then to report back to the Council;
- ◆ to examine, when requested by the President of the Council, certain questions in order to present recommendations to the Council;
- ◆ to examine and make decisions regarding administrative questions between meetings of the Council, and to submit its decisions for approval at the next meeting of the Council.

The quorum of the Executive Committee is three members, which must include the President or the Vice-President. The Secretary of the Council also acts as the Secretary of the Executive Committee; the Secretary prepares the notice of meeting and writes up and signs the minutes of the meetings, which are then presented at the meetings of the Council. Last year, the Executive Committee met once.

The minutes of the meetings of the Council or any of its committees are deemed official once they have been approved by the members of the Council or by the Executive Committee, as the case may be. The same applies to any documents or copies that are issued by the Council or are part of its archives, provided they are certified by the President or the Secretary.

The President appoints the Secretary for a five-year term. The candidate for this position is chosen from lawyers belonging to the Ordre des avocats (Order of Lawyers) for no less than ten years and from members of the public service.

The Government determines the salary, benefits and other working conditions of the Secretary. From the time of appointment, the Secretary ceases to be subject to the *Public Service Act*; the Secretary remains on leave without pay for the duration of the mandate, in order to carry out the duties of his office.

The Secretary exercises his functions on an exclusive basis, under the authority of the President. At the end of the term, the Secretary remains in office until replaced or re-appointed.

The Secretary attends Council meetings, writes up the minutes, follows up on the different files, and ensures that the Council is running smoothly.

Finally, the staff members of the Council, other than the Secretary, are appointed and receive a remuneration according the *Public Service Act*.

1.4 Financing Method

According to the *Courts of Justice Act*, the funds required for the Council to accomplish its mission are taken from the consolidated revenue fund.

In its operating activities and those related to judicial ethics, the Council therefore enjoys total financial independence. Consequently, it cannot be influenced by budgetary constraints in its decision-making.

However, the Government determines the minimum amounts that require the approval of the Minister of Justice, for the Council to be able to incur an expense pertaining to the continuing education of judges.

During the 2000-2001 budgetary year, the Government allocated a budget of \$1,087,300 to the Council for training and continuing education, compared with \$967,700 since 1996-1997. This increase can be explained as follows : the Minister of Justice gave the Council the payment responsibility for approved bills and the legislative directory known as the *Répertoire législatif de l'Assemblée nationale*, representing \$50,000. Following many representations to the Minister of Justice requesting an appropriate budget for the continuing education of part-time municipal judges, the Council received an additional \$60,000. Finally, the government added another \$9,600 for legal documentation for justices of the peace.

2 Training and Continuing Education

The *Courts of Justice Act* gives the Conseil de la magistrature the mandate to establish information, training, continuing education and retraining programs for judges from the courts and tribunals under the legislative authority of Québec and who are appointed by the Government. Moreover, section 3 of the Code of Ethics for full-time judges and part-time municipal judges states that a judge is obligated to maintain his professional competency.

The budget set aside for training and continuing education programs is meant to meet the judges' needs with respect to legal documentation and training activities. A portion of this budget is allocated for the purchasing of legal documentation for judges. A second portion of the budget is used to organize judges' training activities, while the last portion is designated for activities offered to all judges of the courts and tribunals.

2.1 Legal Documentation

The funding policy regarding legal documentation recognizes that specific needs may exist for certain regions and jurisdictions of judges. According to this policy, chief judges and presidents of tribunals or courts receive a budget based on amounts determined by the Council, taking into consideration the various matters to be handled by the judges.

During the last budgetary year, the Council allocated slightly more than \$600,000 for the purchase of legal documentation, representing more than half of the Council's training and continuing education budget.

2.2 Training and Continuing Education Activities Organized by the Courts and Tribunals

The Conseil de la magistrature entrusts the organization of training and continuing education activities to the courts and tribunals. It allocates a budget to a court or tribunal, prorated according to its number of judges. An additional sum is allocated to judges who exercise their jurisdiction concurrently in the Court of Québec and in a specialized tribunal. The courts and tribunals manage these budgets, except for those allocated for second language courses and training sessions for newly appointed judges in criminal matters, which are administered by the Council.

The funds for the participation of judges in symposiums and conferences not organized by the courts and tribunals themselves are included in the budgets for each court or tribunal. The Council has established a guideline that no more than ten percent of the budget which has been allocated to a court or tribunal can be used for external training.

In order to allow for more flexibility in budgetary allocations, the Council has decided to create a reserve fund to enable it to respond to specific requests or to resolve any particular situations at the start of or during the budgetary year. Specifically, this fund allows the Council to take into account the situation of courts or tribunals with fewer judges.

With respect to Québec municipal judges, the budget for training and continuing education covers both legal documentation and training activities.

The following sections present the various training and continuing education programs implemented during the 2000-2001 budgetary year.

It is important to note that the programs set up by the courts and tribunals were made possible not only with the help of the budget allocated to the Council, but also with the considerable and immeasurable support of many judges who offered their time and expertise to help develop and disseminate educational programs.

2.2.1 Court of Québec

2.2.1.1 Jurisdiction

The Court of Québec consists of different divisions: the Civil Division, which includes the Small Claims Division, the Criminal and Penal Division, and the Youth Division.

The Court of Québec, which is composed of no more than 270 judges, is under the supervision of a Chief Judge, assisted by a Senior Associate Chief Judge, and three Associate Chief Judges. Ten coordinating judges and eight associate coordinating judges advise and assist the Chief Judge in the functions pertaining to the distribution of cases and the scheduling of Court sessions, as well as assigning judges according to the regions under their responsibility.

Judges appointed to the Human Rights Tribunal, the Professions Tribunal and the Labour Court are selected from the Court of Québec.

As at March 31, 2001, the Court of Québec was composed of 266 judges.

2.2.1.2 Training and Continuing Education

To carry out the Court's training activities, the Chief Judge of the Court of Québec designates one judge responsible for training. The judge holds this position on a full-time basis and has a three-year mandate. Other than distributing the relevant training information to the members of the Court, the judge responsible for training is also responsible for developing the annual training program, determining the costs relating to this function, setting up and organizing activities to meet expressed needs, recruiting the human resources required to carry out this function, and preparing an annual report. In the case of regional activities, he works in conjunction with the coordinating judges.

In addition, the Chief Judge has created an advisory committee that counsels the Chief Judge on matters involving training. This Committee is composed of ten members: three associate chief judges, six other judges who deal with different subjects (two for civil matters, two for youth affairs, and two for criminal and penal issues), and the judge responsible for training presides over this committee. The Committee advises the Chief Judge on all matters concerning training and assists the judge responsible for training in carrying out his functions.

Last year, the Court of Québec organized numerous training activities, including :

- ◆ a seminar for presiding judges in Aboriginal communities;
- ◆ a seminar on conducting a trial;
- ◆ a seminar on judgements;
- ◆ a seminar on preparing for retirement;
- ◆ a seminar on social realities;
- ◆ a training session for instructors;
- ◆ a training session on civil law;
- ◆ a training session on criminal law;
- ◆ a training session on youth law;
- ◆ thirteen periodic training sessions given on a regional basis;
- ◆ three initial training sessions for newly appointed judges.

The periodic training sessions concentrated on the following areas :

- ◆ absence of consent since the amendment of the *Civil Code*;
- ◆ appraisal of testimony;
- ◆ behaviour to be adopted in court with people with intellectual deficiencies;
- ◆ child pornography;
- ◆ correctional services and a stay of proceedings;
- ◆ distinction between the right to an image, information and privacy;
- ◆ DNA evidence in criminal law;
- ◆ reconciliation of the parties by the judge;
- ◆ role of presiding judge on lawyers' ethics;
- ◆ rules of exception in municipal responsibility;
- ◆ technological crimes;
- ◆ the effects of convictions and sentences on refugee or permanent residence status.

2.2.2 Human Rights Tribunal

2.2.2.1 Jurisdiction

The Human Rights Tribunal is a specialized judicial tribunal. It has jurisdiction over matters concerning discrimination, exploitation of the elderly and people with disabilities, and affirmative action programs.

The Commission des droits de la personne et des droits de la jeunesse can go before the tribunal to defend a victim of discrimination or exploitation. It is therefore the Commission that pleads the case and pays the legal fees.

The Human Rights Tribunal is composed of at least seven members, including the President and the assessors, who are all appointed by the Government. The President is chosen, after consultation with the Chief Judge of the Court of Québec, from the judges of this Court who have experience, expertise, sensitivity, and an ardent interest in matters concerning human rights and freedoms.

As at March 31, 2001, not including the President, the Tribunal was composed of two judges, who perform their duties concurrently with the Court of Québec, and ten assessors, who were selected according to a regulation set forth by the Government.

2.2.2.2 *Training and Continuing Education*

Last year, the Human Rights Tribunal held two summits that addressed the following topics :

- ◆ consumers and discriminatory business practices;
- ◆ dynamics of job discrimination;
- ◆ employment selection tests and women : between myth and reality;
- ◆ general concepts of international law;
- ◆ integration of the disabled into society;
- ◆ racial discrimination;
- ◆ use of psychometry : benefits and pitfalls in personnel selection.

During the same period, the Tribunal organized six additional meetings to examine the following topics :

- ◆ *African Charter on Human and People's Rights*;
- ◆ Québec's parole process;
- ◆ report of the *Canadian Human Rights Act Review Committee*;
- ◆ scope of different decisions of interest.

2.2.3 **Professions Tribunal**

2.2.3.1 *Jurisdiction*

The Professions Tribunal principally hears appeals of decisions rendered by the 44 disciplinary committees of the various professional corporations.

The Professions Tribunal consists of eleven judges from the Court of Québec designated by the Chief Judge of the Court of Québec. The Chief Judge appoints a President and a Vice-President from amongst them.

As at March 31, 2001, excluding the President, this Tribunal was composed of ten judges, including a Vice-President. These judges perform their duties concurrently with the Court of Québec.

2.2.3.2 *Training and Continuing Education*

Last year, the Professions Tribunal held a three-day training program where the following subjects were discussed :

- ◆ additional evidence in an appeal and upon sanction;
- ◆ delays in issuing a sanction;
- ◆ implicit rule of confidentiality : specificity of the subject, professional secrecy and confidentiality of evidence;
- ◆ non-incrimination privilege;
- ◆ stoppage of pleadings in disciplinary law.

2.2.4 **Labour Court**

2.2.4.1 *Jurisdiction*

The Labour Court has jurisdiction in administrative and penal matters. In administrative matters, the Court has exclusive jurisdiction and is the appeal board of last resort for the final decisions of the Labour Commissioners, notably in matters of accreditation, labour standards, dismissal and other disciplinary measures. The Court also has direct jurisdiction over applications under the *Pay Equity Act* and appeals of decisions made by the Commission de l'équité salariale (Commission for Pay Equity) and the President of the Commission de la construction (Building Commission), in accordance with the *Act respecting labour relations in the construction industry*.

Furthermore, the Labour Court is the court of first instance in cases stipulated in the *Labour Code*. In particular, the Court can authorize an employee, upon dismissal or a disciplinary sanction, to submit a claim for arbitration when his union refuses to do so for reasons that are unjustified according to the Code.

In penal matters, the Court has exclusive jurisdiction, in the first instance, to rule on cases concerning violations of the *Labour Code*, the *Act respecting occupational health and safety* and the *Act respecting industrial accidents and occupational diseases*.

After consulting with the Conseil général du Barreau du Québec and the Conseil consultatif du travail et de la main-d'œuvre, the Québec Government appoints the members of the Court from among the judges of the Court of Québec, and chooses a Chief Judge, an Associate Chief Judge and a Coordinating Judge from among the members of the Court.

As at March 31, 2001, the Labour Court was composed of eight judges, including the Chief Judge.

2.2.4.2 *Training and Continuing Education*

Last year, the Labour Court held two days of training focusing on administrative law and labour law. Judges also participated in training activities organized by the Court of Québec concerning such issues as conducting a trial and preparing for retirement.

2.2.5 **Municipal Court of Laval**

2.2.5.1 *Jurisdiction*

The Municipal Court of Laval has jurisdiction in penal matters over statutory violations of municipal by-laws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction in accordance with section XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000, with the exception of residential properties.

Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Laval.

As at March 31, 2001, the Municipal Court of Laval was composed of three judges; the position of Chief Judge is vacant.

2.2.6 **Municipal Court of Montreal**

2.2.6.1 *Jurisdiction*

The Municipal Court of Montreal has jurisdiction in penal matters over statutory violations of municipal by-laws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction under section 469 of parts XIV and XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000, with the exception of residential properties.

Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Montreal and also within the judicial district of Montreal.

As at March 31, 2001, the Municipal Court of Montreal was composed of 15 judges, including a Chief Judge, an Associate Chief Judge and a Coordinating Judge.

2.2.6.2 *Training and Continuing Education*

Last year, the Municipal Court of Montreal organized conferences where the following topics were discussed :

- ◆ a criminal record and its impact on foreign travel;
- ◆ appraising testimony;
- ◆ conducting a trial;
- ◆ credibility of witnesses;
- ◆ enforcement of sentences in open environments;
- ◆ recent developments in jurisprudence;
- ◆ the infernal circle of violence.

Furthermore, the judges of this municipal court participated in training activities organized by the Court of Québec. These activities notably involved the writing of judgments, conducting a trial and social realities, as well as periodic sessions organized for the judges of the Criminal and Penal Division from the Montreal area.

2.2.7 **Municipal Court of Québec City**

2.2.7.1 *Jurisdiction*

The Municipal Court of Québec City has jurisdiction in penal matters over statutory violations of municipal by-laws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. This court also exercises its jurisdiction under section 469 of parts XIV and XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the court has jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000, with the exception of residential properties.

Finally, the judges of this court can hear cases regarding offences that occurred within the city limits of Québec City, Saint-Augustin-de-Desmaures, Beauport, Charlesbourg and Vanier.

As at March 31, 2001, the Municipal Court of Québec City was composed of two judges, including a Chief Judge.

2.2.7.2 *Training and Continuing Education*

Last year, one judge of the Municipal Court of Québec City participated in a training activity organized by the Court of Québec for the hosting of newly appointed judges.

2.2.8 Municipal Courts of Québec

2.2.8.1 Jurisdiction

The Municipal Courts of Québec, other than those of Laval, Montreal and Québec City, are governed by the *Act respecting municipal courts*. They have jurisdiction in penal matters over statutory violations of municipal by-laws and to hear cases initiated under the *Code of Penal Procedure*, the *Highway Safety Code* and various provincial and federal laws. These courts also exercise their jurisdiction in accordance with section XXVII of the *Criminal Code* concerning summary convictions. In civil matters, the courts have jurisdiction over tax collection, permits, licenses and matters involving the leasing by the municipality of real estate or other properties valued at less than \$30,000, with the exception of residential properties.

As at March 31, 2001, there were 129 of these courts across Québec, composed of 91 judges, including a Chief Judge.

2.2.8.2 Training and Continuing Education

Last year, the Municipal Courts held several training activities that included the following:

- ◆ a colloquium on penal law;
- ◆ a day's retreat;
- ◆ a seminar on criminal law;
- ◆ a seminar on the writing of judgments;
- ◆ a symposium;
- ◆ a training session for instructors;
- ◆ a training session for newly appointed judges;
- ◆ five regional colloquiums;
- ◆ three computer-related clinics.

The retreat, symposium and regional colloquiums addressed the following issues:

- ◆ guardianship and control of an automobile;
- ◆ judicial independence;
- ◆ justice and the media;
- ◆ means of defence in penal matters;
- ◆ the breathalyser and its program;
- ◆ the defendant's statement in statutory penal matters;
- ◆ the unrepresented defendant.

2.3 Other Training and Continuing Education Activities

2.3.1 Specialized Training in Criminal Matters for Newly Appointed Judges

Each year, the Canadian Association of Provincial Court Judges, in conjunction with the provinces, organizes a specialized training session on criminal matters for newly appointed judges.

During the 2000-2001 period, the training session was held in Québec City from April 7 to April 14, 2000. During this activity, in which 11 judges of the Court of Québec participated, the following topics were discussed :

- ◆ conducting a trial;
- ◆ discovery of facts and theories on credibility;
- ◆ exclusion of piece of evidence;
- ◆ firearms;
- ◆ judicial notice;
- ◆ justice and Aborigines;
- ◆ means of defence in criminal and regulatory law;
- ◆ operation of the breathalyzer;
- ◆ proving similar facts;
- ◆ racial and social discrimination and the courts;
- ◆ rights guaranteed by the Charter of Rights and Freedoms;
- ◆ "Under the influence" infractions.

2.3.2 Second Language Courses

The Conseil de la magistrature also oversees second language training courses for judges. This training may be in the form of private courses, semi-private courses or immersion programs, and is available to provincial judges and municipal court judges of Laval, Montreal, and Québec City.

In July 1992, the Council signed an inter-governmental memorandum of understanding with the Canadian Government for the promotion of official languages. This memorandum contains terms pertaining to the financial contribution from the Canadian Government for initiatives designed to promote access to judicial services in English for English-speaking parties to a trial by providing English language training for provincially appointed judges. According to this memorandum, the Department of Canadian Heritage and the Council share expenses incurred under this memorandum. However, the maximum contribution from the Department of Canadian Heritage was fixed at \$20,000.

Finally, pursuant to an agreement signed in 1997, the Office of the Commissioner for Federal Judicial Affairs is now responsible for organizing private and semi-private second language courses.

During the 2000-2001 budgetary year, more than 70 judges were registered for private and semi-private second language courses.

2.3.3 Participation in External Symposiums

In addition to the training provided by the courts and tribunals, the Council encourages judges to participate in training programs offered by various organizations. The criteria for selecting the judges for such activities can be found in Appendix 5.

During the 2000-2001 budgetary year, 35 judges participated in the following -activities :

- ◆ Symposium organized by the Association québécoise plaidoyer-victimes, entitled "Xth International Symposium on Victimology", Montreal, August 2000 (two judges);
- ◆ Symposium organized by the Canadian Institute for Advanced Legal Studies, entitled "Journées strasbourgeoises", Strasbourg, July 2000 (six judges);
- ◆ Symposium organized by the Canadian Institute for the Administration of Justice, entitled "Seminar on the Writing of Judgments", Montreal, July 2000 (one judge);
- ◆ Symposium organized by the National Judicial Institute, entitled "Symposium on Civil Proceedings", Montreal, May 2000 (three judges);
- ◆ Symposium organized by the National Judicial Institute, entitled "Sentencing: Reacting to Risks", Toronto, March 2001 (five judges);
- ◆ Symposium organized by the Université de Sherbrooke, entitled "Journées Charles-Coderre", Sherbrooke, May 2000 (three judges);
- ◆ Symposium organized by the Université du Québec à Montréal, entitled "Journées carrières 2000", Montreal, November 2000 (one judge);
- ◆ Symposium organized by the Federation of Law Societies of Canada, entitled "National Criminal Law Program", Calgary, July 2000 (four judges);
- ◆ Symposium organized by the Centre de recherche en droit public of the Université de Montréal, entitled "L'accès à l'information juridique au Québec: le présent et l'avenir", Montreal, November 2000 (one judge);
- ◆ Symposium organized by the Regroupement des intervenants en matière d'agression sexuelle, entitled "Congrès international francophone sur l'agression sexuelle", Québec City, February 2001 (six judges);
- ◆ Symposium organized by The Commonwealth Magistrates and Judges Association, entitled "CMJA 12th Triennial Conference", Edinburgh, September 2000 (three judges).

2.3.4 Visiting Trainee Judge

The Conseil de la magistrature welcomed a trainee judge from the École nationale de la Magistrature de France, for a two-month internship organized by the judge responsible for training at the Court of Québec.

The internship focused on the following matters :

- ◆ imprisonment with respite;
- ◆ reform of the youth penal system;
- ◆ sentencing for adults;
- ◆ treatment of juvenile delinquents in Québec.

During this period, the trainee judge was able to interact with judges working in the various divisions of the Court of Québec and to attend hearings as well as a training session.

3 Ethics

3.1 Code of Ethics

Two codes of ethics determine the rules of conduct and the duties of provincially appointed judges toward the public, litigants and lawyers. One code is for full-time judges and the other is for part-time municipal judges. Furthermore, part-time municipal judges are bound, under the *Act respecting municipal courts* (c. C-72.01), to respect the rules set forth in Section 45 of the Act. The Codes of Ethics and Section 45 of the Act are presented in Appendix 6.

The rules of ethics were developed for an independent judiciary, in that they do not dictate standards to judges, but simply establish general principles relating to their conduct which are intended as a reference tool for judges.

The Council evaluates the conduct of judges according to these general principles. The Council and, where applicable, its inquiry committees, are called upon to clarify these principles during the examination of a complaint.

In a case which it examined in 1995, the Supreme Court of Canada recognized the general nature of the Code of Ethics by stating the following :

[...] there is no doubt that the overall conduct of a member of the judiciary may be assessed under the Code of Ethics [...] Ethical rules are meant to aim for perfection. They call for better conduct not through the imposition of various sanctions but through compliance with personally imposed constraints. A definition, on the other hand, sets out fixed rules and thus tends to become an upper limit, an implicit authorization to do whatever is not prohibited. There is no doubt that these two concepts are difficult to reconcile, and this explains the general nature of the duty to act in a reserved manner : as an ethical standard, it is more concerned with providing general guidance about conduct than with illustrating specifics and the types of conduct allowed.¹

3.2 Complaints Process

Anyone can file a complaint against a judge. The complaint must be made in writing to the Secretary of the Council and it must state the facts relating to the judge's wrongdoing and any other relevant circumstances. The Secretary of the Council then forwards an acknowledgement of receipt to the complainant and a copy of the complaint to the judge.

1. Ruffo v. Conseil de la magistrature et al., [1995] 4 S.C.R. 316, 332-333.

The complaint is examined by the members of the Council. If at this stage, additional information is required, the Council may assign one of its members to obtain all the necessary information and to report to the Council. The complainant and the judge are kept informed of the Council's proceedings. For example, if the incident warranting the complaint took place during a hearing, the designated person will be able to request a complete copy of the file from the court as well as a copy of the court recordings.

If the complaint was filed by a member of the Council, this individual cannot participate in the Council's examination of the complaint.

After examining the complaint, if the Council finds that the complaint is unfounded or that its nature and importance do not justify an inquiry, the Council then advises the complainant and the judge of its decision, along with the grounds for such decision.

If the Council decides that the complaint warrants an inquiry, the Council forms a committee consisting of five individuals. It should be noted that when a complaint is filed by the Minister of Justice, the Council must form a committee to conduct an inquiry.

An Inquiry Committee can be made up of current and past members of the Council. This committee must consist of at least three members of the Council, one of whom is designated as Chair, and no more than two past members. The quorum of the committee is three members.

For the purpose of the inquiry, the members of this committee are vested with the powers and immunities of commissioners appointed under the *Act respecting commissions of inquiry*, except for the power of imprisonment.

As prescribed by the *Courts of Justice Act*, the Inquiry Committee forwards a copy of the complaint to the judge. Within 30 days thereafter, the committee asks the judge in question and the complainant to appear at the inquiry. It also advises the Minister of Justice that the Minister or his representative can intervene during the inquiry.

At this stage, the Council can retain the services of a lawyer or another expert to assist the committee in conducting the inquiry. The judge in question can also retain the services of a lawyer.

The committee hears the "parties", their lawyers and their respective witnesses. It can inquire about relevant facts and summon any person qualified to testify on these facts. The witnesses can be examined and cross-examined by the "parties".

Although the Act uses the word "parties", it is important to note that the Supreme Court of Canada stated, in the *Ruffo* case cited earlier, that the process before the Inquiry Committee is not an adversarial one. In fact, the Committee's inquiry is intended to be the expression of purely investigative functions in search of the truth. Its primary goal is to uphold the judicial Code of Ethics and to ensure the integrity of the judiciary. The function of the inquiry committee is to act in the public's best interest.

Depending on the nature of the complaint, the Council may suspend the judge with pay for the duration of the inquiry. This suspension is not a sanction but is intended to protect the credibility of the justice system.

Once the inquiry is completed, the committee submits its report and recommendations to the Council.

If the inquiry report concludes that the complaint is unfounded, the Council sends a notification, along with the grounds of its decision, to the Minister of Justice, the judge concerned, and the complainant.

Moreover, if the inquiry report determines that the complaint is founded, the Council, following the recommendations of the report, reprimands the judge or makes a recommendation to the Minister of Justice and Attorney General to file a motion in the Court of Appeal for an inquiry. If the committee makes the second recommendation, the Council suspends the judge for a period of 30 days.

Regarding the removal of judges, the Council has only the power of recommendation. If the Minister of Justice and Attorney General files a motion in the Court of Appeal, the judge is automatically suspended from his position until the Appeal Court rules on this matter. After its inquiry, the Court of Appeal sends a report to the Government, which has the power to remove a judge from the bench.

The Supreme Court of Canada has ruled on the fact that the legislature had only foreseen two possible sanctions :

The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflect the objectives underlying the Comité's establishment : not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.¹

3.3 Confidentiality of the Complaints Process

The entire complaints process prior to the holding of the first hearing of the inquiry committee is in camera. This procedure was upheld by the Superior Court, which concluded, in July 1993², that the pre-inquiry stage is not a judicial or quasi-judicial procedure.

1. Ruffo v. Conseil de la magistrature et al., [1995] 4 S.C.R. 309.

2. Southam inc. v. Procureur général du Québec et l'honorable juge en chef Albert Gobeil, [1993] R.J.Q. 2374 (C.S.).

However, the hearings of the inquiry committees are public, subject to a specific order to the contrary¹.

3.4 Statistics

3.4.1 Complaints Received Since the Creation of the Council

From its creation until to March 31, 2001, the Conseil de la magistrature had received 933 complaints.

It is important to note that according to the *Courts of Justice Act*, once a written complaint is lodged against a judge, a file is automatically opened. This means that even if the complaint is not based on the behaviour of the judge, but is rather an appeal of the decision rendered, it nevertheless appears as a complaint and is cause for the opening of a file.

Further details concerning the statistics pertaining to complaints handled by the Council since 1979 can be found in Appendix 7.

3.4.2 Data for the 2000-2001 Budgetary Year

During the past year, the Council completed the examination of 16 complaints that were at the examination stage as at March 31, 2000 and received 59 new complaints.

The results of the 16 complaints that were being examined as at March 31, 2000 are as follows: 13 complaints were deemed unfounded, including seven that required additional information, two complaints became non-applicable following the retirement of one judge and the death of another, and one complaint was the subject of an investigation.

These results appear in appendix 7 in relation to the 1999-2000 budgetary year.

Of the 59 complaints received in 2000-2001, 45 were deemed unfounded, two were deemed to be of a nature and of such importance as to warrant an investigation, while one complaint was the subject of an investigation. As at March 31, 2001, 11 complaints were at the examination stage.

It should be noted that during the year, three Inquiry Committee reports were referred to the Council. Two of them were regarding complaints made in 1994 and 1997. In one case, the Inquiry Committee concluded that the complaint was unfounded and in another, it recommended a reprimand for the judge. In the last case, the Council merely took note of the report, since a majority recommendation could not be issued by the Inquiry Committee which had been reduced to four members following the recusation of one of them.

1. Southam inc. v. Yvon Mercier et al., [1990] R.J.Q. 437 (C.S.).

With respect to complaints received during the 2000-2001 budgetary year, the following table shows the complaints according to the jurisdiction exercised by the courts :

Jurisdiction	Number
Small Claims Division	23*
Criminal and Penal Division	14
Municipal Courts	12
Civil Division (excluding the Small Claims Division)	5*
Youth Division	3
Specialized Tribunals	2
Other	1**

* One complaint concerned both the Small Claims Division and the Civil Division.

** One complaint did not apply to any specific jurisdiction.

Compared to the previous budgetary year, when the Council received 76 complaints, the number of complaints decreased by 22.0%. This decline was particularly manifest in the Small Claims Division and the Criminal and Penal Division, where complaints were down 25.8% and 26.0%, respectively, compared with last year. During this period, 31 complaints concerned the Small Claims Division, while 19 involved the Criminal and Penal Division.

It is interesting to note that, apart from the field or subject matter of the complaints, complaints can be further sub-divided by whether or not the complainant is a party to the case, or has legal representation, his region of origin, and the type of allegation raised.

According to the data collected, 43 out of the 59 complainants were men (72.9%), 52 were parties to the case (88%), and 43 were not represented by a lawyer (72.9%).

The regional origins of the complaints are presented in Appendix 8, which shows that 69% of the complaints originated from three regions: Montreal (39.0%), the Québec City area (20.0%), and Montérégie (10.0%).

The allegations raised by the complainants concern the behaviour of a judge inside or outside the courtroom. It should be noted that very few complaints concern the behaviour of a judge outside of the courtroom. In fact, two complaints were filed on this subject, one having to do with the behaviour of a judge when he was a lawyer, and the other dealing with an event where the complainant alleged that the judge misbehaved in a manner as to undermine the independence of the judiciary.

With respect to the behaviour of a judge during court proceedings, the complaints raised usually pertain to the judge's comments and attitude in court, or the fact that the judge did not apply the rules of law, including the fact that the decision was unfounded or erroneous. This theoretical division is not etched in stone, since many complaints frequently involve several allegations. For instance, a complaint may be brought against a judge for his attitude during the court proceedings and the fact that his decision was erroneous. As an illustration of this point, out of the 57 complaints received concerning a judge's behaviour in court, seven

had to do with the judge's comments, 27 criticized the judge's attitude in court, and 41 pertained to the judge's application of the rules of law. Roughly three cases out of 10 involved multiple complaints.

As for the seven cases mentioned above, the judge was accused of using language that was inappropriate, hateful and provocative, disgraceful, disagreeable, unjustified or abusive. In two of these seven complaints, the judge is also accused of adopting an attitude that was unbecoming of a judge, and in two others, of incorrect application of the rules of law.

As regards the 27 complaints about the judge's attitude during the hearing, the complainants claim that the judge :

- ◆ abused his power;
- ◆ behaved in such a way that the complainant felt "rushed", as if the case had to be completed as quickly as possible;
- ◆ had a brusque and intimidating attitude toward the complainant, who also felt ridiculed by the judge's questions;
- ◆ listened to only one of the parties;
- ◆ should have intervened when a lawyer made racist comments;
- ◆ spoke to the complainant in a strong voice and in an odious and mocking tone;
- ◆ was arrogant, crude and aggressive;
- ◆ was biased;
- ◆ was condescending and disrespectful;
- ◆ was in conflict of interest or partial.

As for the 27 complaints about the judge's attitude during court proceedings, 16 also included other accusations, such as inappropriate language in two cases or incorrect application of the rules of law in 14 other cases.

Finally, 41 complaints concern elements related to the application of the rules of law, notably the fact that :

- ◆ the complainant did not have the chance to question witnesses and to present his evidence;
- ◆ the judge did not properly assess the evidence or rendered a decision on evidence qualified as "thin";
- ◆ the judge had no grounds for the order that he issued;
- ◆ the judge preferred to believe the version of certain witnesses;
- ◆ the judge rendered a completely arbitrary decision;
- ◆ the judge rendered a decision following an all-too-brief examination of jurisprudence;
- ◆ the judge set aside the testimony of the complainant's expert witness without explanation.

Of these 41 complaints, 16 contained other charges, such as inappropriate language in two cases or an attitude that the complainant found reprehensible in 14 other cases.

When the complaints concern the judge's attitude, the complainants occasionally reproduce the judge's comments textually, but they more often do not. Likewise, they try to explain their perception of the judge's attitude by referring to his manner of running the trial or his comments. Examination of the complaint by the members of the Council, specifically by listening to the court recordings, helps shed light on complainants' allegations.

With respect to the non-application of the rules of law by the judge, often the allegations pertain to the discretionary power of the judge in administering evidence and the primary function of a judge, which is to render a decision.

3.5 Decisions of the Council

This section contains abstracts of some complaints handled from April 1, 2000 to March 31, 2001. It includes complaints dealt with by the Council at the examination stage and all inquiry reports submitted during this period.

As stated previously, the pre-inquiry process is held in camera. As a result, the name of the judge mentioned in a complaint is omitted at the examination stage.

3.5.1 Decisions of the Council at the Examination Stage

3.5.1.1 Allegation of Arrogant and Aggressive Attitude

Complaint

In this case, the complainant claimed that during the hearing, the judge was arrogant, crude, aggressive and unethical. He added that the judge "yelled" constantly against his lawyer and acted like a dictator.

Examination of the Complaint

The Council required additional information and, to this end, assigned one of its members to gather the information. The Council then listened to the court recordings.

The Council noted that the judge never "yelled", as the witness claimed. It noted that it was true that the judge upheld the objections to evidence concerning certain questions to the witnesses and the entering into evidence of a few documents. The complainant was wrong to feel that the judge was behaving like a dictator when he was merely fulfilling his duties.

The Council noted that, during the complainant's testimony, the judge intervened a few times to inform him that he seemed to be presenting different versions of certain facts because of his answers to the questions asked.

Decision

The Council could not find any evidence that the judge violated the Code of Ethics.

For these reasons, the Council declared the complaint to be unfounded.

3.5.1.2 *Allegation of Provocative and Hateful Comments*

Complaint

In this case, the complainant took issue with the judge's comments, which he felt made violence against women in general tolerable, if not necessary. He asked that the judge be removed from the bench and that strict disciplinary measures be taken against him. The complainant's letter was accompanied by a petition signed by 176 people backing his complaint.

Examination of the Complaint

The Council required additional information and, to this end, assigned one of its members to gather the information. The Council then listened to the court recordings and obtained the judge's explanations as well as additional comments from the complainant.

The Council noted that, during the arraignment of a woman accused of assault against an officer, the judge said the following :

"In any case, on Saturday morning, I had three arraignments and they were all for three men accused of beating women, so to have one who slaps her boyfriend, it feels a bit good, it's comforting." (OUR TRANSLATION)

He added :

"Very often, it's always men who beat women." (OUR TRANSLATION)

In a letter addressed to the Council, the judge gave the following explanation :

"I had been assigned to arraignment court all week, from Monday May 15th, including the session of Saturday, May 20th.

[...] During the week of May 15th, as is often the case, unfortunately, I had to handle several dozen cases of men who had been arraigned for crimes related to conjugal violence, some of which were exceedingly serious and sordid.

[...] On Saturday, May 20th, six people were to appear before me. The first five were men and three of them were accused of assault and the third man was accused of aggravated assault. The last person to appear was a woman accused of assaulting a police officer. The woman had no criminal record. She was crying and very worried about what was happening to her. That's when I made a comment that had nothing to do with the lady's behaviour, except that

for once, among the many cases I had handled that week, this was the first case that involved violence, not by a man against a woman, but the other way around.

[...] I realize that what I said was very awkward, and for that, I apologize. I never wanted to condone violent behaviour in any way whatsoever, whether from men or from women."
(OUR TRANSLATION)

For his part, the complainant, after reading the judge's explanations, accepted the apology, but pointed out that the context reported by the judge did not justify his comments. She noted the fact that these comments did not reflect the judge's thinking and felt that the judge was still capable of performing his duties.

Decision

After examining the complaint, the Council had to determine whether there was a need for an investigation.

The Council found that the judge's comments were symptomatic of a sexist attitude and, despite his apology, could not conclude that the complaint was unfounded. Moreover, although a complaint may appear founded, the Council can decide not to conduct an investigation, because of the nature and importance of such a measure.

The Committee considered the following elements :

- The judge admitted that his comments were inappropriate, but that they did not reflect his thinking;
- The judge never intended to condone violent conduct, in any way whatsoever, be it from men or from women;
- The complainant accepted the judge's apology and felt that the latter was still capable of performing his duties.

The Council concluded that the nature and importance of the complaint were considerably mitigated and decided that there was no need to conduct an investigation. However, the Council made a point of expressing its disapproval of these unacceptable comments from a judge whose principal duty is to enforce the laws that are meant to maintain social peace and personal safety.

3.5.1.3 *Allegations of Unjustified and Disagreeable Comments*

Complaint

In this case, the complainant claimed that during the court proceedings, the judge raised his voice, made comments out of context, and showed insufficient knowledge of jurisprudence. The complainant added that the judge destroyed 70 pages of jurisprudence that he submitted.

Examination of the Complaint

The Council required additional information and, to this end, assigned one of its members to gather the information. The Council then listened to the court recordings.

The case, which lasted five and a half hours, was heard in the Small Claims Division. The Council noted that throughout the hearing, the complainant argued with witnesses, pleaded and gave testimony on elements that were totally irrelevant or unrelated to his request.

With respect to the judge's comments toward the complainant, the Council noted a few passages from the hearing exemplified by the following :

"Leave aside the invectives, answer the questions. Well then, let's try to get the gentleman to stop testifying and ask some questions. Stop your remarks, we'll spend the next three days here, for Pete's sake. Ask questions means ask questions, it's not oh yeah, but in the police report, that's not what it says. That has nothing to do with it, not in the police report, you don't seem to understand that. Let's continue." (OUR TRANSLATION)

Recommendation of the Report

As regards the jurisprudence presented by the complainant, there was no evidence that the judge had destroyed it. Furthermore, it is well known that, for administrative (filing) reasons, Court files are stripped of everything that is not essential.

Furthermore, the way the complainant was going on, the judge was fully justified to intervene and even severely. Faced with certain situations, judges may react impatiently. They are not sphinxes, nor will they ever be. Judges cannot be expected to always remain stoic, quiet and smiling in all circumstances.

In this case, the Council concluded that the choice of words was inappropriate and that the judge's comments, while reprehensible, did not justify the holding of an investigation.

For these reasons, the Council found that the nature and significance of the complaint did not warrant an inquiry.

3.5.2 Inquiry Committee Reports

3.5.2.1 Complaint Against Judge Andrée Ruffo

Complaint

In this case, the complainant sent two letters to the Council complaining about the judge's many public performances, which called into question her impartiality and neutrality. He also claimed that she received compensation to give a speech at an alternative medicine, wellness and new-age trade show.

Examination of the Complaint

The Council required additional information and, to this end, assigned one of its members to gather the information.

The members of the Council agreed that the elements gathered justified the holding of an inquiry.

Preliminary Comments

The Council formed a first inquiry committee on April 19, 1995, made up of three of its current members and two of its former members.

During the deliberations of the first inquiry committee, a committee member withdrew and the judge presented various interlocutory motions.

On October 16, 1996, the committee suspended its inquiry so that the payment of the judge's lawyer's fees could be settled.

Following the decision rendered by the Superior Court on November 24, 1997 allowing the judge's application for the payment of her lawyer's fees, the committee resumed its work. On February 25, 1999, the committee chairman informed the Council that another member had withdrawn and that the committee had decided to terminate its work, judging that it was no longer qualified to continue its work, pursuant to the provisions of the law.

Faced with this situation, the Council decided to form a second inquiry committee on April 14, 1999.

Inquiry Committee

Motion for Recusation

Before this second committee, the judge's lawyer presented a motion for recusation against two of the members, alleging that they did not have the necessary independence to perform their duties, since they were, along with 43 other people and the Conférence des juges du Québec, parties to a case brought against the Québec government.

Decision on the Motion for Recusation

On September 29, 1999, a decision was rendered on the motion. The case against the Québec government was brought because of its refusal to ratify the recommendations of the "Bisson" report on the remuneration of judges of the Court of Québec and the municipal courts of Laval, Montreal and Québec City. The issue in this case was to determine if these facts were sufficient to raise a reasonable fear of partiality in a reasonable person who deems that the two committee members no longer have the freedom to decide based on their conscience and opinion. Yet they simply followed the procedure suggested by the Supreme Court in *Reference*

Regarding the Remuneration of Judges of the Provincial Court of Prince Edward Island [1998] 1 S.C.R. 282 (J.E. 98-365). By establishing the different steps that should be followed, the Supreme Court of Canada wanted to preserve the independence of the judiciary. It cannot reasonably be concluded that, by following these procedures, the two members jeopardized their impartiality and their judicial independence.

Considering the foregoing, the motion for recusation was dismissed.

The Inquiry

On October 5, 1999, one of the committee members recused himself, such that the inquiry was able to continue before the four other members. It was established before the committee that the judge, during the International Year of the Family in 1994, gave a number of speeches on problems experienced by children. Among her many activities, she recognized having given a speech at the alternative medicine, wellness and new-age trade show. She also acknowledged that, on this occasion, she received a cheque for \$1,500, which she endorsed and cashed.

The \$1,500 payment had been announced in advance in articles that appeared in *La Presse* and *Journal de Montréal* newspapers.

The evidence also showed that the judge had been called in to see her associate chief judge, who wanted to verify the allegations that she was going to receive a \$1,500 fee for the speech at the alternative medicine, wellness and new-age trade show and that she had turned down the invitation from a modest association in Trois-Rivières because it could not pay her the fee she was charging for her speech.

On this occasion, the judge explained that she had accepted the cheque as compensation for the considerable expenses she incurred annually to give her many speeches.

Recommendations of the Report

As indicated previously, the committee membership had been reduced to four people following the recusation of one of its members. The committee was unable to achieve a majority recommendation, since two judges held, in a joint opinion, that the complaint should be dismissed, while two others recommended, in separate opinions, that a reprimand should be issued.

Joint Opinion

In the absence of a prior agreement on fees, the issuance of a \$1,500 cheque and its cashing by the judge constituted a gift to compensate for certain expenses incurred for other speeches she had given. Since there is no complaint against the judge with respect to her comments, she cannot be faulted for exercising her freedom of speech. The fact that a judge agrees to give a speech does not, per se, constitute an activity incompatible with the exercise of judicial power. Moreover, it has been recognized for a long time that judges have the right to

express themselves in public, provided their comments do not undermine their duty to act in a reserved manner nor the perception that they are impartial and represent the dignity of the judiciary. No such complaint was lodged against the judge.

Furthermore, it was not established that giving several speeches is incompatible with the office of a judge and its related duties, nor can the judge be considered to have participated in a commercial endeavour represented by the alternative medicine trade show or to have engaged in an activity incompatible with judicial power.

In addition, accepting a donation with such a substantial value may appear inappropriate. Even if the judge's impartiality was not immediately compromised by this action, the perception of this impartiality by a well-informed person may have suffered. Indeed, the associate chief judge had called in the judge and questioned her about the activities for which she was receiving compensation, but did not make any recommendation about cashing the cheque. As well, a speech is not a pedagogical activity as set forth in section 134 of the *Courts of Justice Act*, since it does not involve a formal learning process. It was therefore not a situation where the judge had to obtain the written consent of her chief judge.

Under the same circumstances, a reasonable person could have, like the judge, concluded that nothing prevented him from cashing the \$1,500 cheque. For these reasons, the two members decided to dismiss the complaint.

Separate Opinions

Two other members found, in separate texts, that a reprimand was in order.

In the first case, the member felt that the speech given by the judge constituted an educational and not a pedagogical activity, which did not meet the commercial criteria set forth in section 129 of the *Courts of Justice Act*. The content of the speech was not at issue and nothing showed that it had an effect on the judge's ability to exercise her judicial powers. Each judge is responsible for his personal conduct; he must ensure that the image of justice is not tarnished and avoid generating controversy. Without demanding excessive prudence, the members of the judiciary must show caution and proper judgment in their choice of extra-judicial activities. In this case, the \$1,500 amount was not meant to compensate the judge for expenses she had incurred, nor was it a gift, since this amount far exceeds the normal limit for gifts. In addition, the judge should have known that she would be remunerated for her participation in the trade show and by how much. Before she took part in this activity, she did not seek counsel from the associate chief judge, nor did she feel any obligation to do so. Apart from raising questions and concerns among ordinary citizens, this situation may have undermined the public's confidence in the judicial system. A judge's good faith can never replace wisdom, prudence and foresight. By acting as she did, the judge violated section 7 of the *Code of Ethics*, and hence a reprimand was in order.

In the second case, the member believed that it was undeniable that the judge gave a speech at a commercial event. Also, the function of a judge has evolved and the latter must strive to be more accessible to the public within the limits imposed by his duty to act in a

reserved manner. The *Code of Ethics* of the judiciary is written in more general terms than the *Courts of Justice Act* as regards engaging in activities that are incompatible with judicial duties. Its ten articles outline what is desirable in exercising judicial powers. Even if a judge is free to choose the activities in which he wishes to participate, he must be prudent when he decides to accept a donation or gift as a token for his participation. In this case, the judge was aware that she would be given substantial compensation and she accepted it in full knowledge of the consequences. Without the notice of meeting from the associate chief judge, she would never have met with the latter on this matter, and the absence of a directive from the associate chief judge had no bearing on her misconduct. By participating as a headliner at this trade show, the judge allowed the prestige associated with her position to be used for this commercial event. By acting in this way, she participated in a commercial activity that is incompatible with judicial power and violated section 7 of the *Code of Ethics*. She should therefore be reprimanded.

The Conseil de la magistrature took note of this inquiry report.

3.5.2.2 *Complaint Against Judge Andrée Ruffo*

Complaints

In this case, six complaints were addressed by the same inquiry. Overall, the complaints lodged concerned the judge's attitude toward a social worker, her delay in rendering a decision, the unnecessary summoning of a witness, undermining of the rights of an adolescent, and abuse of power.

Examination of the Complaint

The Council required additional information and, to that end, assigned one of its members to gather the information.

The members of the Council agreed that the elements gathered justified the holding of an inquiry.

Inquiry Committee

Preliminary Remarks

In this case, the committee noted that, during her testimony, the judge made serious charges against certain members of the judiciary and its institutions. Unfortunately, the judge uses certain facts to reach a conclusion that was repeated several times, namely, that the judiciary has participated in a vast conspiracy against her.

Although the committee had no intention of putting the judge's attitude on trial, it felt that it was important, considering the foregoing, to briefly illustrate the behaviour of the judge in question before dealing with the complaints under review.

No evidence was given concerning the chief judge's participation in a vast conspiracy against the judge. The chief judge's decision not to recommend the payment of extra-judicial fees made by the judge in the context of the evocation and recusation proceedings was based on his examination of the law applicable to such a situation. Moreover, it is following a decision recusing the judge because she had jeopardized her impartiality vis-à-vis officers of the youth protection unit, known as the Direction de la protection de la jeunesse, that the chief judge decided that the judge would carry out her duties in another region.

As well, under the process undertaken by the Council member charged with examining the complaints involved in the inquiry, the member was not obliged to communicate to the judge any evidence that he had obtained. The Council member acted equitably by ensuring that the judge had sufficient knowledge of the nature of the complaints, of which she had received a copy, and he followed the applicable rules of law. Far from being hostile and contemptuous, as the judge claimed, the member showed courtesy and great patience in carrying out what eventually became a very difficult assignment.

The judge also associated a certain number of judges with the alleged boycott movement organized against her. Yet, these unfortunate and regrettable allegations have no basis, especially with respect to the coordinating judge, who was on duty when the systematic recusation applications were submitted. He only wanted to uphold the public image of the Court and to ensure the sound administration of justice, without being accused of interfering in the judicial affairs with which the judge was seized and undermining her judicial independence.

As for the associate chief judge of the Chambre de la jeunesse, the judge claimed that his conduct justified the termination of the inquiry because of the latter's active role in data collection related to complaints lodged against the Council in 1988 and 1990. But given his position, the associate chief judge, through his personal initiative or on the request of the chief judge, forwarded all the relevant documents concerning the wide-ranging accusations against the judge. However, it is the chief judge of the day alone who decided on the timing, content and wording of the complaint brought against the judge. The very serious charges against the associate chief judge lack any factual or legal basis. The same applies to the testimony she gave concerning the promise that the associate chief judge supposedly made to a lawyer to the effect that he would be appointed judge. The expression "hearsay" has a much-too-legal connotation to be used to describe what was no more than gossip and twaddle.

The committee disapproved of the judge's assertion that both the leadership of the Court of Québec and some of its judges were conspirators who had connived to get her off the bench.

Context of the Complaints

It was established before the inquiry committee that, in the opinion of all social, institutional and judicial stakeholders, the chronic lack of financial and professional resources in the district of Saint-Jérôme makes it difficult to enforce the *Youth Protection Act*. Furthermore, the approach of the region's Direction de la protection de la jeunesse, which asked judges

working in the *Chambre de la jeunesse* to abstain from issuing hard-to-enforce orders, did nothing to alleviate the frustrations felt by all these people.

In fact, in November 1997, the situation deteriorated when the special general meeting of the multidisciplinary committee and the advisory committee of the clinical staff adopted an action plan with a view to systematically boycotting the judge targeted by the complaints. The staff of the *Laurentides* youth centres refused to appear before her, complaints were filed before the *Conseil de la magistrature*, and many motions for recusation were presented. The committee strongly disapproves of such action plans because they undermine the judicial independence of the judge and the entire judiciary.

The following section contains the facts alleged against the judge in the six complaints covered by the inquiry as well as the recommendations of the inquiry committee.

Attitude Toward a Social Worker

When the judge made comments to a lawyer concerning a social worker who had not understood a placement order, it was not the beginning of proceedings, but a discussion she had with the lawyer of the child against whom the order was issued. The fact that this conversation was recorded in the minutes of the hearing changed nothing. The judge felt that a court order had not been respected and that this had caused prejudice to the child in question. The committee felt that the judge only expressed her opinion on the error committed by the social worker, since the latter had admitted that she misunderstood the order.

Delay in Rendering a Decision

On December 16, 1996, the judge was seized with two motions to review an order which she heard jointly because they involved two young girls from the same family. During the hearing, the judge expressed, with reason, in the committee's view, her concern about the troubling facts communicated to her. She decided to take some time to think things through and reserved judgement in these cases. The judge then received documents concerning the case and elected to forego her period of reflection in these cases and to hold a hearing for the parties to read these documents and to make representations.

Only the case of one of the young girls was put on the docket on February 3, 1997 and brought before the judge on February 21, 1997. It appeared, however, that the decision then rendered in the case before the judge also affected the girl's sister, who did not complain because contacts were allowed between the two girls. The other young girl's case remained at the registry office without a decision and without raising any questions.

Why would the judge have unduly delayed issuing a decision in the second case for thirteen months, whereas she had disposed of this matter somewhat in the first case after carefully examining all facets of the two girls' history? Under the law, the youth protection director takes over the child's case if he believes that the child's safety and development are compromised. The committee had difficulty understanding why the director waited for a decision after thirteen months, instead of taking the necessary steps to assume control of the child.

Summoning of a Witness

The evidence did not show that the judge had demanded the presence of the youth protection director for any reason other than to obtain the information she needed in carrying out her judicial functions. In addition, it was not established that she acted in a malicious and intentional manner by not informing him that the case had been postponed. The committee also believed that, if the complainant believed that this subpoena was illegal, he could appeal for a review of this court order.

Undermining of an Adolescent's Rights

The judge erred by stripping an adolescent's lawyer of his professional secrecy, because only his client could do so. In addition, she should not have continued the hearing without the adolescent being represented by a lawyer. Besides, the judge who allowed the motion of undermining the rights of this adolescent arrived at the same conclusion. However, the committee believed that these were just "court incidents" that did not show that the judge refused deliberately or was incapable of applying the rule of law. This error was committed within the limits of the judge's power of discretion. She did not refuse deliberately to apply the law.

Abuse of Power (Two Complaints)

The youth protection director presented a motion for evocation and stay of the judge's order that demanded the complete list of employees of a youth centre as well as their curriculum vitae in order to examine the establishment's hiring criteria.

The order was issued in respect of one particular case, but also in the known context of ideas that have long been expressed by the judge concerning a youth centre. This was more a general inquiry about the competency of the centre's employees and its hiring policy than simply obtaining information that was useful or indispensable for the judicial consideration of the case. The demands as formulated in the order were clearly abusive under the circumstances.

The judge's comments about social workers were the product of anger, aimed at all indiscriminately, were injurious and useless in terms of resolving the case, and were simply not permissible.

Recommendation of the Report

All judges who witness the suffering of children who are abandoned or are victims of violence or abuse feel compassion and indignation with the situation. The limits that they place on expressing their feelings are not the product of their complacency or compromise, but of the impartiality and credibility required for the performance of their duties.

Protecting children's rights must not mean denying the rights of others, including social workers, to be treated with respect and justice, not just on the surface, but more fundamentally with the absence of prejudice and bias.

For these reasons, the inquiry committee concluded, in respect of the last two complaints for abuse of power, that the judge's behaviour constituted a breach of the *Code of Ethics* and recommended that the Conseil de la magistrature issue a reprimand.

3.5.2.3 *Complaint Against Judge Maximilien Polak*

Complaint

In this case, the complainant criticized the judge for his conduct during trial and alleged that the judge violated his duty of impartiality, objectivity, reserve, courtesy and serenity.

Examination of the Complaint

The Council required additional information and, to that end, assigned one of its members to gather the information.

The members of the Council agreed that the elements gathered justified the holding of an inquiry.

Inquiry Committee

The committee examined the stenographic notes as well as the court recordings.

In his testimony before the committee, the complainant deplored the judge's general attitude and insisted particularly on the fact that he did not give the complainant the opportunity to complete his explanations by hurrying him, by "driving his back against the wall" (OUR TRANSLATION), and by making disagreeable and sometimes sarcastic comments to the complainant. In fact, when the complainant was found guilty on three charges of fraud, he appealed the conviction and one of the grounds of his appeal was precisely the fact that the judge intervened too often.

As for the judge, he admitted directly that he intervenes regularly in arguments but, in his view, the goal is only to seek the truth and not to favour any party. He said he considers every case very seriously and only intervenes to obtain clarifications in order to properly understand the facts.

According to the judge, the complaint's case was all the more difficult as the latter represented himself and had to be advised on how to proceed and how to question witnesses. He said he was upset by the complainant's serious allegations, especially since he said he never received any letter of complaint throughout his career and that he felt he always acted objectively and impartially. He admitted having a slightly populist style, that he may seem severe during some of his questions, but felt he appeared the same to all those who participated in the trial.

Recommendation of the Report

The conception of the quest for the truth or the judge's methods was perhaps not the best, but it was in good faith and sincere. The judge's behaviour toward the complainant did not show any ill-will or preconceived judgement, even though it appeared that the explanations he gave in his defence were not believed.

Moreover, it will be up to the Court of Appeal to decide whether the judge respected the rules of law and procedure in penal matters by intervening so often. This role is not incumbent on the committee, whose sole power is to decide whether the judge breached the *Code of Ethics* with his behaviour.

The Committee felt that by acting as he did, even if his behaviour could be perceived at times as exhibiting a lack of reserve or courtesy toward the complainant, the judge did not commit an act that was of sufficient objective seriousness as to constitute, in the context in which it was performed, an act that undermines the honour, dignity or integrity of the judiciary.

For these reasons, the inquiry committee declared the complaint unfounded.

4 Administrative Activities

During the 2000-2001 budgetary year, the Office of the Secretary of Council carried out its regular activities along with other work arising from the specific files of the Council.

4.1 Enquiries

Given the Council's mandate, the Office of the Secretary receives many enquiries, mostly via telephone. The majority of these enquiries come from individuals who have gone through the court system, and who would like to know if the actions that they hold against a judge could warrant a complaint, and how they can lodge a complaint as well as the ensuing process. This offers an ideal opportunity to explain the mission and functioning of the Council. If the questions raised are outside the Council's mandate, the citizens are referred to other organizations that may be in a position to help them.

4.2 Publications

The Office of the Secretary currently publishes two information pamphlets : Le Conseil de la magistrature and La déontologie judiciaire.

In addition, following an agreement concluded in April 1997 with the Centre de recherche en droit public of Université de Montréal, the reports of the Inquiry Committees can be consulted free of charge on the Internet at the following address : <http://www.lexum.umontreal.ca/cmq/index.html>.

Finally, since the fall of 2000, all the decisions and reports of the inquiry committees established by the Council are accessible through the jurisprudence database of the Société québécoise d'information juridique (<http://www.azimut.soquij.qc.ca>).

4.3 Complaints Process

The Office of the Secretary is responsible for the processing of files, from the time the complaint is received until a decision is sent. It coordinates the docketing of files for the Inquiry Committee, organizes the hearings and is responsible for managing and keeping files. The Secretary is also responsible for certifying the decisions of the Council.

4.4 Training and Continuing Education

The Office of the Secretary is in charge of the acquisition and payment of legal documentation to be used by the judges under its jurisdiction. On an annual basis, the Office of the Secretary handles thousands of orders for purchases or subscription renewals. It also keeps the Council informed about expenses in this regard.

The Office of the Secretary is also responsible for following up on the decisions of the Council regarding the training and continuing education activities carried out by the courts and tribunals under its jurisdiction.

4.5 Hosting Session for Newly Appointed Judges of the Court of Québec

As part of the training activities organized by the Court of Québec, the Secretary of the Council participated in three initial training sessions for newly appointed judges. During these sessions, the Secretary presented the mission of the Council, its operating structure and the activities of the Office of the Secretary.

5 Specific Files

5.1 Process of Judicial Ethics Dealing with Complaints

In 1999, the Council forwarded a report to all the judges under its jurisdiction proposing amendments to the *Courts of Justice Act* and asked for their feedback. The product of discussions within the Council to enhance the efficiency of the complaints process, this report suggested other operating methods for ethical matters.

During the 2000-2001 budgetary year, following comments received regarding a few aspects that were of concern to members of the judiciary, the Council reformulated certain proposals contained in the report that was put to judges for consultation purposes.

Before proposing to the Minister of Justice amendments that it would like to see to the *Courts of Justice Act*, the Council decided to take another look at this matter in light of its consultation with judges as well as the Supreme Court decision in *Richard Therrien* case, which addresses certain aspects of the Council's jurisdiction and the functioning of the ethics process.

By the time this report was produced, the Supreme Court of Canada had handed down its decision in the case of Judge Richard Therrien¹. The following elements are worth noting :

- ◆ The Supreme Court reaffirmed the Council's jurisdiction over the actions held against a judge before his appointment;
- ◆ According to the Supreme Court, the process of removing a provincially appointed judge does not require a motion by the National Assembly, even if this is desirable;
- ◆ Section 95 of the *Courts of Justice Act* which deals with the Court of Appeal report is construed by the Supreme Court as follows : the government is bound by a recommendation from the Court of Appeal which concludes as to a judge's exoneration;
- ◆ The fact that the law says that the Conseil de la magistrature should be bound by the recommendation of an inquiry committee does not compromise procedural equity and the provision of the *Courts of Justice Act* is therefore valid in this regard;
- ◆ In the context of Québec's judicial ethics process, the composition of the Conseil de la magistrature and an inquiry committee that includes "non-judges" does not undermine the independence of the judiciary and is in line with the latter's structural principles;
- ◆ The Supreme Court states that the role of the lawyer assigned to assist an inquiry committee is to provide the latter with aid and assistance in fulfilling its mandate. There is no reason to conclude that the role played by this lawyer may violate the principles of procedural fairness or raise a reasonable fear of partiality;
- ◆ The inquiry committee is master of its proceedings and, in this regard, is not obliged to hold a separate hearing on the sanction to be recommended.

1. *Therrien v. Minister of Justice and al.*, S.C.C., No. 27004, June 7, 2001

5.2 Functions or Activities Incompatible with the Office of Judge

In 1999-2000, the Council forwarded a discussion paper to judges under its jurisdiction concerning duties or activities that are incompatible with the office of a judge. During this period, the Council held a one-day conference attended by representatives of the judiciary as well as the academic and legal communities.

Following the comments received and the discussions with various representatives consulted, the Council asked the Minister of Justice for his view on the subject. The Council also submitted a recommendation for clarifying the *Courts of Justice Act*, avoiding to list certain activities or functions, as section 129(2) of the Act does. According to the Council, determining whether certain non-judicial functions or activities are appropriate is an ethical issue involving the principle of judicial independence. As a result, if such a situation arises, it should be brought before the Council, which is the appropriate body to enforce the codes of ethics and to develop jurisprudence on this matter.

On March 28, 2001, the Minister of Justice introduced bill 2 (*Act to amend the Courts of Justice Act*) in the National Assembly. One of the goals of this bill is to amend section 129(2). When the Council read the amendments proposed at the National Assembly, it informed the Minister of Justice of its disapproval, because these amendments were not compatible with the discussions between the Council and the Ministry¹.

5.3 Rules of Procedure for Examinations and Inquiries

The Council has begun to revise the rules of procedure regarding the receipt and examination of complaints submitted to the Council. A task force has been formed and is working towards developing tools that may be useful to the members of the Council for examinations as well as inquiries.

The task force will continue its work next year.

5.4 Legal Documentation

Aware of its mandate to furnish judges with the necessary documentation for their professional development, the Council hired consultants to re-evaluate the various ways of obtaining legal documentation with the introduction of new technologies.

In fulfilling their mandate, the consultants met with a committee made up of five judges, examined the Council's purchase of documentation, conducted a survey among the judiciary, and met with representatives of the Office of the Commissioner for Federal Judicial Affairs to obtain information about a database to be used by judges under federal jurisdiction.

1. At the time this activity report was presented, the Council had been informed of the bill's withdrawal.

After completing their work, the consultants submitted a report to the Council indicating their observations and recommendations. This report was distributed to judges for comment.

Finally, the Council established a three-person committee to take on the following tasks :

- ◆ study the judges' comments;
- ◆ detail the effects of the recommendations;
- ◆ examine their impact on judges and libraries;
- ◆ determine the timing and feasibility of implementing the report in whole or in part, including the budgetary effects of the proposed recommendations (cost/benefit analysis);
- ◆ assess judges' training needs and consider transitional tools for those who may not be able to adapt to new technologies;
- ◆ consult chief judges and presidents of courts and tribunals as well as the judges they designate;
- ◆ develop a realistic timetable for implementing the measures selected that takes into account the transition from the current procedure to the proposed alternative, notably with regard to existing management systems.

A member of the Council's Secretariat serves as the committee's secretary.

This study will be conducted over the next few months and the Council will have to examine its resulting recommendations.

5.5 Second Language Courses

While renewing the memorandum of understanding with the Office of the Commissioner for Federal Judicial Affairs for the 2000-2001 budgetary year, the Council requested that it be provided with a specific learning program that focused more on teaching and professional techniques. During the same period, the Council sent a survey questionnaire to all judges registered for second language courses to find out about their relations with the teachers as well as their level of satisfaction with the number of hours of courses and the quality of teaching.

During the current fiscal year, the Council examined the program proposed by the Office of the Commissioner in light of the needs of courts and tribunals and its survey findings. Following this study, the Council developed objectives to guide it in the adoption of a policy that promotes the best learning possible.

Moreover, taking into account the limited budgets and increasing demand for these courses, as well as the uncertainty about obtaining the necessary funding from the Department of Canadian Heritage to carry out the proposed program in whole or in part and the lead time for its implementation, the Council agreed to renew the memorandum of understanding with the Office of the Commissioner for the 2001-2002 budgetary year. It anticipates that the training courses may begin in the fall of 2002.

Finally, following the request for a budgetary adjustment sent to the Minister of Canadian Heritage, the Council was informed that the Department of Justice, on behalf of the Government of Canada, has started examining the entire issue of language training for federally and provincially appointed judges in light of the Supreme Court's ruling in *Beaulac*¹. In this case, the court was called upon for the first time to interpret the language rights set forth in section 530 of the *Criminal Code*.

Through this review, the Council would like to obtain, during the next budgetary year, the funding it deems necessary to ensure that the accused who speak only one of Canada's official languages have equal access to the courts, in accordance with the *Beaulac* ruling.

5.6 Adjustments to the Council's Training and Continuing Education Budget

Although, during the 2000-2001 budgetary year, the government increased the Council's training and continuing education budget, particularly for the implementation of the training program for part-time municipal judges, the Council reiterated to the Minister of Justice that it would like to obtain the funds that it received in the past for the organization of an annual symposium for all full-time provincially appointed judges. The Council intends to continue its representations over the next budgetary year.

5.7 Development of a Complaints Data Bank

During the current budgetary year, the Office of the Secretary mandated a firm to develop a data bank which will allow it to efficiently compile the information it has on the complaints it has received since its inception. This information is now available in hard copy. It will also be able to better understand and analyze the nature of complaints, compile information on such aspects as the nature of the allegations brought to support complaints and the legal area involved in the complaint.

This tool will also allow it to better monitor the complaints it receives at different stages of their processing.

This data bank will be operational over the next few months.

5.8 Development of a Minutes Database

During the current budgetary year, the Office of the Secretary mandated a firm to develop a database for all the minutes of the Council and its committees. This tool will make searching for minutes easier and faster.

This database will be operational next fall.

1. *Jean Victor Beaulac v. Her Majesty the Queen* [1999] 1 S.C.R. 768

APPENDIX 1 Members and Staff of the Conseil de la magistrature as at March 31, 2001¹

Members

Honourable Huguette St-Louis, Chief Judge of the Court of Québec, President
Honourable Rémi Bouchard, Senior Associate Chief Judge of the Court of Québec,
Vice-President
Honourable Michel Jasmin, Associate Chief Judge of the Court of Québec
Honourable Jacques Lachapelle, Associate Chief Judge of the Court of Québec
Honourable Louise Provost, Associate Chief Judge of the Court of Québec
Honourable Jacques Biron, President of the Professions Tribunal
Honourable Gilles Charest, Chief Judge of the Municipal Courts of Québec
Honourable Claude Pinard, Judge of the Court of Québec
Honourable Michel Simard, Judge of the Court of Québec
Judge Denis Laberge, Municipal Court of Lasalle
Henri Grondin, Lawyer, Grondin, Poudrier, Bernier
Manuel Shacter, Lawyer, Mendelsohn, Rosentzveig, Shacter
Louisiane Gauthier, Psychologist
Marlène Rateau, Teacher

Staff

Jean-Pierre Marcotte, Lawyer, Secretary of the Council
Michelle Blanchet, Secretary
Liliane Gouge, Desk Officer
Carolle Richard, Administrative Assistant

1. A position has been vacant since the retirement of the Honourable Pierre Lalande, Chief Judge of the Municipal Court of Laval, on December 31, 2000.

APPENDIX 2 Jurisdiction of the Conseil de la magistrature

Excerpts from the *Courts of Justice Act* (R.S.Q., c. T-16)¹

PART VII

THE CONSEIL DE LA MAGISTRATURE, REFRESHER PROGRAMMES FOR JUDGES AND JUDICIAL ETHICS

CHAPTER I

THE CONSEIL DE LA MAGISTRATURE

DIVISION I

ESTABLISHMENT

- Constitution. 247. A body, hereinafter called the "council", is established under the name of Conseil de la magistrature.
1978, c. 19, s. 33.
- Composition. 248. The council shall be composed of 15 members, namely,
(a) the chief judge of the Court of Québec who shall be the chairman of the council;
(b) the senior associate chief judge of the Court of Québec;
(c) the three associate chief judges of the Court of Québec;
(d) one of the chief judges of the Municipal Courts of Laval, Montréal or Québec;
(d.1) one judge chosen among the persons exercising the functions of chief judge of the Labour Court, president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
(d.2) the chief judge of the municipal courts;
(e) two judges chosen among the judges of the Court of Québec or the Municipal Courts of Laval, Montréal or Québec and appointed upon the recommendation of the Conférence des juges du Québec;
(f) one judge chosen among the judges of the Municipal Courts other than those of Laval, Montréal or Québec and appointed upon the recommendation of the Conférence des juges municipaux du Québec;
(g) two advocates appointed upon the recommendation of the Barreau du Québec;
(h) two persons who are neither judges nor advocates.
1978, c. 19, s. 33; 1986, c. 48, s. 4; 1986, c. 61, s. 47; 1987, c. 50, s. 8; 1988, c. 21, s. 53; 1991, c. 70, s. 4; 1995, c. 42, s. 42; 1998, c. 30, s. 40.
- Appointment of members. 249. The Government shall appoint the members of the council contemplated in paragraphs *d*, *d.1* and *e* to *h* of section 248. To sit on the council, those members shall make the oath contained in Schedule III before the chief judge or the senior associate chief judge of the Court of Québec.

1. See note on page 8.

Vice-chairman.	The vice-chairman of the council is elected by the council from among its members.
Term of office.	The term of office of the members of the council appointed under the first paragraph is not more than three years; at the expiry of their term, these members remain in office until they are replaced or reappointed. <u>1978, c. 19, s. 33; 1988, c. 21, s. 54; 1989, c. 45, s. 6; 1995, c. 42, s. 43; 1998, c. 30, s. 41; 1999, c. 40, s. 324.</u>
Remuneration and expenses.	250. The members of the council who are not judges are not entitled to any remuneration, except in such cases, on such conditions and to such extent as may be determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the performance of their duties, on the conditions and within the limits determined by the Government.
Indemnity.	<u>The judges are entitled to the indemnity provided for in section 119.</u> 1978, c. 19, s. 33; 1988, c. 21, s. 55.
Quorum.	251. Eight members of the council, including the chairman or vice-chairman, are a quorum. <u>1978, c. 19, s. 33; 1986, c. 48, s. 5.</u>
Meetings.	252. The council meets as often as necessary, when convened by the chairman.
Sittings in camera.	It may sit <i>in camera</i> and hold its sittings at any place in Québec.
Head office.	<u>The council has its head office in the territory of Ville de Québec or in the territory of Ville de Montréal, as the Government may decide.</u> 1978, c. 19, s. 33; 1996, c. 2, s. 985.
Internal management.	253. The council may make by-laws for its internal management or to establish committees and determine their functions. <u>1978, c. 19, s. 33.</u>
Minutes.	254. The minutes of the sittings of the council or of one of its committees are authentic if they are approved by the members of the council or of the committee, as the case may be; the same rule applies to documents or copies emanating from the council or forming part of its records if they are certified true by the chairman or the secretary. <u>1978, c. 19, s. 33.</u>
Secretary.	255. The chairman shall appoint the secretary of the council, for a five-year term, from among the advocates on the Roll of the Order of Advocates for at least 10 years who are members of the public service. The Government shall determine the salary, the employment benefits and other conditions of employment of the secretary.

- Leave. Upon being appointed, the secretary shall cease to be subject to the Public Service Act (chapter F-3.1.1); the person appointed to the office of secretary shall be on leave without pay for the duration of the five-year term.
1978, c. 19, s. 33; 1978, c. 15, s. 140; 1983, c. 55, s. 161; 1989, c. 45, s. 7; 1997, c. 76, s. 2.
- Functions. **255.1.** The secretary of the council shall exercise the functions of the secretary on an exclusive basis, under the authority of the chairman.
- Oath. The secretary shall, before taking office, make the oath set out in Schedule III, before the chief judge of the Court of Québec.
1989, c. 45, s. 7; 1997, c. 76, s. 2; 1999, c. 40, s. 324.
- Expiry of term. **255.2.** At the expiry of the five-year term of office, the secretary shall remain in office until replaced or reappointed.
1989, c. 45, s. 7; 1997, c. 76, s. 2.
- Personnel. **255.3.** The members of the personnel of the council, other than the secretary, shall be appointed and remunerated in accordance with the Public Service Act.
1989, c. 45, s. 7; 1997, c. 76, s. 2.

DIVISION II

FUNCTIONS OF THE COUNCIL

- Functions. **256.** The functions of the council are :
- (a) to organize, in accordance with Chapter II of this Part, refresher programmes for judges;
 - (b) to adopt, in accordance with Chapter III of this Part, a judicial code of ethics;
 - (c) to receive and examine any complaint lodged against a judge to whom Chapter III of this Part applies;
 - (d) to promote the efficiency and uniformization of procedure before the courts;
 - (e) to receive suggestions, recommendations and requests made to it regarding the administration of justice, to study them and to make the appropriate recommendations to the Minister of Justice;
 - (f) to cooperate, in accordance with the law, with any body pursuing similar purposes outside Québec, and
 - (g) to hear and decide appeals under section 112.
- 1978, c. 19, s. 33; 1988, c. 21, s. 56.

CHAPTER II
REFRESHER PROGRAMMES FOR JUDGES

- Information, programmes for judges. 257. The council shall establish information, training, refresher or reorientation programmes for the judges of the courts under the legislative authority of Québec and appointed by the Government.
1978, c. 19, s. 33.
- Preparation. 258. The council shall determine the needs, prepare the programmes and fix the terms and conditions of application; it may, for that purpose, act in cooperation in particular with the Conférence des juges du Québec, the Conférence des juges municipaux du Québec, the Barreau du Québec, the law faculties and the Ministère de la Justice.
1978, c. 19, s. 33; 1987, c. 50, s. 9.
- Authorization for expenditures. 259. The Government determines the amounts over which expenditures by the council in the application of this chapter require the approval of the Minister of Justice.
1978, c. 19, s. 33.

CHAPTER III
JUDICIAL ETHICS

DIVISION I
GENERAL PROVISION

- Applicability. 260. This chapter applies to a judge appointed under this act.
Applicability. It also applies to a judge of a Municipal Court and to a justice of the peace appointed in accordance with section 158, if the deed of appointment indicates that section 162 applies to that justice of the peace.
1978, c. 19, s. 33; 1980, c. 11, s. 98; 1995, c. 42, s. 44.

DIVISION II
CODE OF ETHICS

- Code of ethics. 261. The council shall, by regulation, adopt a judicial code of ethic
Meeting of the judges. However, it must previously call a meeting of the judges to whom the code of ethics applies to consult them on the draft regulation.

- Approval. Coming into force. A regulation made under this section is published in the *Gazette officielle du Québec* at least thirty days before it is submitted to the approval of the Government. If it is so approved, it comes into force on the date of its publication in the *Gazette officielle du Québec* or on a later date fixed therein
1978, c. 19, s. 33.
- Contents. 262. The code of ethics determines the rules of conduct and the duties of the judges towards the public, the parties to an action and the advocates, and it indicates in particular which acts or omissions are derogatory to the honour, dignity or integrity of the judiciary and the functions or activities that a judge may exercise without remuneration notwithstanding section 129.
- Special provisions. It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts other than the Municipal Courts of Laval, Montréal and Québec, or special provisions may be established for those judges. For the purposes of this chapter, the rules set out in section 45 of the Act respecting municipal courts (chapter C-72.01) are deemed to be special provisions of the code of ethics applicable to municipal judges. The code may also indicate the functions or activities that the chief judge of the municipal courts may exercise without remuneration notwithstanding section 37.1 of the Act respecting municipal courts.
1978, c. 19, s. 33; 1980, c. 11, s. 99; 1988, c. 21, s. 57; 1988, c. 74, s. 8; 1989, c. 52, s. 138; 1998, c. 30, s. 42.

DIVISION III

EXAMINATION OF COMPLAINTS

- Object of complaints. 263. The council receives and examines a complaint lodged by any person against a judge alleging that he has failed to comply with the code of ethics.
1978, c. 19, s. 33; 1988, c. 21, s. 58.
- Contents. 264. Any complaint is made in writing to the secretary of the council and states the facts with which the judge is charged and the other relevant circumstances.
1978, c. 19, s. 33.
- Necessary information. 265. The council shall examine the complaint; it may, for that purpose, require from any person such information as it may deem necessary and examine the relevant record, even if the record is confidential under the Youth Protection Act (chapter P-34.1).
- Conflict. If the complaint is lodged by a member of the council, he cannot participate in the examination of the complaint by the council.
1978, c. 19, s. 33; 1986, c. 48, s. 6; 1988, c. 21, s. 59.
- Copy to judge. 266. The council shall forward a copy of the complaint to the judge; it may require an explanation from him.
1978, c. 19, s. 33.

Complaint not justified. **267.** If the council, after examining a complaint, establishes that it is not justified or that its nature and importance do not justify an inquiry, it shall notify the plaintiff and the judge of it and state its reasons therefor.
1978, c. 19, s. 33.

Inquiry. **268.** The council may, after examining a complaint, decide to make an inquiry. It must make an inquiry, however, if the complaint is lodged by the Minister of Justice or if the latter requests it pursuant to the third paragraph of section 93.1.
1978, c. 19, s. 33; 1988, c. 21, s. 60; 1990, c. 44, s. 24.

DIVISION IV

INQUIRY

Committee. **269.** To conduct an inquiry on a complaint, the council establishes a committee consisting of five persons chosen from among its members and designates a chairman among them.

Quorum. Three persons are a quorum of the committee.
1978, c. 19, s. 33.

Composition. **269.1.** Notwithstanding the first paragraph of section 269, a committee of inquiry may be composed of members of the council and of persons who have previously been members of the council.

Composition. However, such a committee must include at least three members of the council, from whose number the committee shall designate a chairman, and not more than two previous council members.
1991, c. 70, s. 5.

Oath. **269.2.** Any person who has previously been a member of the council and who is appointed to sit on a committee must, before taking up his functions, make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.
1991, c. 70, s. 5; 1995, c. 42, s. 45; 1999, c. 40, s. 324.

Inquiry. **269.3.** A person who ceases to be a member of the council may continue to sit on a committee of inquiry established under section 269 or 269.1 in order to complete an inquiry undertaken by the committee.
1991, c. 70, s. 5.

Remuneration and indemnities. **269.4.** A person to whom either of section 269.2 and 269.3 applies is entitled for the time he is a member of a committee to no remuneration other than the remuneration and indemnities council members are entitled to receive under section 250.
1991, c. 70, s. 5.

- Meetings. 270. The committee meets as often as necessary, when convened by its chairman.
1978, c. 19, s. 33.
- Copy of complaint, or request. 271. The committee communicates to the judge a copy of the complaint or of the request of the Minister of Justice made pursuant to the third paragraph of section 93.1.
Calling by committee. Within thirty days after the communication of the complaint, the committee calls the judge concerned and the plaintiff; it also notifies the Minister of Justice, and the latter or his representative may intervene at the proof or hearing.
1978, c. 19, s. 33; 1988, c. 21, s. 61; 1990, c. 44, s. 24.
- Hearing. 272. The committee hears the parties, their attorneys and their witnesses.
Facts and testimonies. It may inquire into the relevant facts and call any person apt to testify on such facts.
Examination. The witnesses may be examined or cross-examined by the parties.
1978, c.19, s. 33.
- Powers and immunity. 273. The members of the committee enjoy, for the purposes of an inquiry, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.
1978, c. 19, s. 33; 1992, c. 61, s. 621.
- Prohibition. 273.1. An advocate who is a judge of a Municipal Court may not act as a prosecutor for the application of this chapter.
1980, c. 11, s. 100.
- Recusation of a member of the committee. 274. A party to the inquiry may request the recusation of a member of the committee for one of the causes provided for in articles 234 and 235 of the Code of Civil Procedure (chapter C-25).
Obligation to declare. Furthermore, a member of the committee who is aware of a ground of recusation to which he is liable is bound to declare it.
1978, c. 19, s. 33.
- Rules of procedure or practice. 275. The committee may make rules of procedure or rules of practice for the conduct of an inquiry.
Orders of procedure. If necessary, the committee or one of its members makes the orders of procedure, based on the Code of Civil Procedure (chapter C-25), that are necessary for the carrying out of its duties.
1978, c. 19, s. 33.

- Suspension of a judge. 276. The council may suspend a judge for the duration of an inquiry on him.
1978, c. 19, s. 33.
- Report of inquiry and recommendations. 277. The committee submits the report of its inquiry and its recommendations to the council. It transmits that report to the Minister of Justice; in addition, it transmits a copy of its record of the inquiry in the case where the council makes the recommendation provided for in paragraph *b* of section 279.
1978, c. 19, s. 33.
- Complaint not justified. 278. If the report of the inquiry establishes that the complaint is not justified, the council notifies the judge concerned, the Minister of Justice and the plaintiff. That notice states the grounds on which it is based.
1978, c. 19, s. 33.
- Complaint justified. 279. If the report of the inquiry establishes that the complaint is justified, the council, according to the recommendations of the report of the inquiry,
(a) reprimands the judge; or
(b) recommends that the Minister of Justice and Attorney General file a motion with the Court of Appeal in accordance with section 95.
- Suspension. 280. If it makes the recommendation provided for in paragraph *b*, the council suspends the judge for a period of thirty days.
1978, c. 19, s. 33; 1980, c. 11, s. 101; 1988, c. 21, s. 62; 1988, c. 74, s. 9.
- Motion to Court of Appeal. 280. If the Minister of Justice and Attorney General, in accordance with section 95, files a motion with the Court of Appeal, the judge is suspended from office until the report of the Court.
1978, c. 19, s. 33; 1988, c. 21, s. 63.
- Services of an advocate. 281. The council may retain the services of an advocate or of another expert to assist the committee in the conduct of its inquiry.
1978, c. 19, s. 33.

CHAPTER IV

MISCELLANEOUS PROVISIONS

- Amounts required. 282. The amounts required for the application of this part are taken out of the consolidated revenue fund.
1978, c. 19, s. 33.

PART VIII
FINAL PROVISIONS

Minister responsible. 282.1. The Minister of Justice is responsible for the administration of this Act.

1988, c. 21, s. 64.

Disability. 93.1. A judge suffering from a permanent disability which, in the opinion of the Government, prevents him from effectively performing the duties of his office shall cease to hold such office.

Reappointment. If the judge recovers, the Government may reappoint him as a judge of the court where he formerly held office without having recourse to the selection procedure prescribed by regulation under section 88, even if all the posts in that court are already filled.

Disability. The permanent disability is established, after inquiry, by the Conseil de la magistrature, at the request of the Minister of Justice. Termination of permanent disability is established in the same manner.

1990, c. 44, s. 4.

Removal. 95. The Government may remove a judge only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.

R. S. 1964, c. 20, s. 86; 1988, c. 21, s. 30.

Modification to a notice of appointment. 108. Any modification to the notice of appointment of a judge concerning his place of residence shall be decided by the Government on the recommendation of the chief judge. The Government may make such a decision only if the period prescribed in section 112 for filing an appeal is expired or, where an appeal is filed, if the recommendation of the chief judge is confirmed.

R. S. 1964, c. 20, s. 100; 1965 (1st sess.), c. 17, s. 16; 1982, c. 17, s. 76; 1987, c. 50, s. 5; 1988, c. 21, s. 30; 1995, c. 42, s. 26.

Assignment to another division. 111. The chief judge may, where the administration of justice so requires and after consultation with the associate chief judges concerned, assign a judge to another division after the judge concerned has been given the opportunity to present his views in that respect.

R. S. 1964, c. 20, s. 103; 1965 (1st sess.), c. 16, s. 21; 1965 (1st sess.), c. 17, s. 18; 1978, c. 19, s. 15; 1988, c. 21, s. 30; 1995, c. 42, s. 29.

Notice of decision. 112. The chief judge who makes a recommendation under section 108 or a decision respecting the permanent assignment of a judge to another division under section 111 shall notify the judge concerned. The latter may, within fifteen days, appeal to the Conseil de la magistrature which may confirm or quash the recommendation or the decision of the chief judge.

R. S. 1964, c. 20, s. 104; 1974, c. 11, s. 30; 1977, c. 20, s. 138; 1978, c. 19, s. 16; 1986, c. 95, s. 334; 1988, c. 21, s. 30.

Exclusive office. **129.** Subject to the provisions of this subdivision, the office of judge shall be exclusive.

Incompatibility. The office of judge is incompatible, in particular, with the office of director or manager of a legal person or any other constituted body, or with the conduct, even indirect, of commercial activities.

R. S. 1964, c. 20, s. 121; 1965 (1st sess.), c. 17, s. 2; 1978, c. 19, s. 25; 1988, c. 21, s. 30.

APPENDIX 3 Internal By-Laws of the Conseil de la magistrature

Courts of Justice Act (R.S.Q., c. T-16, s. 253)

DIVISION I — GENERAL PROVISIONS

1. The following definitions shall apply in these by-laws :
 - a) "Act" : the *Courts of Justice Act* (R.S.Q., c. T-16);
 - b) "Council" : the Conseil de la Magistrature as established under section 247 of the Act;
 - c) "President" : the Chief Judge of the Court of Québec;
 - d) "Vice-President" : a member of the Council, elected by the members of the Council.
2. The head office of the Council shall be located in Québec City at 300 boulevard Jean-Lesage. The Council may also have an office in the City of Montreal.

DIVISION II — FUNCTIONS AND POWERS

3. The Council, in addition to its functions and powers as set forth in the Act, shall assume the following responsibilities :
 - a) approve the training and continuing education programs presented by the Chief Judges and the Presidents of the courts and tribunals under its jurisdiction, in keeping with the operating methods adopted by the Council;
 - b) determine the budget allocated to each court and tribunal for its training and continuing education programs and carry out regular follow-ups during its meetings;
 - c) establish committees and give them the necessary powers to fulfil their mandates;
 - d) approve the Activity Report of the Council.
4. The President of the Council, in addition to managing the operations of the Council, shall exercise the following functions :
 - a) prepare and preside over the meetings of the Council;
 - b) determine which issues shall be brought before the Council;
 - c) oversee the preparation of the budget and take the necessary steps to secure its approval;
 - d) sign, alone or together with any other person designated by the Council, any documents or records that fall under the jurisdiction of the Council;
 - e) assign responsibilities to the members of the Council as well as to the Secretary.
5. The Vice-President, elected by the Council from among its members, shall assume the functions and responsibilities of the President of the Council in the event of the latter's absence or inability to act.

6. Under the authority of the President, the Secretary of the Council shall carry out the general functions pertaining to his position and those that may be assigned to him by the President or by the Council.

More specifically, the functions of the Secretary shall be the following :

- a) assume, in matters of managing the resources of the Council, which have been devolved upon him according to all applicable Acts and by laws;
- b) prepare the meetings of the Council, draft the minutes of the meetings, and follow up on decisions made by the Council;
- c) act as the Secretary of the Executive Committee and other committees established by the Council;
- d) prepare an annual budget allocation plan for the Council's training and continuing education programs;
- e) keep and maintain the records of the Council;
- f) prepare, for the benefit of the members, documents concerning points of interest for the Council;
- g) certify the minutes of the meetings of the Council or any of its committees, as well as any documents or copies emanating from the Council;
- h) at the request of the members of the Council, express his opinion on the different issues dealt with at the meetings of the Council;
- i) prepare an annual report on the issues to be brought before the Council.

DIVISION III — COUNCIL MEETINGS

7. The Council shall hold its meetings at the head office of the Council or at any other location specified in the notice of meeting.
8. The number of meetings of the Council shall be determined by the latter in accordance with a timetable that it shall establish.
9. In addition to the regular meetings, the Council may hold special meetings as often as it deems necessary.
10. Meetings of the Council shall be convened by a written notice from the Secretary at the request of the President.

The President shall arrange for a special meeting to be convened at the written request of two members of the Council.

11. The Secretary shall forward to the members of the Council, at least three days before the meeting, a written notice of meeting which shall specify the date, time and place of the meeting. This notice of meeting shall be accompanied by an agenda.

In the case of a special meeting, the notice of meeting may be given by telephone 24 hours before the meeting. During these meetings, discussions are based solely on the items on the agenda, unless members agree otherwise.

12. The Council may dispense with notice of meeting formalities if all members of the Council consent to it.

A member may, before or after a meeting, waive the notice of meeting.

The presence of a member at a meeting constitutes a waiver on his part to a notice of meeting.

13. The members of the Council may participate in a meeting by means that enable all participants to communicate verbally, notably by telephone.
14. The meetings of the Council shall be presided over by the President or, in his absence, the Vice-President.
15. The quorum of the Council shall consist of eight members, including either the President or the Vice-President.

If a quorum is not present one half-hour after the time specified in the notice of meeting, the meeting shall be adjourned and a new notice of meeting must be issued. However, the President may extend the deadline before adjourning the meeting.
16. A meeting may, by a majority vote, be adjourned to another time or to a later date and a new notice of meeting shall not be required.
17. The decisions of the Council shall be made by a majority vote of the members present.
18. Votes shall be cast orally or by a show of hands unless the President or two members of the Council request a secret ballot.
19. In the absence of a secret ballot, the declaration by the President that a decision has been made unanimously or by a majority and the recording of this declaration in the minutes of the meeting shall constitute proof of the Council's decision, without the need to divulge the specific way in which members voted, except if a request is expressed to this effect by one of the members of the Council.
20. In case of a tie vote, the President, or the Vice-President in the absence of the President, shall have a deciding vote on any matter submitted to the Council regardless of whether the votes are cast orally, by a show of hands, or by secret ballot. The President or the Vice-President may or may not exercise his right to a deciding vote.
21. The decision to hold all or part of a meeting in camera shall be made by a majority of the members present.
22. The Council shall exercise its powers by means of decisions, except in matters that must be settled by way of a regulation, as prescribed under the Act.

A decision signed by all of the members of the Council shall have the same value as a decision made during a Council meeting which was duly convened and held. This decision shall be recorded in the minutes of the meeting following the date on which it was signed.
23. The Secretary of the Council shall draft and sign the minutes of each meeting. The minutes shall contain a summary of the deliberations of the Council as well as the decisions made at each meeting.
24. Apart from the President of the Council, the Secretary may also certify the minutes, excerpts from the minutes and other documents and copies emanating from the Council or forming any part of its records.

25. In the event that the Secretary is not able to attend any of the meetings, the Council may designate a member of the Council or a member of the staff of the Council to draft the minutes. These minutes shall be signed by such person and by the Secretary of the Council.

DIVISION IV — COMMITTEES OF THE COUNCIL

26. The Council shall establish an Executive Committee consisting of five members of the Council, including the President and the Vice-President of the Council. The other members shall be designated by the Council from among its members for a mandate that it shall determine.
27. The President of the Council shall be the President of the Executive Committee and the Vice-President of the Council shall be the Vice-President of the Executive Committee.
28. The Executive Committee shall have the following mandate :
 - a) examine the matters and execute the mandates which are entrusted to it by the Council and then report to the Council;
 - b) examine, at the request of the President of the Council, certain matters in order to make recommendations;
 - c) examine and make decisions on administrative matters between meetings of the Council and to submit its decisions for approval at the next meeting of the Council.
29. The quorum of the meetings of the Executive Committee shall consist of three members, including the President or the Vice-President.
30. The Secretary of the Council shall be the Secretary of the Executive Committee and as such, shall prepare the notice of meeting, draft and sign the minutes of the meetings, which shall be presented at the meetings of the Council.
31. With the necessary adaptations, section 7, paragraph 1 of section 11, sections 12, 13 and 14, as well as sections 16 through 25 shall apply to the Executive Committee.
32. The Council may also establish other committees. The Council shall determine the composition, mandates and powers of these committees.
33. Unless the Council decides otherwise, the Secretary shall act as Secretary of the committees established by the Council under section 32.

DIVISION V — FINAL PROVISIONS

34. These by-laws shall not be amended without the prior notification of members of the Council of such amendment in a notice of meeting.

The text of the proposed amendment must accompany the notice of meeting.
35. The internal by-laws of the Council shall be effective at the time of their adoption by the Council and shall replace any other internal by-laws previously adopted by the Council.

Effective: 15-12-99

APPENDIX 4 Members of the Executive Committee as at March 31, 2001

Honourable Huguette St-Louis, Chief Judge of the Court of Québec, President
Honourable Rémi Bouchard, Senior Associate Chief Judge of the Court of Québec,
Vice-President
Honourable Gilles Charest, Chief Judge of the Municipal Courts of Québec
Honourable Michel Simard, Judge of the Court of Québec
Henri Grondin, Lawyer, Grondin, Poudrier, Bernier

APPENDIX 5 Criteria for Selecting Judges to Participate in External Symposiums¹

After determining that the symposium in question is relevant for the judicial function and that its cost is acceptable given the budgetary situation, the courts select the judge(s) based on the following criteria :

I- GENERAL TRAINING SYMPOSIUMS

- 1) the judge's merit based on his interest in his position, his involvement in his workplace;
- 2) relevance, i.e., the relationship between the content of the event and the duties performed by the judge;
- 3) seniority;
- 4) the judge's active participation in organizing the symposium, for example as a speaker;
- 5) the judge's participation in other similar symposiums;
- 6) the anticipated benefits for the judge himself.

1. These include symposiums and conventions organized by other institutions not falling under the jurisdiction of the Council.

II- SPECIALIZED TRAINING SYMPOSIUMS

- 1) relevance, i.e., the relationship between the content of the event and the duties performed by the judge;
- 2) the anticipated benefits for the judge himself, especially in response to a training need on a given subject;
- 3) the judge's active participation in organizing the symposium, for example as a speaker;
- 4) the judge's merit based on his interest in his position, his involvement in his workplace;
- 5) the judge's recent participation in other similar symposiums;
- 6) the commitment to transmit his acquired knowledge to other colleagues;
- 7) membership in the association organizing the symposium.

June 1999

APPENDIX 6 Codes of Ethics

Code of Ethics for Provincial Judges¹

- 1- The judge should render justice within the framework of the law.
- 2- The judge should perform the duties of his office with integrity, dignity and honour.
- 3- The judge has a duty to foster his professional competence.
- 4- The judge should avoid any conflict of interest and refrain from placing himself in a position where he cannot faithfully carry out his functions.
- 5- The judge should be, and be seen to be, impartial and objective.
- 6- The judge should perform the duties of his office diligently and devote himself entirely to the exercise of his judicial functions.
- 7- The judge should refrain from any activity which is not compatible with his judicial office.
- 8- In public, the judge should act in a reserved, serene and courteous manner.
- 9- The judge should submit to the administrative directives of his chief judge, within the performance of his duties.
- 10- The judge should uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society.

1. This code is applicable to the following courts and tribunals: Court of Québec, municipal courts of Laval, Montreal and Québec City, the Human Rights Tribunal, the Professions Tribunal, the Labour Court, and justices of the peace (section 260 of the *Courts of Justice Act*).

Code of Ethics for Part-Time Municipal Judges

- 1- The judge should render justice within the framework of the law.
- 2- The judge should perform the duties of his office with integrity, dignity and honour.
- 3- The judge has a duty to foster his professional competence.
- 4- The judge should avoid any conflict of interest and refrain from placing himself in a position where he cannot faithfully carry out his functions.
- 5- The judge should be, and be seen to be, impartial and objective.
- 6- The judge should perform the duties of his office diligently.
- 7- The judge should refrain from any activity which is not compatible with his functions of municipal judge.
- 8- In public, the judge should act in a reserved, serene and courteous manner.
- 9- The judge should uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society.

Excerpts from the Act respecting municipal courts (c. C-72.01)

Rules of conduct. 45. A municipal judge, in addition to complying with the standards of conduct and fulfilling the duties imposed by the code of ethics adopted pursuant to section 261 of the Courts of Justice Act (chapter T-16), shall observe the following rules :

(1) He shall not, even indirectly, enter into a contract with a municipality within the territory in which the municipal court has jurisdiction, except in the cases provided for in section 305 of the Act respecting elections and referendums in municipalities (chapter E-2.2), adapted as required, nor shall he advise any person negotiating such a contract;

(2) He shall not, even indirectly, agree to represent or act against a municipality or a member of the municipal council, an employee other than an employee within the meaning of the Labour Code (chapter C-27) or a police officer of a municipality within the territory in which the municipal court has jurisdiction;

(3) He shall not hear a case pertaining to a contract described in paragraph 1 to which an advocate with whom he practises as an advocate is a party or a case in which such an advocate is representing or acting against a municipality or person contemplated in paragraph 2;

(4) He shall not hear a case involving a question similar to one involved in another case in which he represents one of the parties;

(5) He shall, with respect to every case referred to him, make and file in the record a declaration stating not only the grounds of recusation to which he is aware he is liable and which are set out in article 234 of the Code of Civil Procedure (chapter C-25), but also any grounds indirectly connected with him and arising either from the fact that he is representing one of the parties or from the activities of a person with whom he practises as an advocate.

1989, c. 52, s. 45.

APPENDIX 7 Summary of Complaints Handled Since 1979

YEARS	RESULTS FROM THE EXAMINATION STAGE						
	COMPLAINTS RECEIVED	Complaints Unfounded Without Additional Information	Complaints Unfounded After Additional Information	Complaints That Led to the Application of Section 267 ^a	Others ^b	Complaints Under Examination	Complaints Warranting an Inquiry ^c
1979-1980	5	1	2	1			1
1980-1981	1			1			
1981-1982	5		4				1
1982-1983	5		4				1
1983-1984	6		4	1	1		
1984-1985	10		5	1			4
1985-1986	10	1	4	3			2
1986-1987	18	1	12	2	1		2
1987-1988	24	2	17	1	1		3
1988-1989	37	4	26	1	3		3
1989-1990	41	16	13	2	5		5
1990-1991	56	33	17	2	2		2
1991-1992	65	50	13				2
1992-1993	51	34	14		3		
1993-1994	81	39	20		3		19
1994-1995	88	63	21		1		3
1995-1996	89	66	13	1	2		7
1996-1997 ^d	68	48	18				2
1997-1998 ^e	70	32	27	1			10
1998-1999	68	44	20	1	1		2
1999-2000	76	53	19		2		2
2000-2001	59	33	12	2		11	1
TOTAL	933	520	285	20	25	11	72

a. Complaints which, due to their nature and importance, do not warrant an inquiry (sec. 267 of the *Courts of Justice Act*).

b. These are closed files (complaints that no longer applied).

c. In all, 48 committees were set up to inquire 72 complaints.

d. Under section 93.1 of the *Courts of Justice Act*, the Minister of Justice submitted a request to the Council and the latter then set up an inquiry committee. Since this is not a complaint, it is not counted in this appendix.

e. Two files opened during the budgetary year each contained several letters and petitions and were counted as two complaints.

YEAR	RESULTS OF THE INQUIRIES				
	Complaints Unfounded After an Inquiry	Complaints That Led to a Reprimand ^a	Complaints That led to a Recommendation of Destitution	Others ^b	Complaints Under Inquiry ^c
1979-1980		1			
1980-1981					
1981-1982	1				
1982-1983	1				
1983-1984					
1984-1985	2	2			
1985-1986	2				
1986-1987	1	1			
1987-1988	2			1	
1988-1989		3			
1989-1990		2		3	
1990-1991	1	1			
1991-1992	1	1			
1992-1993					
1993-1994	13	6			
1994-1995	1	1		1	
1995-1996	3	2		2	
1996-1997		1	1		
1997-1998	1	9			
1998-1999					2
1999-2000	1				1
2000-2001					1
TOTAL	30	30	1	7	4

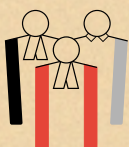
a. The 30 complaints gave rise to 19 reprimands.

b. These are files that were closed following the retirement or resignation of the judge and one case in which the Council took note of the Inquiry Committee's report.

c. Three committees were set up to inquire the four complaints.

APPENDIX 8 Regional Origin of Complaints

Regional Origin	Number
Abitibi-Témiscamingue	1
Bas-Saint-Laurent	1
Capitale-Nationale	12
Centre-du-Québec	2
Chaudière-Appalaches	3
Côte-Nord	0
Estrie	2
Gaspésie—Îles-de-la-Madeleine	1
Lanaudière	1
Laurentides	1
Laval	3
Mauricie	1
Montérégie	6
Montréal	23
Nord du Québec	0
Outaouais	2
Saguenay—Lac-Saint-Jean	0
TOTAL	59



Conseil de
la magistrature
du Québec