# Applied Judicial Ethics

PIERRE NOREAU EMMANUELLE BERNHEIM

THIRD EDITION – 2013

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Pre-publication cataloguing information for Bibliothèque et Archives nationales du Québec and Library and Archives Canada

Noreau, Pierre, 1958-

Applied Judicial Ethics

Third Edition.

ISBN 978-2-89689-218-1

1. Juges – Judicial Ethics – Québec (Province). 2. Processus judiciaire – Québec (Province). 3. Procédure (Droit) – Québec (Province). I. Bernheim, Emmanuelle, 1976 –. II. Titre.

KEQ154.N67 2013 174'.309714 C2013-942124-6

Coordination:
Esther Boivin

Cover and book design:
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Layout:
Alphatek

Canada

We acknowledge the financial support of the Government of Canada through the Canada Book Fund at Canadian Heritage

Québec

Gouvernement du Québec
Programme de crédit d'impôt pour l'édition de livres
Gestion SODEC



Legal Deposit – 3rd quarter 2014
Bibliothèque et archives nationales du Québec
Library and Archives Canada

ISBN 978-2-89689-218-1

Printed in Canada

# PREFACE

One of the mandates of the Conseil de la magistrature du Québec, now in its 35th year of existence, is to examine citizens' complaints about the behaviour of judges in the province. Fulfilling this important mission is an expression of the Conseil's raison d'être: ***earning the public's trust.***

Many judicial ethics rulings have been handed down. Through the complaints process, the Conseil rules on what constitutes fair and appropriate conduct for judges. The resulting ethical standards evolve constantly to reflect changing social norms. Nothing is ever set in stone: what was acceptable in the past may no longer be so today.

Conseil de la Magistrature members are expected to exhibit a high degree of discernment and sensitivity to the values that shape our society. If we were to choose three words to summarize the values embodied by the judiciary they would be "independence," "impartiality" and "integrity." The meaning of these values must be interpreted in the light of society's expectations, each and every time the Conseil investigates a complaint.

Citizens rightly hold judges to a high standard, as they do others whose roles entail important responsibilities. It is incumbent on every individual judge to behave, both in public and in private, in a fashion compatible with the values of the judiciary, the broader justice system and society as a whole.

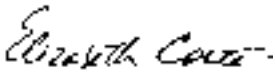
When a citizen files a complaint with the Conseil concerning behaviour they consider unfitting of the abovementioned values, it is the Conseil's job to set a standard of acceptable behaviour. The *Judicial Code of Ethics* and the *Code of Ethics for Municipal Judges of Québec* do not set out an exhaustive list of acceptable or objectionable behaviours. For this reason it is critical that the Conseil's decisions be published to ensure that judges and citizens alike have a clear sense of the standards that must guide judges' actions.

As this is a task of the highest importance, the Conseil de la Magistrature has developed numerous tools including its annual report, website and agreement with Société québécoise d'information juridique (SOQUIJ).

By publishing *Applied Judicial Ethics* and making it freely available online, the Conseil aims to keep judges, citizens and researchers informed on its work and provide a roadmap of judges' ethical obligations. The book's value as an educational resource is beyond question.

The third edition summarizes a multitude of rulings from both the Conseil and the courts. While some are older and others more recent, all are of great significance with regard to judicial ethics. This latest edition of *Applied Judicial Ethics,* with its new look and user-friendly structure, is designed both to transmit information and to provide the Canadian and international legal communities with a singular reference on judicial ethics.

I would like to thank the members of the Conseil de la magistrature, whose reflections over the last five years have fuelled the tireless and professional work of professors Noreau and Bernheim in writing this book. We owe the authors, and the staff of the Conseil de la magistrature's Secretariat who assisted them, a great debt of gratitude.



**Élizabeth Corte**
Chief Judge of the Court of Québec

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## Preliminary Chapter



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# Code, Decision and Annotation: Organizing Principles

The Conseil de la magistrature du Québec has received and examined more than 2,000 complaints since it was created.[1] Appendix 1 contains a description of the steps that guide the processing of complaints regarding judicial ethics.[2] This book offers the reader the result of a thematic analysis of about 805 decisions delivered since 1980 (703 post-examination reports and 102 post-inquiry reports). Many complaints did not actually fall under ethics, as is often the case with other disciplinary bodies. Some were applications for review or simply complaints that, on the face of it, contained no facts likely to demonstrate the existence of breaches of ethics. In these cases the Conseil informs the plaintiff without further investigation. The complaints we read and analysed are those that, over the last 35 years, gave rise to more sophisticated decisions.

Writing an annotated Code of Judicial Ethics predictably implies defining a certain number of prior parameters. While reading the decisions, section by section, is inevitable, other choices had to be made that gradually gave rise to a general approach to the Conseil's decisions.

We wish to recall that the Conseil de la magistrature has not one but two codes of ethics: one for full-time judges and another for part-time municipal judges (see Appendix 4). Their content is quite similar so we did not consider it useful to divide decisions according to whether they concerned full-time or part-time judges. We would further note that decisions made by the Conseil hold for all judges subject to its jurisdiction.

1. For details, see the statistics kept by Conseil de la magistrature du Québec: Results from the Examination Stage (Conseil website): <http://www.conseildelamagistrature.qc.ca/examen_conseil_magistrature_du_quebec.php>, consulted May 31, 2013.
2. Text from the *Complaints Process: How?* Page (Conseil website): <http://www.conseildelamagistrature.qc.ca/porter_plainte_conseil_magistrature_du_quebec.php?langue=en>, consulted April 23, 2014.

After a brief exploratory study of the decisions we were able to make certain observations. The most important is that the members of the Conseil and the inquiry committees entrusted with processing complaints generally worked in a straightforward and inductive manner. We therefore generally avoided an interpretative reading of the Code, and, as much as possible, as the complaints lodged with the Conseil were examined according to their factual reality without falling into a rigid formalism that would have undermined the value of the exercise and of ethical requirements. In this way, the Conseil was able to avoid qualifying the objects and situations the Code refers to in too restrictive a manner. In so doing, it also avoided overcodifying ethical standards. This general trend guided our study of the Conseil's decisions. Instead of trying to set general principles applicable to each section, we decided to focus our reading of these decisions essentially on defining certain typical, frequently encountered situations while referring to each section of the Code.[3]

More specifically we systematically applied three rules to our reading of the Conseil's decisions. In all cases we tried to:

- provide an accurate account of the decisions made by the Conseil and its committees, as well as by courts of general jurisdiction
- suggest a coherent reading of all decisions
- provide a practical reference book

## Faithfulness to the decisions made by the Conseil and its inquiry committees

Of course these principles required subsequent choices, which were sometimes incidental, sometimes important. The decision to provide an accurate account of all the decisions made by the Conseil therefore implied many other choices. It required that we consider on the same level the decisions made by both the Conseil and its inquiry committees, and that we include these decisions in this annotated Code, whatever their conclusions and regardless of whether these complaints had been considered justified or not. Moreover we often quoted the *obiter dicta* found in some decisions when they were likely to shed light on certain aspects of judicial ethics.

3. This approach has also been taken by France's Conseil supérieur de la magistrature, which decided to abandon references to the *Code de déontologie* of 1959 in favour of a more inductive perspective which would restore the case law component to judicial ethics.

Sometimes we have also indicated the views of minority members of the inquiry committees when their reasons were likely to guide subsequent decisions. In other cases, it became clear that some of these decisions were of no special interest for our project. We therefore left out decisions that did not provide any content conducive to annotation, as well as decisions on anecdotal situations with little social or historical interest.

## Coherence among decisions

Though we wanted to ensure coherence among the decisions delivered over the last three decades, we had to acknowledge the fact that decisions were often made according to the specific characteristics of each case and therefore were not always governed by the mutual adjustment mechanism of jurisprudence. Clearly, this situation gave rise to numerous consequences. Since the number of decisions delivered by the Conseil is rather small compared to that of the courts of general jurisdiction, some decisions refer to atypical and unique situations, which diminishes the strength of established precedents. Only the Conseil's future activity will help offset these weaknesses. On the other hand, some more commonly encountered situations sometimes gave rise to an unsystematic analysis. Other situations were sometimes examined according to one specific section of the Code and sometimes according to another one. We therefore tried to set the reference standard the Conseil most often applied in equivalent situations. In still other cases, committee members tended to examine some situations by referring to several sections at a time without specifying which facts related to which section. Again we had to identify the section the Conseil referred to most often and group under this section all the listed cases and findings of complaints that related the most. In some cases we also referred to other sections of the Code as needed. We did the same with apparently contradictory or atypical decisions. In these cases the author added a note indicating the particular nature of these decisions.

One might assume that this work will help to gradually tighten references to the sections of the Code and support more systematic analysis. On the other hand, some situations may long require referral to many sections at once. This is the case of certain typical situations (like the use of humour or threats) that have often been simultaneously examined under sections 2 (integrity, dignity, honour) and 8 (reserve, courtesy, calm). Therefore we have gathered these cases in a specific chapter of the book.

### A practical reference book

Our purpose was to provide a practical reference book that would be useful to the members of the Conseil and its committees as well as to judges, citizens, researchers and practitioners. This specific purpose contributed the most to the way the topics related to each section of the Code are divided. Given that judicial ethics situations are first and foremost dealt with empirically, we have divided the topics according to how the Conseil itself qualified the facts. We have also taken a highly empirical approach to the decisions while avoiding a theoretical or "aesthetic" perspective as much as possible. The latter is more abstract and sometimes more satisfying for the mind but would have led to "overcodification"—something the Conseil has so far succeeded in avoiding while at the same time sidestepping the risks of a sterile and auto-referential formalism with respect to Québec judicial ethics.

The only time we yielded to the temptation to apply some degree of systematization is when the Conseil's decisions reflected an attempt at organizing and distinguishing between cases. Therefore, whenever possible given the present state of the Conseil's decisions, we have tried to distinguish the following categories for each section or specific duty: "General Principles" and "Scope of Application."

We believe these categories will help the reader understand the content of the sections of the Code. For instance, in the case of Section 8 which provides that "in public, the judge should act in a reserved, serene and courteous manner, "we have tried to reproduce the general principles and scope of application of these ethical duties (*reserve, serenity* and *courteousness*) whenever they are reflected in the Conseil's or its committees' decisions. That said, only the Conseil's continued interpretation efforts will, in the long run, help fill in the gaps left by certain missing definitions. This longer-term work will make it possible to more systematically establish the general principles and scope of application of certain sections or duties. In this case, we avoided taking the place of the authorities responsible for this ongoing and demanding work.

Moreover, since many sections are subdivided according to specific duties (for instance, Section 5 explicitly refers to the judge's duty to be *impartial* and *objective,* and Section 2 to the duties of *integrity, dignity* and *honour*), we attempted to distinguish four situations according to the cases examined by the Conseil since 1980. All four situations are topics which, with regard to the scope of ethical duty, are likely to help pinpoint the precedents established by the Conseil:

1. Remarks made while exercising judicial functions
2. Conduct while exercising judicial functions
3. Remarks made in public
4. Conduct in public

Finally, for each of these situations and according to the existing decisions, we attempted to distinguish three topics that take into account how the Conseil addresses the complaints against a judge:

1. Breaches of duty
2. Insufficient seriousness of allegations
3. Unfounded complaints[4]

All situations encountered by the Conseil until now are listed under one of these headings. For example, a quick glance at the table of contents shows that in matters related to *independence of the judiciary,* the following situations were considered breaches of duty: *real or apparent conflict of interests, publishing articles of a political nature* and *participation in an advertising message*. These are just a few examples.[5]

Of course there are some exceptions to this general framework. For example, Section 1 of the Code which states, "The judge should render justice within the framework of the law "is subdivided a bit differently than the other sections. We also attempted as much as possible to respect these thematic subdivisions, which have proven to be valuable and convenient points of reference for the reader.

4. Certain complaints, though deemed not important or serious enough to merit an inquiry, are listed in the section on "Breaches of duty." In some cases the actions of the judge were ruled to be incompatible with his or her ethical responsibilities, but were excused by certain particular circumstances of the case. Most of the cases listed under "Insufficient seriousness of allegations" were deemed insufficiently serious *only for the particular acts at hand.*

5. It is plausible that, as the Conseil studies more cases in the coming years, a different categorization scheme will be developed. Categories might, for example, be established based on types of situations, rather than their seriousness, as is the case in the current edition. Were this the case, a given situation—for example, "Participation in an advertising message"—could be deemed a "breach of duty" *or* "unfounded complaint" on such grounds as whether the participation was voluntary. As the total number of cases grows, it could lead in the long term to a new hierarchy of categories. The current thematic scheme we have adopted here is, for now, adequate for our purposes and for the wide range of situations encountered by the Conseil. The majority of complaints filed with the Conseil to date are substantially different matters; when they are comparable, they often rate differently in terms of their relative seriousness.

**An evolving work**

Readers of this reference work will notice that judicial ethics—like all fields of law—is constantly evolving. A comparative reading with previous decisions shows the growing diversity of the issues and situations submitted to the Conseil. These changes indicate that situations likely to raise ethical problems closely follow the public's sensitivity to new issues and explain why our book designed for the legal community and the general public approaches each section of the Code differently. Some sections are nearly never used as ethical references, e.g., Section 3 regarding professional competence and continuous training and Section 9 establishing the authority of the chief judge of the Court of Québec. Similarly, some sections have more or less stopped evolving, given the frequency with which the duties involved are referred to in complaints received by the Conseil.

Efforts to interpret the *Judicial Code of Ethics* have thus far been irregular, according to the nature of the cases submitted to the Conseil de la magistrature. It is inevitable that in the future the Conseil will fill the gaps in the typology we have developed for the purpose of this book. It is also foreseeable that, over the long run, certain topic groupings will be changed, added or removed in order to reflect changes in the situations before the Conseil and the decisions it delivers.

The third edition of Applied Judicial Ethics is being released to coincide with a major overhaul of the Conseil de la magistrature website.[6] One important change is that decisions will now be located in a central directory without regard to jurisdiction. The "Decisions" tab now has a dropdown menu with three pages. The "Hearing Schedule" page lists pending cases; the other two pages list "Inquiry Reports" and "Examination Reports." Website users can now follow the progress of a complaint through the system, in real time. A single case number (e.g., 2011 CMQC 79) will identify all decisions made on a complaint, whether in an examination or an inquiry, as well as any related decisions handed down by administrative courts. We have thus decided in this work to list Conseil case numbers alongside case law references.

6. <http://www.conseildelamagistrature.qc.ca/index.php>, consulted July 25, 2013.

This work is published in both paper and electronic formats, available at www.conseildelamagistrature.qc.ca. This offers important advantages, especially with regard to the indexing of decisions. A thematic index is also included in the paper version that will make it easier to consult the book and find the various problems submitted to the Conseil. The current version is up-to-date as of December 31, 2012.

### The *Courts of Justice Act* and constitutional provisions related to judicial ethics

The first chapters of this book offer a reading of the *Courts of Justice Act* (RSQ c T-16), which is partially reproduced in Appendix 2. This is the basis for the Conseil's jurisdiction. The judicial interpretation of the relevant sections of the CJA was developed mainly within the scope of the preliminary exceptions raised by respondent judges challenging the application of some provisions. Provisions of the *Courts of Justice Act* and their interpretation successively concern the scope and objectives of the Code, the Conseil's disciplinary jurisdiction, the procedure for submitting complaints, the examination and inquiry procedure, the procedural protections given to judges and the impact of sanctions (reprimand and removal) for any ethical breach.

**Acknowledgements**

A work like *Applied Judicial Ethics* cannot be successfully completed without the help of many people. The first two editions benefited from the painstaking and determined efforts of Chantal Roberge, who through her questions and suggestions helped develop the overall structure of the book. For this third edition, Professor Emmanuelle Bernheim played the same role as for the second edition, acting as co-author.

We also wish to thank André Ouimet, Secretary of the Conseil de la magistrature du Québec, whose constant support was instrumental in the drafting this work and bringing it to a conclusion. We also thank the Conseil's administrative team, particularly Dominique R. Bouchard and Esther Boivin, and the staff of the Centre de recherche en droit public, particularly Sylvie Sylvestre.

Montreal, May 21, 2013

# Preliminary Chapter

## Parameters of judicial ethics

Within democratic societies the exercise of judicial power derives its legitimacy from citizens' confidence. Consent is the foundation of the democratic ideal. The force of the law depends not on the exercise of public power but rather on the sense of obligation felt by each and every one of us. For this reason citizens have extremely high expectations of the courts: in many cases they constitute their last resort against the arbitrary exercise of other forms of power and authority. Consequently, judicial activity is essential to democratic life. But this privilege puts each judge, and the judiciary as a whole, in a complex situation. Since it is the last resort against arbitrariness, justice should not itself become a place for the arbitrary exercise of power. Judges are acknowledged as having the power to resolve disputes and lay down limits to behaviours considered undesirable with regard to the law, the facts and the prevailing values of the time. But the exercise of this particular form of public power must also be subject to limits. There should be no absolute power.

In substantive law, establishing limits is the function of review and appellate bodies. As regards judges' daily activity, the *Judicial Code of Ethics* and the Conseil de la magistrature play this role. The Code and the Conseil provide the institutional space required for the internal oversight of judicial activity. They are essential to preserving the public's confidence in the courts, and their existence attests that no power is absolute. The development of judicial ethics makes it possible to constantly adjust judges' conduct to the public's expectations and to the values we collectively share. The Code and the Conseil are reminders that judges are also social actors, and their conduct—like that of any other public office holder—must conform to their responsibility.

In law and the justice system generally, judges' ongoing reflection on their practice is necessary to ensure equality before the legal system.[7] To achieve this we must first have equality before the law, which is constitutionally enshrined: every citizen enjoys equal rights without discrimination based on social condition, religion, sex, origin, etc. This is a negative equality, in that it prohibits the government from treating citizens differently based on particular distinctions. Equality before the law refers to equal treatment to be afforded all legal subjects before the institutions empowered to enforce the law. This simply means "the consistent application of the law generally, a principle inherent in all legal systems."[8] Consistency, however, goes beyond the consistent and stable interpretation of the rule of law to

7. On the distinction between "equality in law" and "equality before the law" see Hans Kelsen, *Théorie pure du droit,* Paris, Dalloz, 1962, pp. 189-190. Kelsen classifies both precepts as "political rights."

8. Ibid. p. 190. This concern was explicitly discussed by Locke in his discussion of the judiciary, where he invokes the impartiality of third-party arbitrators

encompass how citizens are treated by the courts. Standards of judicial ethics thus come under this imperative. They are not moral standards *per se,* setting the parameters of a given "good" or "bad," but rather standards governing the actions of members of an institution.

But judicial ethics cannot be a reference set forever. On the contrary, it must meet the requirements and values of the society in which judges are called on to act. The *Judicial Code of Ethics* in itself is nothing more than a statement of principles. Its concrete meaning and flexibility derive from the activity of the Conseil de la magistrature because, as Professor Patrick Glenn pointed out well before us, the normative force of the *Judicial Code of Ethics* for Québec judges lies essentially in the interpretive activity of the Conseil de la magistrature. The Conseil's activity and role in realizing ethical standards are also, in this sense, the foundation of a dynamic interpretation of the ethical requirement.

Professor Glenn reemphasizes that disciplinary decisions exemplify in a particular case the standard of conduct indicated in the section of the Code.[9] Consequently, an accurate understanding of ethical duties implies an *in situ* reading of the standards provided in the Code. This view is shared by the members of an inquiry committee of the Conseil, who stress in a frequently cited decision that the inquiry committee's decisions illustrate and express the desirable and realistic standard arising [. . .] from the Code and its spirit.[10]

We mentioned above that ethical questioning is an expression of the democratic ideal. While our concept of modern democracy was originally built on the separation of competing powers, with checks and balances, it later became associated with the idea of equality of opportunity and the protection of the rights of minorities.

For some thirty years the accountability and transparency of institutions has been an additional requirement of democracy. This broadening of the notion of equality explains citizens' growing interest in how public bodies are governed. The exercise of vested powers is increasingly seen as impermanent and subject to new parameters.

9. "Indépendance et déontologie judiciaire" (1995) 55 R. du B. 2

10. Bergeron and Pagé (Small Claims Division), 2000 CMQC 48

Ethics considerations are part of this same movement. Authority (or the right to exclusively exercise a given office) is no longer viewed as an objective, or abstract, necessity. As we have said, authority must now obtain the support of those upon whom it is exercised. This new requirement applies not only to public office holders but to all social institutions, including businesses.

Nearly two centuries ago Tocqueville stated that the spirit of freedom, once it has crossed over into one or two realms of social activity, will invariably cross over into all others. The same could be said of current expectations of professional ethics. There is no question they will cross over into all institutions; the justice system is no exception.

Specific objectives for ethical conduct are both individual and collective. On the individual level the question of ethics requires that judges have the capacity to question their own conduct, incorporating societal expectations in their frame of reference. Collectively, it presupposes a dialogue within the society in question on the scope and limits of judges' activities. The Conseil de la magistrature's role is to steer this reflection and, over time, develop the standards that will guide judges' conduct.

But this must not be an abstract process. It exists rather at the interface between legitimacy and transparency, where all public institutions operate. It also implies a form of agreement between social expectations and the imperatives of the justice system. Finally, ethical questions require a reflection on the delicate balance between habits and established practice, on the one hand, and the requirements of contemporary justice practice on the other. Our reflections here focus on the fault lines running through the field of judicial ethics.

## Judicial ethics: Between the imperatives of legitimacy and transparency

Addressing the matter at hand requires a new perspective. From the beginning, organized justice has always been shrouded in mystery and plagued by questions. The wearing of the toga, courtroom decorum, an abstract and often abstruse vocabulary and even courthouse architecture have all served to reinforce the image of an institution at odds with the imperatives of everyday life. Similarly, the institution's hermeticism could be taken as a constituent part of its nature and function: the desire for secrecy was very much part of the conditions needed to protect it. In the past other institutions, from religions to the army to social clubs, were similarly veiled in secrecy; secrecy was what gave these institutions their stability.

The emergence of the ethics movement altered this protective, even defensive, impulse. Its underlying principle is that institutional legitimacy is based on transparency. The longstanding idea of the honour of institutions could no longer be protected by the silence of the group when faced with questionable actions by its members. This change represented more than just the emergence of a new ethical consciousness; it reflected a movement toward greater transparency in social life generally. And, by extension, this affected individual holders of public office. Exposing and remediating situations liable to jeopardize citizens' confidence in institutions became a precondition of institutional legitimacy. This imperative came to take precedence over the temptation to remain silent. Justice system activities are themselves a public activity, and protecting them required an equally public initiative. The justice system, then, found its legitimacy in the tension between the institution's public legitimacy and the reflex to be discreet, and it leaned toward the former.

This new perspective required an adjustment to the practice of judicial ethics. In judicial matters, ethical standards are designed more to protect the public than to protect judges. Further, the need to preserve the "image of judges" must not be taken at face value. If the image of judges is to be preserved, it is not done for its own sake but rather because the institution's legitimacy is founded on public trust. And this trust is based largely on judges' ability to adapt day-to-day court operations to the changing needs of the citizens who appear before them. Very few people relish the idea of going to court, but everyone hopes that if they must, they can at least be assured the court will be presided over by a skilled, impartial, independent and honest judge. Even once it is gained, this public trust cannot be counted on indefinitely; it must be nurtured by a constantly evolving institution and a degree of self-questioning. A delicate balance must be established wherein protecting the public becomes a precondition of protecting the judiciary.

Every situation submitted for ethical review involves two other variables. Because public trust is at stake with every decision, the Conseil must always strike a balance between proportionality and representativity. Judicial ethics is an ongoing process. Oversight is based on the principle of proportionality: it must assess how seriously a given situation has breached the community's expectations. Clearly, we must constantly refer to previous decisions. On the scale of exemplarity, on the other hand, there can be situations where otherwise unremarkable behaviours take on a new social resonance, which justifies a reassessment of their seriousness. While filing a complaint is generally justified by the incompatibility of a judge's behaviours or attitudes

with society's expectations, the judicial ethics review process is a function of the values a society embraces at a given moment in time. Each particular situation must be assessed based on empirical data, and while certain behaviours criticized in the past may seem acceptable today, others may be censured more harshly. Exemplarity here trumps proportionality and a new standard is set.

Contemporary judicial ethics must be situated within a precise socio-historical context. Our activities and institutions are characterized by frequent interaction between the public and private spheres, and it is easy to see how this places constraints on our personal lives. Hence the Conseil's interest not only in judges' professional activities but also in their behaviour as members of society. It is not a matter of infringing on a judge's right to a private life: inquiries to date on these matters have amply demonstrated that the public accepts that judges are entitled to their private lives, which are subject to the same vagaries as any other citizen. It is, however, expected that any behaviour deemed questionable or counter to the duties of a specific public office be sanctioned more harshly, at least socially and professionally. Underlying these expectations is the notion that the office of judge, while it does not presuppose a particular way of life, does demand a degree of exemplarity. This is why so much discussion of judicial ethics hinges on the notion of "reserve." Exercising the duty of reserve will take a great number of new forms in the future, notably with the spread of social media. These expectations extend also to the activities of the courts: audio recordings of discussions between judges, Court staff and litigant parties are but one example. And while the public nature of the justice system has always been one of its intrinsic features, it has never been more extensively guaranteed than today. It follows that a judge can no longer preside over a hearing with the same authoritarian certitude as in the distant past, when the legitimacy conferred by judges' status carried enough weight to justify or even dissimulate their behaviour. As the idea of a recognized, vested authority gradually gives way to a more dynamic view of the judiciary, legitimacy is no longer tied exclusively to the exercise of an effective authority but rather to behaviour endorsed by those upon whom this authority is exercised. At the very least, what is said and done in the courts should not be of a nature to inspire the disapproval of observers. Given the superposition of the private and public spheres, certain duties have become more important than they were in the past, such as courtesy and serenity. But these requirements clearly show how judicial ethics oversight must straddle two notions in constant flux: the need to exercise authority and to behave in a socially appropriate manner.

### Harmonizing social expectations and the work of the justice system

By extension, the work of judges in court and in society at large is situated at the meeting point of two imperatives: the need to exercise reserve and the need to maintain a constant grasp on the real world. In the first instance, judges are bound by a certain modesty which calls for behaviour unlikely to solicit debate or discussion. This is the practical reason guiding judges' actions. It may promote a degree of retreat from daily life, and a certain distance from the daily reality of other citizens. But while this position may be both prudent and reassuring, it has the effect of removing judges from the rest of society. It alienates judges, distancing them from the abstract "reasonable and well-informed individual" often used to guide judiciary decisions. In striving to attain a degree of objectivity in their own assessment of reality, however, judges require a profound knowledge of the society in question and, by extension, an intimate and uninterrupted relationship with it. Sometimes this lack of contact with reality can create a sense of incomprehension among laypersons with regard to the holders of public office. There is inevitably a tension between judges' duty of reserve and their obligation to maintain close ties with the society that has assigned it the role of public adjudicator.

The same tension separates institutional culture from current social values. Every institution develops its own culture, and in so doing may close itself off from society, retreating into its own procedures. More so than other institutions, the justice system is prone to such withdrawal. As in many other institutions, the feeling of fulfilling a unique mission and facing shared challenges cultivates a form of solidarity liable to breed complacency among members. The makeup of the Conseil de la magistrature, with certain members who are not working judges, and the judicial ethics process itself, offer a solution to this tension between *esprit de corps* and the ability to critically review judges' behaviour. The judicial ethics review process strives to strike a balance between the inherent requirements of the judicial function and the social expectations vis-à-vis the judicial system generally and judges specifically.

In other words, judicial ethics practice is a combination of the internal perspective of judges and the external perspective of citizens. Though a practical understanding of how the justice system works is indispensable, it must not become an excuse for complacency. The same can be said of the role of evaluating complaints from a judicial ethics standpoint: it is located at the meeting point between the institution and society at large, and as such represents an ever-evolving relationship.

What remains to be found is an anchor, a shared reference that can reconcile internal and external perspectives on judicial actions. Here, another tension exists between the moral, disciplinary and institutional aspects of ethics. Depending on the perspective adopted, ethics practice can be understood as a procedure to assess judges' probity (the moral perspective); as a mechanism to sanction judges for inappropriate behaviour (the disciplinary perspective); or as an ongoing process to keep the justice system in line with societal expectations (the institutional perspective). The third of these, the institutional perspective, best describes the Québec approach to judicial ethics.

Studies have established that, overall, citizens expect judges to adhere to a higher standard of morality than other citizens. This can make it tempting to evaluate judges' behaviour from a moral perspective. Such an approach is based on the notion of individual betterment, with judges being held up as "more perfect" individuals than others. While this perspective is sometimes adopted in ethics reviews, it tends to accord excessive weight to the duty of integrity at the expense of the no less essential duties of impartiality and independence. More problematic still is this perspective's implication that we must expect judges to display attitudes removed from normal human behaviour. This would suggest judges are somehow removed from the lot of "normal" people and the difficulties and contingencies of everyday life. In this way a certain notion of "perfection" suggests that judges must not know, or must overlook, a part of what forms the basis of daily life of the citizens they sit in judgement of. And who among us, living in an imperfect world in which we sometimes find ourselves before the courts, would wish to be judged by a perfect being, a demiurge, a saint—or a machine? While the morality of a given behaviour may periodically lead to a complaint, such cases represent only a very small portion of the judicial ethics cases, and constitute an incidental part of the grounds for the decisions delivered by the Conseil de la magistrature.

Judicial ethics can also be viewed from a disciplinary perspective: this appears to be the norm in the American tradition. The duties and sanctions imposed on judges are strictly codified and judges implicitly defined as members of a particular profession. Standard sanctions are meted out according to strict, and often highly detailed and restrictive, definitions of the duties of judges. The list of judges' duties grows ever longer as judicial ethics bodies and the courts are faced with new situations. However, while it is true that certain facets of judges' activities can be assimilated into a disciplinary process, this perspective has the disadvantage of making the judges against whom complaints are filed the main subject of judicial ethics activity. While, by comparison and by extension, we have frequently defined the field of judicial ethics as a subfield of disciplinary law, over time judicial ethics review has emerged as a fully independent field of law, with its own particular features and objectives.

A quick overview of Conseil de la magistrature du Québec decisions shows that the main aims of judicial ethics are prevention, education and pedagogy. Rather than focusing on simply punishing offenders for inappropriate behaviour, the goal is to ensure the behaviour of judges is constantly in line with the public's expectations.

> *[TRANSLATION]** "More generally [. . .] the judicial ethics process must also pursue educational and preventive objectives for judges. By setting standards of behaviour that judges must comply with in circumstances like those that gave rise to the initial complaint, the public inquiry and resulting report are first of all a means of regulating how the judiciary operates and, secondly, a mechanism for encouraging all judges to adjust their behaviour based on these standards."[11]

Judicial ethics practice, then, is not so much designed to evaluate the morality of the behaviour of specific judges but rather to reflect on public expectations of judges in general. In essence, the institution uses the case of a particular member to improve the institution as a whole. Further, the intent of the ethics process is less to "make an example" of those who fall short, or hold judges to a higher moral standard than their fellow citizens, but rather to protect the public and demonstrate the judiciary's constant desire to keep up with changing social expectations. The judiciary as a whole is the true target of judicial ethics activities. Québec's judicial ethics activities are thus essentially inspired by the institutional approach. The Conseil's decisions are public, and therefore meet the requirement of

* Please note that, for the most part, the citations herein are English translations of rulings originally drafted in French.

11. Pierre Marois, Esq. on behalf of Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 44 and 46.

transparency expected of public institutions today. And as its decisions are public, judicial ethics is a collective activity.

This state of affairs also explains how, despite what an imperfect understanding of judicial ethics practice might lead one to believe, the true value of the Conseil's decisions resides not strictly in imposing a suitable sanction (reprimand or removal), but in the arguments made by its various committees in every case it studies. By this means an ethical continuum is established in the grey area between dismissing a complaint and demanding removal of a judge. Over time, the Conseil must gradually standardize decisions. This process is part of the institutional tradition of judicial ethics, as is this third edition of *Applied Judicial Ethics*.

**The new parameters of theoretical and practical judicial ethics**

For the same reason, judicial ethics cannot be deployed without considering social standards, as we see through specific examples. A growing number of judicial ethics decisions touch on matters of civility, the subject of a dedicated chapter in this work. This book spans both ends of the spectrum, with situations where judges address others in too familiar a tone, and others where they come across as too indifferent to the reality of citizens who appear before them. These situations again show that, while the position of authority conferred on judges cannot justify their acting without due consideration for current social norms, judges face a constant balancing act between formality and familiarity. While, in court, decorum is still viewed as a necessity, and it is the judge's role to enforce this decorum (formality), many people appearing before the courts have complained that the judge came across as insensitive to their circumstances. A fully formalized approach sends the message that the justice system functions entirely according to its own frame of reference. It soon becomes incomprehensible to the uninitiated. Issues of gender, disabilities, social class and ethnic origin are regularly mentioned in Conseil decisions—an indication of the sensitivity judges are expected to show toward individuals and communities alike. On the other hand, many complaints focus on inappropriate humour or excessive familiarity, suggesting that the justice system does not always live up to the standards of seriousness associated with it.

These competing requirements hint at the difficulties facing judges today, while raising the larger question of the accessibility of the justice system. There are several examples of sensitive situations encountered by judges, where they are placed outside the comfort zone of procedural law where they generally operate. The typical situation—a civil court proceeding with two opposing parties represented by lawyers—no longer perfectly matches the realities of the contemporary justice system. Current procedural guidelines are not enough to protect judges from ethical misconduct.

Citizens choosing to represent themselves in court; citizens taking on large, faceless corporate entities; disputes between people of different cultural backgrounds; and the growing popularity of judicial conciliation are all examples of situations in which judges may have to adopt particular attitudes. They nearly always require the judge's personalized involvement, an indispensable part of giving the justice system a human face and putting parties on an equal footing. This involvement is even becoming a precondition to making the justice system accessible, while also presupposing the development of new ways of acting and communicating—even using everyday language—that may take judges beyond standard formalized, professionalized models. For the justice system to be truly accessible judges must strike a new balance between formality and familiarity, at the interface where judicial ethics issues tend to arise.

This tension reflects the diversity of perceptions of the justice system, depending on whether the parties concerned are individuals, institutions, or corporations. While the legal and financial aspects often take precedence in dealings with corporations and institutions, in cases with individuals, it is the personal, affective aspects that come to the fore. It is imperative that judges take this asymmetry into account, as it is often the source of dissatisfaction with judges.

Today judges act under the scrutiny of those who appear before them in court. These citizens cannot be considered a neutral aspect of a problem, or a mere "client," so long as the activity of judges takes place in a more transparent society based on ideals of individual autonomy and public participation. The desire to be heard often wins out over the desire to be right. At the very least, citizen complaints often centre on their perception of the justice system, even when the complaint itself concerns the acts of judges in society. This perspective opens the door to a great many questions. What do we expect of judges today? What exactly is justice?

May 21, 2013

# I Judicial Ethics: Principles and Foundations

> "The independence of the judiciary is an important principle. It is not, however, absolute. Independence alone cannot pre-empt the review of a judge's conduct. And judges' independence does not license behaviours that might affect the integrity of the judiciary as a whole. [. . .]
>
> The notions of independence and judicial ethics are interdependent. Without ethics, independence cannot be justified. And without independence, our current judicial ethics would be inadequate. Both are therefore essential and each mutually reinforces the other."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 82–84, quoting Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11 and H. Patrick Glenn, "Indépendance et déontologie judiciaires" (1995) 55 *R. du B.* 295, 303–304

SEE ALSO:

Conseil de la magistrature du Québec v. DuBois, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, no. 33973), par. 12

> "[T]he goal of judicial ethics is to ensure the integrity of judicial power."
>
> G.R. and Lafond, CM-8-95-74 (inquiry)

> "Public interest is the objective of the judicial ethics process."
>
> Gagnon and Drouin, CM-8-94-17 (inquiry)

## 1. Objectives of judicial ethics

> "Specifically, the judicial ethics process must help make judges against whom complaints have been made more aware of their duties, by both examining whether the alleged conduct violates the judiciary standards and making judges accountable for their actions. The judicial review process further impacts these judges by encouraging them to model future conduct on established standards. [. . .]
>
> More generally [. . .] the judicial ethics process must also pursue pedagogical and preventive objectives with regard to the judges. By setting standards of behaviour that judges must comply with in circumstances like those that gave rise to the initial complaint, the public inquiry and resulting report are first a means of regulating the judiciary and, secondly, a mechanism for encouraging all judges to bring their behaviour in line with these standards."
>
> Pierre Marois, Esq. on behalf of Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3 (May 2, 2012), par. 44 and 46.

> "'The precious public trust in the justice system, which every judge must strive to preserve,' defines the contours and dictates the ultimate ends of the judicial ethics process."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 147

SEE ALSO: INQUIRY, PAGE 55.

> "[T]he primary purpose of ethics . . . is to prevent any violation and to maintain the public's confidence in the judicial institutions."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 110

> "Only when the words and actions of a judge call into question the integrity of the judiciary function itself [. . .] when there is an allegation that an abuse of independence of the judiciary by the judge threatens the integrity of the judiciary as a whole, does the judicial ethics process have its place."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 33, quoting Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 58

> Ethics aims essentially at "avoiding repeating an action or a gesture that should be considered as a breach of good judicial conduct in the broad sense."

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC)

SEE ALSO:

Lapointe and Ruffo, CM-8-88-37 (inquiry)

> "The aim of judicial ethics is to improve the judiciary as a whole, not to sanction individual judges."

2010 CMQC 55, par. 16 (examination)

> "In judicial ethics, complaints from a third party must be viewed first of all as an opportunity to define standards of conduct for judges, and to reaffirm the importance of adhering to these standards, in the best interest of justice, the judiciary and society."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 17 (inquiry)

> "Our judicial ethics system [. . .] does not keep files on the potentially inappropriate behaviours of its judges."

Dunn and Fauteux, CM-8-67 (Youth Division) (inquiry)

## 2. The judicial function and the judicial ethics framework

> "The cornerstones of the judicial ethics framework [. . .] are: 1) the judge's commitment to the law; 2) the judge's compliance with the established practices and ways of thinking of the judiciary; 3) the preservation of the judge's impartiality; and 4) the interdiction against using the prestige of his or her function for other ends than those it must serve."

Ruffo (Re), [2006] RJQ 26 (C.A.), 2005 QCCA 1197, par. 49, quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire,* Montréal, Wilson & Lafleur, 2000, p. 204.

> "By swearing an oath, judges promise to serve the ideal of justice, which is fundamental to democracy and the rule of law. They undertake to serve justice impartially and they formally agree to the legal relationship that binds them to the parties to legal proceedings subject to the authority of the courts."

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 45

> "Fundamentally, the ethical obligations of judges are independent of the formal regulations provided by the Code of Ethics. They are, in reality, a requirement of the judiciary function, a result of both the commitment judges make when they take an oath to acquit the duties of their office, and of the existence of obligations inherent to the office of judges."

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 44

> "[T]he Code of ethics is simply a reference framework."

> Since the ethical rules stated in the Judicial Code of Ethics are an indicative and non-exhaustive reference framework, "a judge is not only subject to the ten sections setting out" these rules. A judge's conduct may be appraised in the wider context of the *Courts of Justice Act*.

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

> The inquiry committee has the power to conclude, after an inquiry, that "the judge breached a non-codified ethical standard."

Gagnon and Drouin, CM-8-94-17 (inquiry)

### 3. Broad interpretation of judicial ethics principles

> "Ethics is in essence a general norm whose goals are educational, preventive rather than punitive. It is a guide so as to maintain the public's confidence in our judicial system and its independence."

Viau and Ruffo, CM-8-94-43(3) (inquiry), opinion of a single member

> The *Judicial Code of Ethics* plays an educational and preventive role regarding the conduct that a judge should adopt.

Bergeron and Pagé,2000 CMQC 48 (Small Claims Division) (inquiry)

> "[T]he Code of ethics is neither a list of fixed rules nor an enumeration of limits imposed on a judge's conduct beyond which what is not otherwise prohibited would become permitted. The Code is not a statement of punishable offences but rather a statement of objectives that should be pursued by each judge, in order to 'prevent any and all abuses and maintain public trust in the justice system.'"

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), quoting Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267. Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry), Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry), par. 12 and Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), par. 31

> The *Judicial Code of Ethics* does not dictate a specific conduct for the judge—which should be left to the judge's determination—but states more simply "a notion of what a judge is."

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry), par. 31, quoting Patrick Glenn, "Indépendance et déontologie judiciaire" (1995) 55 *R. du B.* 295, pp. 306–307

> "The function of the Code is to provide inspiration and education."

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry), par. 31, Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), par. 24, quoting Patrick Glenn, "Indépendance et déontologie judiciaire" (1995) 55 *R. du B.* 295, pp. 306–307

> Ethical rules do not prohibit specific actions but constitute norms of conduct which "are meant to aim for perfection."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 110

### 4. Ethical responsibilities of judges

> "The judicial function is absolutely unique."

> Because of the important powers they are entrusted with, "judges occupy 'a special place' in our society and must conform to the demands of this exceptional status." Judges "must be and must give the appearance of being an example of impartiality, independence and integrity.
>
> There is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary."
>
> Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 108, 111 and 112, quoting in particular Gerald L. Gall, *The Canadian Legal System,* Toronto, Carswell, 1977, p. 167

> "Judicial ethics rules constitute [. . .] an injunction to do better, not by imposing sanctions but by observing self-imposed constraints."
>
> Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 110

> "The responsibility for determining the behaviour that best reflects the requirements inherent in the duty [of reserve], and for adopting that behaviour, lies primarily with each judge, whose appointment is a sign of confidence in his or her personally."
>
> Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 106

> "Ethics demands that judges voluntarily adhere to the requirements of the duties they carry out."
>
> Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 254
>
> SEE ALSO:
>
> Charest and Cloutier, 2004 CMQC 18 (inquiry), par. 77, quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire,* Montréal, Wilson & Lafleur, 2000, pp. 203–204.

> Judicial ethics provides a framework within which judges may leave their personal mark. But judges also commit to protect and follow the law, adhere to the functioning and rationality typical of the judiciary, preserve its impartiality and not to "use the prestige of the judicial function for purposes other than those it should serve."
>
> Bouchard and Ruffo, 2001 CMQC 45 (inquiry), par. 179, quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire,* Montréal, Wilson & Lafleur, 2000, p. 204.

> "[F]irst and foremost, every judge is free to determine, and must take responsibility for, his/ her own conduct, particularly in order to avoid controversy or anything likely to undermine the image of justice. This responsibility belongs to judges and is not transferable. Judges cannot release themselves from it by going too easy on themselves or easing their conscience."
>
> Viau and Ruffo, CM-8-94-43(3) (inquiry), opinion of a single member.

> "A member of the judiciary who refuses to comply with ethical rules has no choice other than to leave it if he or she does not feel comfortable there."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

> The obligations judicial ethics places on judges are ongoing obligations.

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

### 5. Ethical responsibilities of the chief judge

> Under the *Courts of Justice Act,* the chief judge is the guardian of judicial ethics.

Viau and Ruffo, CM-8-94-43(3) (inquiry), majority

> It is up to the chief judge to ensure that the code of ethics is observed.

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

> Judges are not legally subject to administrative directives of an ethical nature that are issued by the chief judge under Section 96 of the *Courts of Justice Act.*

The chief judge "will assert him or herself only through moral influence on the judges of his or her court."

Ruffo v. Gobeil, [1989] RJQ 1943 (SC)

SEE ALSO: LA PLAINTE, PAGE 43.

### 6. Legal principles and judicial ethics

#### 6.1 Prescription

> "Note that the law provides no prescription on filing complaints [. . .]."

Charest v. Alary, 2008 CMQC 87 (10-7-2009), par. 20 (inquiry)

> "In ethical law, prescription as such is inoperative."

St. Germain v. Conseil de la magistrature du Québec, [1986] DLQ 223 (SC)

SEE ALSO:

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### 6.2 Principle of *minimis non curat prætor*

> As regards judicial ethics, the legislator chose to adopt the principle of *minimis non curat prætor,* meaning that cases that are below a certain level of importance will not be heard by the Court.

Chamard and Brunet, CM-8-62 (inquiry)

SEE ALSO: L'EXAMEN, PAGE 47.

### 6.3 Transposition of procedural rules

> "While the Court saw fit to insist that rules of criminal law evidence and procedure cannot be imported wholesale and unchanged into disciplinary law, the same certainly applies for judicial ethics, where the entire notion of a suit is nonexistent."

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 110

> The nonsuit rule, i.e., dismissal of a charge due to a total lack of evidence relating to an essential element of the offence, is a notion closely linked to penal and accusatory procedure. It is therefore not applicable to judicial ethics.

Ruffo (Re), [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 35

> Dismissal of a disciplinary procedure must be an exceptional circumstance reserved for cases where "the applicant demonstrates the existence of an irreparable damage that irremediably compromises either his or her right to present a full and complete defence, or the integrity of the justice system."

Ruffo (Re), [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 35

> "In principle, only people with firsthand knowledge of the relevant facts can establish them through testimony."

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 205

AUTHORS' NOTE

It has however been established that the inquiry committee may "accept evidence based on hearsay, provided that the rules of natural justice are complied with."

SEE ALSO: PRECEDURAL PROTECTIONS, PAGE 69.

# II Courts of Justice Act

THE COURTS OF JUSTICE ACT

# 1 The Conseil's Disciplinary Jurisdiction

## 1.1 FUNCTIONS OF THE CONSEIL

**256.** The functions of the council are:

*a)* to organize, in accordance with Chapter II of this part, refresher programs 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.

> "The *Courts of Justice Act* places two conditions on the Conseil's jurisdiction: it must have jurisdiction both on the person against whom the complaint is made and on the subject of the complaint, i.e., an alleged breach of judicial ethics."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 33, quoting Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 54, [2001] 2 SCR 3

> The Conseil de la magistrature was established "to fulfil two major functions, i.e., on the one hand to promote and control judicial ethics, and on the other hand to ensure that the conditions essential to independence of the judiciary are complied with."

Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA), par. 83

> "The Conseil de la magistrature must also play a proactive role in developing standards of conduct for judges [. . .]. Its decisions [. . .] are of great collective importance, as they provide the judicial function with a basic framework,

benefiting both the judiciary as an institution and the society it serves, which is the ultimate beneficiary of applicable rules of judicial ethics."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 21 and 106 (inquiry)

## 1.2 NATURE OF THE CONSEIL'S POWERS

> "With respect to judges, the Conseil fulfils functions absolutely comparable to those of the disciplinary committees of the different professions recognized by law."

Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA), par. 108

> "[A]s regards judicial ethics, the Conseil is well and truly its own master and, in fact, acts the same way a true judicial court would, free from all direct or indirect formal influence on the part of the executive branch as to how rules are defined as well as the way they are enforced. [. . .] [T]herefore the Conseil exercises true judicial power through both its functions and the very nature of the disputes that may be brought before it [. . .]."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116, par. 31 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), quoting Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA), par. 91

> "The Conseil is a tribunal with a rich, broad knowledge of judicial ethics. It is eminently qualified to hand down collegial decisions on the conduct of judges, particularly in cases where issues of partiality or the independence of the judiciary come into play."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, 2007 QCCS 4761, [2007] RJQ 2750, par. 19 quoting Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 49

AUTHORS' NOTE

In Moreau-Bérubé v. New Brunswick, the Supreme Court ruled that the Conseil, given its collegial nature, was better qualified than an individual sitting judge to "draw conclusions on matters of judicial independence, permanence and impartiality."

SEE ALSO: CONSEIL DE LA MAGISTRATURE DU QUÉBEC V. DUBOIS, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, NO. 33973), PAR. 13-14

Procedural protections, page 69.

> "The Conseil's decisions must carry a certain authority and definitiveness."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, 2007 QCCS 4761, [2007] RJQ 2750, par. 20, quoting Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 52.

SEE ALSO:

Conseil de la magistrature du Québec v. DuBois, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, no. 33973), par. 17

REPRIMAND AND REMOVAL, page 95.

## 1.3 OBJECTIVES OF THE CONSEIL'S DISCIPLINARY JURISDICTION

> The Conseil's judicial ethics function is related to protecting the public.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

"The work of the Conseil's committees does not jeopardize the independence of the judiciary, but rather strengthens it by reinforcing public trust in judges."

Conseil de la magistrature du Québec v. DuBois, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, no. 33973), par. 21

### 1.3.1 Protecting the institution versus the independence of the judiciary

> "The judicial ethics process for judges, given that is entrusted to an organization comprised exclusively of judges, is a process independent of government and lawmakers. This means it does not compromise the independence of the judiciary before other instances of state power—independence designed to benefit citizens appearing before the courts, not judges."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2011 QCCA 550 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 6, quoting Conseil de la magistrature du Québec v. DuBois, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, no. 33973), par. 11

> "Disciplinary bodies that receive complaints against judges must, on the one hand, protect the institution of the judiciary through a disciplinary process and, on the other hand, ensure the constitutional guarantees of judicial independence, including judges' right to express themselves freely and hand down decisions without fear or facing threats [. . .]"

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, 2007 QCCS 4761, [2007] RJQ 2750, par. 16 referring to Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 46

SEE ALSO:

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 56 and 57

Section 10, page 249.

> "[T]he Conseil de la magistrature and the inquiry committees it establishes must [. . .] ensure the integrity of the judicial system and, in particular, one of the characteristics that is closely linked to it, namely its independence as an institution and the independence of each of its members."

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

### 1.3.2 Intervening in cases of breach of duty

> "The Conseil de la magistrature has jurisdiction over alleged breaches of judicial ethics."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 55 (inquiry)

> "[T]he purpose of the Conseil's disciplinary jurisdiction over a judge [. . .] is to intervene in order to take away his or her jurisdiction in cases of very serious ethical breaches and, in other cases, to remind the judge of his or her ethical obligations through an appropriate reprimand."

Côté and Hodge, CM-8-87-14 (Provincial Court) (inquiry)

In order to carry out the mandate entrusted by the Conseil regarding "the charge of impaired driving," it is necessary "not only to determine whether the judge is guilty of this accusation but also to shed light on the situation that is denounced."

Paré and Fortin, 1999 CMQC 56 (inquiry), par. 42

SEE ALSO:

Gobeil and Léveillé, CM-8-89-37, CM-8-89-38, CM-8-89-39 (Provincial Court) (inquiry) Lapointe and Ruffo, CM-8-88-37 (inquiry)

CM-8-90-54 (examination)

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 95.

## 1.4 JUDGES' SUBMISSION TO THE AUTHORITY OF THE CONSEIL

> "In principle, refusing to accept an ethical sanction is in itself an act of indiscipline that could undermine the public's confidence in the disciplinary process and, as a result, in the judiciary as a whole."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

> Judges against whom a complaint is lodged must cooperate in the work of the inquiry committee.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 99.

> Considering the remedial and educational function of the inquiry committee, it may be appropriate for it to make certain comments about the judge's conduct during the inquiry process.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

Since during the hearing the attorney assisting the committee and the plaintiff had been "the subject of sometimes disagreeable, hostile, sarcastic, vexatious or ungracious remarks" by the respondent judge, the committee categorically disapproved of the judge's refusal to cooperate and lack of respect towards them.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry), par. 125

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 99 AND SECTION 8, PAGE 211.

> "The Conseil de la magistrature has jurisdiction over alleged breaches of judicial ethics."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 55 (inquiry)

SEE ALSO:

CM-8-90-54 (examination)

## 1.5 COMPLAINTS UNDER THE CONSEIL'S JURISDICTION

**260.** This chapter applies to judges appointed under the *Courts of Justice Act*. The provisions of this chapter applicable to judges also apply to municipal court judges and presiding justices of the peace.

> "The disciplinary jurisdiction of the Conseil and its committee applies in cases involving judges appointed by the province.

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 34

> Section 260, par. 2 of the *Courts of Justice Act* and Section 38 of the *Municipal Courts Act* indicate that "it was the legislator's intention to submit municipal judges to the same authority as those appointed under the *Courts of Justice Act*."

Charest v. Alary, 2008 CMQC 87 (10-7-2009), par. 22–23 (inquiry)

### 1.5.1 Conduct predating the complaint

> "Whether the acts under consideration occurred before or after the judge's appointment is not a relevant criterion under the law."

"[The inquiry committee] must be able to examine the past conduct of a judge if it is relevant to the assessment of the judge's candidacy, as regards the capacity to carry out judicial functions, and to subsequently determine whether this past conduct may reasonably undermine public confidence in the incumbent."

"[T]he process of selecting persons for appointment as judges is so closely tied to the exercise of the judicial function that it cannot be dissociated from it."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 54 and 58

SEE ALSO: THERRIEN (RE), [1998] RJQ 2956 (CA)

> "[T]he Conseil de la magistrature has the jurisdiction to examine the past conduct of a judge that may affect his or her capacity to carry out his or her judicial functions."

2006 CMQC 58 (examination)

> "[A] judge's misconduct transcends time. [. . .] [T]he Conseil de la magistrature has the jurisdiction to examine the past conduct of a judge that may affect his or her capacity to carry out his or her judicial functions, and to determine whether this past conduct undermines public confidence in the incumbent."

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

SEE ALSO: SANCTION, PAGE 100.

### 1.5.2 Carrying out a government mandate

> "As a general rule, a judge who carries out a mandate entrusted by the government according to Section 82 of the *Courts of Justice Act* remains subject to the *Judicial Code of Ethics* [. . .].

Exceptionally, when a judge is entrusted with a mandate that requires him or her to exercise the executive power of the Crown, he or she is not subject to the *Code of Ethics* if it prevents the exercise of this power."

CM-8-85, CM-8-86-11 (examination)

### 1.5.3 Leave without pay

> "[T]he fact that the judge on the Labour Tribunal is on leave without pay does not remove his or her status as a judge of the Court of Québec and does not relieve him or her from his or her ethical obligations" nor from the Conseil's disciplinary jurisdiction.

Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry)

### 1.5.4 Cases involving judges no longer active

> Recent years have seen "a sea change" on the issue of whether inquiry committees continue to hold jurisdiction over judges who have resigned or retired. "Earlier decisions by inquiry committees renounced jurisdiction [. . .]. More recent decisions have ruled in the opposite sense that the committee continues to exercise jurisdiction." Therefore, judges who have resigned or retired continue to be considered appointed judges.
>
> "It seems illogical to conclude that the term 'appointed' would lose its natural meaning the moment a judge retires. Were this the case, resigning would have the effect of retrospectively undoing the appointment."
>
> "The opposite interpretation would lead to an absurd result: the person under inquiry could evade the inquiry by resigning or retiring."
>
> "The committee therefore concludes that Chapter III on judicial ethics applies to all appointed judges regardless of their status at the time when the complaint is filed."
>
> Charest v. Alary, 2008 CMQC 87 (10-7-2009), par. 12 (inquiry)

> "A judge's resignation does not have the result of [. . .] automatically annulling the committee's jurisdiction over the complaint. The following question must be asked: Is the matter at hand important enough to all judges that the committee must continue to examine the complaint?"
>
> Horne and Ruffo, 2001 CMQC 26 (inquiry), par. 16 and 17

> "The Conseil can in fact rule on [complaints against retired judges] if these may provide a lesson of value to the judiciary as a whole.
>
> [To] assess whether a complaint has merit, and should be considered even though the judge named has retired, the committee must consider the following:
>
> 1. The novelty of the situation, and the potential contribution of the question it raises to the advancement of judicial ethics
> 2. The case's distinctiveness as an educational and preventive example for the judiciary
> 3. The need to restore the public trust in the independence, impartiality or integrity of the judiciary
> 4. The importance of ensuring the sound administration of justice and appropriate use of public funds."

2010 CMQC 55, par. 15 and 19 (examination), Charest v. Alary, 2008 CMQC 87 (3-24-2010), par. 11 (inquiry), Saba and Alary, 2008 CMQC 43 (26-08-2009), par. 12 (inquiry), quoting Pierre Noreau, *Déontologie judiciaire et diversité des choix. L'activité du Conseil de la magistrature en contexte de retraite, de démission ou de décès d'un juge visé par une plainte*. Working document submitted to the Conseil de la magistrature du Québec, April 2008 (see Appendix 5 for study)

AUTHORS' NOTE

Horne and Ruffo, 2001 CMQC 26 (inquiry), was the first time the committee strayed from earlier interpretations, inspired by the committee's role as set out by the Supreme Court in Ruffo v. Conseil de la magistrature.

SEE ALSO:

Gobeil and Léveillé, CM-8-89-37, CM-8-89-38, CM-8-89-39 (Provincial Court) (inquiry) Sainte-Foy City and Jessop, CM-8-95-13, CM-8-95-89 (inquiry)

Fraternité des policiers et policières de Montréal and Plante, 2004 CMQC 24 (Labour Tribunal) (inquiry)

Côté and Hodge, CM-8-87-14 (Provincial Court) (inquiry)

CM-8-87-14 (examination)

## 1.6 REQUESTS OUTSIDE OF CONSEIL DE LA MAGISTRATURE JURISDICTION

> "The Conseil de la magistrature is of the opinion that it is not enfranchised to deal with any matter concerned with the assessment of evidence, judicial discretion or judges' rulings."

2006 CMQC 60 (examination)

SEE ALSO:

2010 CMQC 13 (examination)

2010 CMQC 75 (examination)

2006 CMQC 34 (examination)

SEE ALSO: ABSENCE OF ETHICAL BREACH, PAGE 271.

### 1.6.1 Appeals for correction or review of rulings

> "The Conseil de la magistrature is not a body before which citizens may appeal judges' rulings [. . .]."

2008 CMQC 4 (examination), 2007 CMQC 83 (examination)

> The disciplinary process does not call into question the compulsory nature of rulings delivered by a judge.

2003 CMQC 63 (examination)

> "The ethical procedure is not and should not be another form of appeal.
>
> This committee will not hear appeals against or reviews of rulings delivered in good faith [. . .]. It is a matter of judicial independence, which is not tied to whether the judge did or did not rule well."
>
> Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry), par. 123

> The Conseil has no jurisdiction to overrule a judge's decision or even to make any approving or disapproving comment about the soundness of a ruling.
>
> CM-8-95-38 (examination)

> "Obviously, the plaintiff is not satisfied with the ruling delivered by the judge. However, the Conseil de la magistrature cannot in any way [. . .] act as an appellate jurisdiction in order to review the judgements delivered by judges."
>
> 2010 CMQC 13 (examination), 2010 CMQC 75 (examination), 2008 CMQC 88 (examination), 2008 CMQC 74 (examination)

SEE ALSO:

2006 CMQC 27 (examination)
2007 CMQC 8 (examination)
2006 CMQC 66 (examination)
2006 CMQC 56 (examination)
2006 CMQC 27 (examination)
2004 CMQC 41 (examination)

### 1.6.2 Applications for revocation of judgement

Since the letter to the Conseil requests the revocation of the judgement delivered, the Conseil dismissed the "complaint as being unfounded."

CM-8-90-42 (examination)

### 1.6.3 Applications for setting aside a judgement and for a new hearing

> The Conseil does not have jurisdiction regarding any application for setting aside a judgement or ordering a new hearing.
>
> 2008 CMQC 79 (examination), 2004 CMQC 61 (examination)

SEE ALSO: CM-8-87-23 (EXAMINATION)

The plaintiff is requesting a new hearing in order to present her evidence. It is not the Conseil's role to hear appeals on judgements delivered.

CM-8-95-58 (examination)

### 1.6.4 Claims for damages

The Conseil cannot in any way grant "redress or compensation" for a judgement delivered.

CM-8-97-5 (examination)

The plaintiff demanded that a judge pay him damages. The Conseil de la magistrature felt it could not examine this aspect of his claim.

2002 CMQC 85 (examination)

### 1.6.5 Applications for recusal

"It is out of the question that Mr. B.'s complaint could result in the judge being replaced through ethical proceedings, when this was not possible judicially."

2003 CMQC 63 (examination)

> "A party who claims that the judge hearing a specific case should decline to exercise his or her jurisdiction over this case must file a recusation motion [. . .], since referring a case to a judge constitutes a judicial action, and the same is true of the removal of a case from court."
>
> 2003 CMQC 63 (examination)
>
> SEE ALSO:
>
> 2006 CMQC 15 (examination), par. 15 *et seq.*

### 1.6.6 Applications for legal opinion

> "[T]he Conseil's mandate does not allow it to give legal opinions advising litigants on how to present their case before the courts. This is the responsibility of the members of the Barreau."
>
> 2005 CMQC 9 (examination)
>
> SEE ALSO:
>
> CM-8-90-54 (examination)
>
> The Conseil cannot intervene to give a plaintiff advice regarding follow-up after a Small Claims Division ruling, which is a final judgement according to law.
>
> 2002 CMQC 51 (examination)

### 1.6.7 Requests for an apology

"The Conseil de la magistrature has no jurisdiction to award damages or order a judge to make a public apology."

### 1.6.8 Lack of new allegations

> The Conseil "should dismiss" complaints making accusations that were dismissed in the past and that bring no new accusations.

2007 CMQC 82 (examination)
CM-8-89-27 (examination)

COURTS OF JUSTICE ACT

# 2 Complaints

## 2.1 PLAINTIFF

**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.

> The words "any person" used in Section 263 of the *Courts of Justice Act* "do not allow any restriction or limitation."

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### 2.1.1 Interest on the part of the plaintiff

> "There can be no question of legal interest on the part of the plaintiff [. . .] since only the judiciary as a whole is likely to derive any advantage from the ethical procedure."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

> Considering that Section 263 of the *Courts of Justice Act* is public in nature, "the legislator did not wish to limit the right to lodge a complaint only to persons with a specific interest."

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### 2.1.2 Multiple complaints

> The fact that a judge is named in multiple complaints must be viewed as a "red flag" to urge a change in his or her behaviour.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 96 (inquiry)

The judge claimed that "the multiple complaints she was named in by the government's agencies constituted a serious attack on the independence of the judiciary, as these complaints were designed to apply pressure."

The Court of Appeal stressed that the disciplinary process does not entail examining the complainant's motivations, and that it respects the guarantees of impartiality and the principle of the irremovability of judges.

Ruffo (Re), [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 43

### 2.1.3 Chief judge

**96.** The chief judge has the direction of the Court. The functions of the chief judge shall be, in particular, [. . .]
(3) to ensure that the judicial code of ethics is observed.

> The chief judge's power to lay a complaint is an intrinsic part of his or her ethical responsibility.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

## 2.2 COMPLAINT WORDING AND CONTENT

### 2.2.1 Complaint wording

**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.

> "The legislator did not subject the presentation and wording of the 'complaint' to any formality."

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), par. 19

> The word "complaint," which keeps its ordinary meaning in the law, does not have to be mentioned in a request addressed to the Conseil. It can "be inferred from the content of the letter of denunciation and even by reference to a section of the Act."

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), par. 19 and 20

> "[T]he complainant cannot be criticized for exposing facts and conduct that were in essence the matter to be assessed by the committee, however extensive it might be."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 97

> "Does saying that the complaint must be accurate and detailed imply that the Conseil's analysis will be limited to its content? The Conseil's previous rulings suggest otherwise. Thus, in 1995, the Conseil ruled during an examination, that

the complaint does not have to be formal to induce an examination. A simple "denunciation by someone of a judge's remarks and attitude, having the nature of a complaint" requires an initial examination of the facts."

2010 CMQC 55, par. 6 (examination), quoting CM-8-95-3 (examination)

> "Every plaintiff must know that his or her right to file a complaint must be exercised responsibly and respectfully."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 10

Regarding a complaint whose wording "was on the extreme verge of admissibility," a dissenting member stressed that the committee's mandate is to investigate the judge's conduct. "Even if we succeeded in challenging the plaintiff's credibility or discrediting the plaintiff, this would in no way change the judge's actions and remarks."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry)

SEE ALSO: GILBERT AND RUFFO, 2001 CMQC 84 (INQUIRY), PAR. 47

### 2.2.2 Complaint content

> The complaint must state the facts with which the judge is charged.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

> The complaint filed against a judge does not have to specify "the exact nature of the breach with which the judge is charged by referring to the *Judicial Code of Ethics*."

2010 CMQC 55. 7 (examination), quoting Gagnon and Drouin, CM-8-94-17 (inquiry) and Gobeil and Ruffo, CM-8-90-30 (inquiry)

> "Sections 263 and 264 CJA do not compel a person who files a complaint to specify the provision of the *Code of Ethics* that has allegedly been infringed."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 47, inspired by Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

> The complaint does not have to list the ethical rules the judge has supposedly violated.

CM-8-91-32 (examination)

## 2.3 WITHDRAWAL OF A COMPLAINT

> "Once a complaint has been filed, the complainant is no longer in control of it."

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 283

> "Once a complaint is brought forward against a judge, the complainant no longer has the option of withdrawing it. The complaint, once filed, becomes the 'property' of the Conseil."

2010 CMQC 55, par. 13 (examination)

> "Despite a plaintiff's intent to withdraw a complaint, it is up to the Conseil de la magistrature to make a decision about it."

2001 CMQC 51 (examination)

SEE ALSO:

Pierre Marois, Esq. on behalf of Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3 (May 2, 2012)

2011 CMQC 70 (examination)

Following the judge's withdrawal from the case, which was the plaintiff's chief desire, the plaintiff expressed "the wish to withdraw his complaint." Nevertheless the Conseil decided to carry on with the examination.

2001 CMQC 51 (examination)

The judge claimed that the withdrawal of the complaint rendered inadmissible in court any earlier Inquiry Committee reports. The Court of Appeal felt rather that the withdrawal of the complaint had no legal effect on previous committee decisions, which could be considered final and invoked in subsequent cases.

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA

# 3 Examination

## 3.1 ADMINISTRATIVE NATURE OF THE EXAMINATION PROCESS

> "At the examination stage the Conseil exercises administrative power [. . .].

By thus describing the Conseil's role in the complaint process, the courts have granted it a great deal of power to act."

2010 CMQC 55, par. 12–13 (examination) quoting Ruffo v. Conseil de la magistrature du Québec, [1989] RJQ 2432 (SC) (upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)), Southam Inc. v. Attorney General of Quebec, [1993] RJQ 2374 (SC) and Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA)

> The complaint is merely what sets the inquiry process in motion. Its effect is not to initiate litigation between two parties.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

## 3.2 PROCEDURE

### 3.2.1 Confidentiality

> "The Conseil's work at the examination stage is confidential, and must remain so [. . .]."

Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 99 and 101

### 3.2.2 Procedural protections during the examination

> The examination of complaints is an administrative function subject to the general duty to act fairly. It is not a quasi-judicial power subject to the principles of natural justice.

Respondent judges are not entitled to the protection of the *audi alteram partem* rule at the examination stage.

Ruffo v. Conseil de la magistrature du Québec, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

"However, a Superior Court decision found that "once triggered, the complaints examination process provided for in the [*Courts of Justice Act*] comprises several steps. The judge involved has the opportunity to fully explain his or her version of the events subject to the complaint. He or she can submit evidence and make representations before the committee, and has the right to be represented by a lawyer."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116, appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 35

AUTHORS' NOTE:

This trend has yet to be borne out in actual cases handled by the Conseil.

### 3.2.3 Disclosure

> "The law does not provide the judge any right to consult the information gathered at the examination stage."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 89

> The inquiry carried out by the examiner does not require that all evidence supporting the complaint be disclosed to the judge concerned.

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

The respondent judge blamed the examiner for not having provided her with all the evidence gathered in support of the complaint. The committee concluded that the examiner "had acted fairly, in the scope of a preliminary and investigative procedure" by making sure that the judge was sufficiently aware of the nature of the complaints, which she had received a copy of.

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

### 3.2.4 Delegation of research to an examiner

> The Conseil may task one of its members with collecting the information deemed necessary to examine the complaint, without this being considered illegal delegation of its discretionary power.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA), then by Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 97.

> The purpose of delegation to an examiner, which incidentally is not mandatory, is solely to assess whether there are grounds for an inquiry.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

> The role of the examiner is limited to "gathering the information the Conseil needs to examine the complaint."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

The decision to suspend an examination is at the Conseil's discretion.

For complaints concerning the conditions of a judge's appointment to the Court of Québec, "the Conseil [. . .] opted to move forward with the examination even though the Commission [investigating the appointment process for judges] had not yet completed its work." It is up to the Conseil to decide whether or not to suspend an inquiry. In this case, there was nothing to warrant a suspension, particularly since the Conseil was not taking part in the Commission.

2010 CMQC 55 (examination)

In another case, the Conseil chose to suspend the examination of a complaint until the Court of Appeal had ruled on a judicial review based on the events at the origin of the complaint.

2002 CMQC 21 (examination)

## 3.3 EVIDENCE

**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 P34.1).

> "A complaint may be examined in a serious fashion through succinct verification of the facts."

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

> "At the end of the examination, the Conseil's decision on the direction the complaint should take was based not on the complaint itself, as formulated by the complainant, but rather on the alleged actions of the judge as put into context by the examination process. The examination process thus brought a new dimension to the initial impression created after reading the complaint by endowing it with a sense, an appearance of merit and a relative degree of seriousness, all of which emerge through the examination process."

2010 CMQC 55, par. 8 (examination), quoting Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3 (inquiry), par. 34

### 3.3.1 Details requested from the judge

**266.** The council shall forward a copy of the complaint to the judge; it may require an explanation from him or her.

> "The Conseil is is no way [. . .] [obliged to demand an explanation from judges], nor grant judges specific precedural rights at this early stage in the file."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3 (inquiry), par. 38

> The Conseil de la magistrature may request relevant information regarding a judge's private life if the context of the complaint so requires.

1999 CMQC 29 (examination)

Since the complaint alleged that the judge did not withdraw from cases pleaded by a defence lawyer with whom he was having an affair, the Conseil had to request explanations from the judge regarding the beginning of their relationship.

1999 CMQC 29 (examination)

SEE ALSO:

Viau and Ruffo, CM-8-94-43(3) (inquiry)

### 3.3.2 Probative value of facts already established in court

> "The Court of Appeal's observations and conclusions must be considered during the examination of a complaint."

2002 CMQC 21 (examination)

The Conseil ruled that the Court of Appeal had definitively disposed of the plaintiff's allegations regarding the judge's bias against him, since they had been dismissed during judicial review proceedings based on the same events.

2002 CMQC 21 (examination)

AUTHORS' NOTE:

The inquiry committee has already indicated that it is not bound by the decision delivered by the penal authorities. In this specific case, the burden of proof based on preponderance instead of the absence of reasonable doubt could lead the committee to a different conclusion.

SEE ALSO: QUÉBEC MINISTER OF JUSTICE AND HAMANN, CM-8-98-3, CM-8-98-4 (INQUIRY) INQUIRY, PAGE 65.

## 3.4 ANALYSIS OF THE MERITS OF A COMPLAINT

> "Information collection and deliberations at the complaint examination phase have a single aim: enabling the Conseil to make a decision on how to follow up on the complaint. The Conseil does not take a position on judges' alleged actions."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 99

> "The Conseil must consider all circumstances of the case and take into account the plaintiff's claims, the judge's explanations and attitude, the media coverage of the events and the repercussions on the image of the judiciary."

2000 CMQC 10 (examination)

### 3.4.1 Unfounded complaints

**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.

> "To be considered founded, complaints must be demonstrated by facts, and these facts must be evident or objective."

CM-8-98, CM-8-86-16 (examination)

#### 3.4.1.1 Erroneous perceptions on the part of the complainant

"The entire proceedings, and the tone used, showed that the judge treated the complainant respectfully [. . .] the serene atmosphere manifest upon listening to the audio recordings was incompatible with the complainant's characterization of the judge's alleged 'condescending, accusing air.'"

2011 CMQC 3 (6-15-2011), par. 20 (examination)

"The audio recordings did not reveal any accusation made by the judge regarding the complainant's character, and in particular any characterization of the complainant as a liar [. . .] No statement made by the judge revealed a bias [. . .]."

2010 CMQC 13, par. 8–10 (examination)

"Contrary to the plaintiff's allegations in his letter to the Conseil, the judge [. . .] said nothing that could be construed as bias towards him or prejudice in favour of the opposing party because the latter was French-speaking. Nor was anything said that could have suggested that political reasons were in play."

2001 CMQC 82 (examination)

SEE ALSO:

2006 CMQC 38 (examination)
2002 CMQC 18 (examination)
CM-8-92-14 (examination)

### 3.4.2 Insufficient seriousness of allegations

**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.

> As regards judicial ethics, the legislator chose to adopt the principle of *minimis non curat prætor,* meaning that cases that are below a certain level of importance will not be heard by the Court, contrary to the principle applying to criminal law, "which requires that as soon as there is evidence against an accused person, that person must be sent for trial."

Chamard and Brunet, CM-8-62 (inquiry)

SEE ALSO: JUDICIAL ETHICS, PAGE 27.

### 3.4.3 Decision to make an 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 or the third paragraph of Section 168.

> Section 268 of the *Courts of Justice Act* enables the Conseil to decide whether or not to make an inquiry "independently of the nature and importance of the case before it."

CM-8-90-33 (examination)

> "It is therefore important to keep in mind that the applicable legislative provisions for the examination and the resulting decision are such that the decision cannot be considered a preliminary decision on the merits of the complaint itself [. . .].
>
> We must resist the temptation to extrapolate and see in the Conseil's decision to investigate a complaint any connotation of wrongdoing on the part of the judge, which is not implied by the decision to hold an inquiry.
>
> The decision rendered at the end of the examination is not a ruling on the complaint itself, but rather on the appropriateness of continuing to move the complaint forward within the process provided for under the Act."
>
> Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 35, 78 and 95 (inquiry)

SEE ALSO: INQUIRY, PAGE 56.

> "The inquiry becomes necessary when information gathered during the examination phase of a complaint is such that it is impossible to summarily dismiss the complaint."
>
> Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 104 (inquiry)

> "If it believes that there is a possible breach of ethics, the Conseil must follow the provisions of Section 267 and establish an inquiry committee."
>
> 2000 CMQC 10 (examination)

> The existence of a fundamental contradiction between the plaintiff's and the respondent's perception of the discussion that took place between them may contribute to the decision to uphold the complaint and order an inquiry.
>
> CM-8-95-81 (examination)
>
> SEE ALSO:
>
> Gagnon and Drouin, CM-8-94-17 (inquiry)

### 3.4.4 Grounds for holding an inquiry

> "Unlike the provisions in Section 267 of the *Courts of Justice Act* governing a decision by the Conseil to close a file after the examination process, Section 268 does not compel the Conseil to state its grounds for deciding to investigate a complaint."
>
> Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 31 (inquiry)

COURTS OF JUSTICE ACT

# 4 Inquiry

## 4.1 INVESTIGATIVE NATURE OF THE INQUIRY PROCEDURE

> The inquiry procedure provided for in the *Courts of Justice Act* clearly demonstrates the legislator's desire "to avoid creating an adversarial atmosphere between two opponents, each seeking to prevail."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 103, [2001] 2 SCR 3

> The debate that occurs before the committee "does not resemble litigation in an adversarial proceeding; rather, it is the expression of purely investigative functions marked by an active search for the truth."

"Any idea of prosecution is thus structurally excluded."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 72 and 73

SEE ALSO:

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 38

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 17 (inquiry)

> The Committee has "broad discretion to hold its inquiry and set the rules of procedure or practice as it sees fit. It is not presiding over a dispute between parties, i.e., a trial in the usual sense of the term."

Corriveau and Dionne, 2007 CMQC 7 (2-11-2008), par. 9 (inquiry)

> "The inquiry committee created by the Conseil de la magistrature is not required to rule on *lis inter partes*."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 34 (inquiry)

> The specific procedure for handling complaints, as set out in the *Courts of Justice Act,* is inquisitorial in nature and "fundamentally different from the accusatory procedure of the *Professional Code*."

Gagnon and Drouin, CM-8-94-17 (inquiry)

## 4.2 PURPOSE OF THE INQIRY

> "[T]he committee's purpose is not to act as a judge or even as a decision-maker responsible for settling a dispute, but on the contrary to gather the facts and evidence in order to ultimately make a recommendation to the Conseil de la magistrature."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 103, [2001] 2 SCR 3

> "[T]he [committee], through its own research and that of the complainant and the judge who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation based on the circumstances of the case before it."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 73

## 4.3 INQUIRY COMMITTEE

### 4.3.1 Composition of the 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.

**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.
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.

> The establishment of the inquiry committee and the choice of its members is a prerogative of the Conseil de la magistrature "that nobody else may exercise, at the risk of undermining [. . .] the Conseil's institutional independence."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

#### 4.3.1.1 Conseil members party to the decision to hold an inquiry on a complaint

> The judge objected to the fact that the inquiry committee included Conseil members who had been part of the decision to hold an inquiry into the complaint, because this suggested, in his view, that "their minds were already made up" on the matter.

The committee held that Section 269 of the *Courts of Justice Act* expresses the legislator's wish that "members of the inquiry committee be named from among those who took part in the examination of the complaint."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 12, 13 and 95 (inquiry)

SEE ALSO: EXAMINATION, PAGE 47 AND PROCEDURAL PROTECTIONS, PAGE 87.

#### 4.3.1.2 Associate chief judge

> The function of associate chief judge imposes no reservations regarding the right to sit on an inquiry committee.

Gobeil and Ruffo, CM-8-90-30 (inquiry)

#### 4.3.1.3 Chief judge

> A committee member who rises to the office of chief judge of the Court of Québec must resign from the committee because he or she is henceforth required to "ensure compliance with the judicial code of ethics" and would otherwise be at risk of acting as both judge and party.

Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 4.3.2 Functions of the committee

> "The committee's mandate is to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary." Its role in this respect is remedial and clearly one of public order.

"This mission must be carried out with due consideration given to the unique nature of the judicial function, society's high expectations of the judiciary and the vulnerability of citizens appearing before the courts."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 38–39 and 65, quoting Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267 and Therrien (Re), 2001 CSC 35

> In the exercise of its functions, "the committee is responsible for ensuring justice is administered soundly, and the resources of the judiciary are used appropriately."

Horne and Ruffo, 2001 CMQC 26, par. 12 (inquiry)

> "The committee's primary role is to seek the truth."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 73

SEE ALSO:

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 38

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 17 (inquiry)

Horne and Ruffo, 2001 CMQC 26 (inquiry), par. 13

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 18 (inquiry)

Therrien (Re), [1998] RJQ 2956 (CA)

Corriveau and Dionne, 2007 CMQC 7 (2-11-2008), par. 12 (inquiry), Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 67 (inquiry)

### 4.3.3 Powers of the inquiry commmittee

**268.** The council may, after examining a complaint, decide to make an inquiry, [. . .]

**269.1.** 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.

> "Once the inquiry committee has been formed, it is master of all decisions. The Conseil may not intervene to overturn committee decisions, as per sections 277 to 279 of the *Courts of Justice Act*."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par 79

> The Conseil does not have the power to bind the committee regarding the way the *Judicial Code of Ethics* or any other regulation must be interpreted. "The committee remains free to adopt any other interpretation after the parties have been heard."

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC)

> The committee must be able to exercise its inquiry authority fully and without restriction "regarding the facts and circumstances presented in the complaint the plaintiff addressed to the secretary of the Conseil." [. . .] "The Conseil does not have the power to limit or otherwise modify the elements of a complaint."

Gagnon and Drouin, CM-8-94-17 (inquiry)

> The Conseil's reference to one or more sections of the *Judicial Code of Ethics* in its resolution to form an inquiry committee "is indicative only, not limitative."

Gagnon and Drouin, CM-8-94-17 (inquiry)

AUTHORS' NOTE:

This represents a departure from previous positions.

SEE ON THIS TOPIC:

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 49 *et seq.* (inquiry)

Descôteaux and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

G.R. and Lafond, CM-8-95-74 (inquiry)

#### 4.3.3.1 Judicial authority of the inquiry committee

> The decisions of the inquiry committee are judicial in nature.

Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA)

> "The committee exercises judicial [or at least quasi-judicial] powers both during its inquiry [. . .] and when it delivers its decision."

Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

SEE ALSO:

2010 CMQC 55, par. 12 (examination)

AUTHORS' NOTE

The judicial nature of the committee's decisions has been recognized by the Court of Appeal, notably with regard to the process for removal of judges.

SEE ALSO: REPRIMAND AND DISCRIMINATION, PAGE 95.

#### 4.3.3.2 Procedural authority

**275.** The committee may make rules of procedure or rules of practice for the conduct of an inquiry.

### Intervention by a third party

> "Complaints against judges often have far-reaching implications. They can involve situations that affect society of a whole, or a specific part thereof. They may raise important questions concerning judicial ethics and legal principles with repercussions for the judiciary and society as a whole. In such cases, there are often people or associations who wish to be part of the debate, to share their points of view. [. . .]
>
> Only under very exceptional circumstances will a third party be permitted to speak to an inquiry committee. Such a measure must be considered only after all other avenues of investigation, such as expert witness testimony. The position of any third party must be wholly independent from the matters under inquiry, to ensure they do not simply pursue their own ends. Considerations of a general

> nature must only be presented if they help advance the committee's inquiry into the allegations. [. . .]
>
> We must, then, take great care when involving a third party, which may complicate the inquiry process. [. . .] It is important to handle the complaint swiftly."
>
> Corriveau and Dionne, 2007 CMQC 7 (5-14-2008), par. 15–17 (inquiry)

The committee denied the Association des avocats et avocates de la défense, of which the complainant is a member, permission to take part in the inquiry. The complainant had accused the judge of breaches during her client's cross-examination. The committee felt that the observations the association might make could equally well be brought forward by the lawyer present, or an expert witness. The association's involvement was thus deemed neither necessary nor appropriate.

Corriveau and Dionne, 2007 CMQC 7 (5-14-2008) (inquiry)

For the first time in the Conseil de la magistrature's history, the Conférence des juges du Québec, in moving to obtain official status in the inquiry, effectively asked to be granted standing in an inquiry. The committee concluded that it had "all the necessary latitude to accept the Conférence des juges' request."

As long as the "requested involvement is of value in helping the inquiry move forward, the committee has the implicit power to authorize a person or organization, whose contribution to the work may be deemed significant, to take part.

The committee invoked the following criteria:

1. The significant public interest of the debate
2. The nature, profile and mission of the party requesting standing, with priority given to public interest groups
3. The meaningful representativity of the party
4. The general nature of the party's objectives
5. The party's experience and expertise on the questions raised by the inquiry
6. The party's interest in the matter of the inquiry being "real, true, sincere, and focused on justice being rendered"
7. The party's general point of view
8. The originality and newness of points to be brought forward by the party
9. The usefulness and complementarity of the party's participation
10. "The propensity of the party's involvement to serve the higher interests of justice"

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 23, 35, 48 and 49 (inquiry)

#### 4.3.3.3 Constitutional authority

> "We must [. . .] keep in mind that the inquiry committee is not empowered to make reparations that are constitutional in nature. It is a well-established principle that 'the committee does not have declaratory power to determine whether there has been infringement of constitutional rights. [. . .].' That said, there is nothing preventing the committee from taking constitutional considerations into account when interpreting the legislative provisions whose application is its mission [. . .] insofar as [. . .] such a reading gives effect to the provisions in question rather than sterilizing or neutralizing them."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 57, 58 and 59 (inquiry), quoting Viau and Ruffo, CM-8-90-30 (inquiry) and Plante v. Conseil de la magistrature du Québec, REJB 1998-08604 (SC)

SEE ALSO:

G.R. and Lafond, CM-8-95-74 (inquiry)

### Standard of review

> "When a committee of inquiry into the conduct of a judge 'is called on to rule on constitutional matters, the applicable standard of review is that of the correct decision,' at least when there is an issue of 'contesting the constitutionality of a legislative decision.'"

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 12, quoting Cosgrove v. Conseil canadien de la magistrature, [2006] 1 RCF 327, par. 43 and 49. This statement was upheld in 2007 by the Federal Court of Appeal.

#### 4.3.3.4 Discretionary and interpretive powers

> Even when an inquiry committee does find it has jurisdiction over the judge named in the complaint and the subject of the complaint, it "holds a high degree of discretion over whether, under the circumstances, to pursue or dismiss the inquiry."

Charest v. Alary, 2008 CMQC 87 (10-7-2009), par. 53 (inquiry)

> "The inquiry committee had, and still has, the power to not consider in its inquiry any part of the complaint that falls outside its jurisdiction. The Conseil de la magistrature's choice not to do so changes nothing."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 76

> "The committee is a competent administrative authority to interpret the law it is requested to enforce."

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC)

SEE ALSO: RUFFO V. CONSEIL DE LA MAGISTRATURE DU QUÉBEC, [1992] RJQ 1796 (CA)

> If many complaints related to the same case are lodged with the Conseil de la magistrature, the inquiry committee, once established, has the jurisdiction to examine each of these complaints unless one or all of them are explicitly dismissed by the Conseil as groundless or not justifying an inquiry.

Gagnon and Drouin, CM-8-94-17 (inquiry)

#### 4.3.3.5 Powers of the chair

**270.** The committee meets as often as necessary, when convened by its chairman.

> "According to Section 271 CJA, the committee chairman has no attribution or special status other than convening the committee."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

#### 4.3.3.6 Suspension of a judge during an inquiry

**276.** The council may suspend a judge for the duration of an inquiry on him.

> "The advisability of ordering a suspension depends on the judge's ability to act with the confidence of the parties and to continue to carry out his or her duties in a manner consistent with public order."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 92

#### 4.3.3.7 Withdrawal of a complaint

> The committee does not have the authority to grant an application for withdrawal of a complaint.

Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry)

SEE ALSO: FRATERNITÉ DES POLICIERS ET POLICIÈRES DE MONTRÉAL AND PLANTE, 2004 CMQC 24 (LABOUR TRIBUNAL) (INQUIRY)

## 4.4 ANALYZING THE MERITS OF THE COMPLAINT

> "The following norm could be applied to determine whether there is a breach of judicial ethics: the alleged gestures, actions or words are such that an unbiased and well-informed person might believe that the judge's conduct undermines the litigant's or the public's confidence in the judiciary and damages the integrity, dignity and honour of the judiciary."

Beaudry and L'Écuyer, CM-8-97-14 (inquiry)

SEE ALSO: BETTAN AND DUMAIS, 2000 CMQC 55 (SMALL CLAIMS DIVISION) (INQUIRY), PAR. 49 REPRIMAND AND EMOVAL, PAGE 95, SECTION 2, PAGE 131 AND HUMOUR, THREATS, DISCRIMINATION, AND DISRESPECT, PAGE 261.

"The following aspects must be weighed in order to analyze the impact of the whole situation:

- the image of justice
- the transparency and integrity of the judicial system
- public confidence in this respect

Does the situation introduced as evidence compromise the integrity of the judicial system, and affect, weaken or undermine public confidence? What image of justice does it show? These are the relevant questions. [. . .] Such a situation objectively analysed by a 'reasonable, unbiased and well-informed person' may undoubtedly undermine his or her confidence in the judiciary and therefore his or her respect for the administration of justice."

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

SEE ALSO: SECTION 1, PAGE 119.

> "[T]he merit of an ethical complaint must not be assessed according to the sanction likely to be recommended in a particular case.
>
> The alleged actions are what will or will not constitute breaches of the ethical obligations of the *Judicial Code of Ethics*, according to the specific circumstances in which they were committed."
>
> St-Louis and Gagnon, 2003 CMQC 35 (inquiry), par. 105

> "It is not a question of whether the plaintiffs were right to complain but rather whether ethical rules were breached in light of all the circumstances of the case."
>
> Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry)

> The complaint must be considered from an overall perspective, and the committee must examine it in its entirety.
>
> Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 4.4.1 Burden of proof

> Preponderance of evidence is the burden of proof applicable to ethics.
>
> Québec Minister of Justice and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

SEE ALSO: INQUIRY, PAGE 55.

> "The plaintiffs are not a suing party that bears the burden of proof."

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

Contradictions on many points between the plaintiff's and the respondent's perception of the facts may keep the inquiry committee from granting the plaintiff's testimony "a sufficient degree of reliability that the facts alleged against the judge may be considered as being proven by preponderance."

Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry)

### 4.4.2 Events subsequent to the alleged acts

> "In order to decide whether a judge did or did not commit a breach of professional ethics, we must place ourselves at the time of the incident and not act retrospectively on the basis of what happened afterwards."

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry), par. 47

AUTHORS' NOTE:

Despite the fact that media exposure subsequent to the Court of Appeal's decision ordering a new trial has considerably amplified the effects of the judge's mistake, with the victim refusing to testify at the second trial, the committee chose to consider only the judge's actions during the trial with regard to his ethical obligations.

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)

### 4.4.3 Complainant references to sections of the Code

> The Conseil is not bound by the complainant's references to sections of the *Judicial Code of Ethics*.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

AUTHORS' NOTE:

It should be noted that the complainant is under no obligation to refer to the *Judicial Code of Ethics*.

SEE ALSO: COMPLAINT, PAGE 43.

> In assessing the judge's conduct, the committee is not limited "only to the sections set out by the complainant's counsel."

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

## 4.4.4 Decisions of other bodies on the alleged acts

### 4.4.4.1 The Québec Bar disciplinary committee

> Judges sanctioned by the Québec Bar for a breach of the professional ethics of lawyers are not *ipso facto* guilty of a breach of judicial ethics.
>
> Québec Minister of Justice and Houle, CM-8-97-38 (inquiry)

Since it considered that a plea of guilty before the Québec Bar's disciplinary committee did not necessarily constitute a breach of judicial ethics, the committee chose to re-examine the facts of the case and to put the judge's plea into context in order "to assess the ethical significance of the complaint lodged with the Conseil de la magistrature."

Québec Minister of Justice and Houle, CM-8-97-38 (Municipal Court) (inquiry)

SEE ALSO: SECTION 2, PAGE 131.

### 4.4.4.2 Penal or criminal court

> The burden of proof based on preponderance instead of absence of reasonable doubt may lead the committee to a different conclusion than the one reached by a penal or criminal court.
>
> Québec Minister of Justice and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

SEE ALSO: INQUIRY, PAGE 55.

> "[The inquiry committee] is not bound by the decision delivered by the penal authorities."
>
> Paré and Fortin, 1999 CMQC 56 (inquiry), par. 16

Despite the acquittal of the first charge against the judge by the Court of Appeal and despite the fact that the prosecution decided not to indict him on the second charge related to a different series of events, the committee considered that it was its duty to proceed with the inquiry in order to determine whether the judge's conduct could constitute a breach of judicial ethics.

Québec Minister of Justice and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

## 4.4.5 Evaluation criteria for the alleged acts

### 4.4.5.1 Infringement of the honour, dignity or integrity of the judiciary

**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 or 171 of this Act or Section 45.1 of the *Act respecting municipal courts* (Chapter C-72.01).

> To be a breach of judicial ethics, the judge's conduct must constitute a threat to the integrity of the judiciary.

2003 CMQC 12 (examination)

> Any conduct that undermines the purposes of ethics may be subject to blame. But the alleged facts must be "objectively serious enough as to infringe on the honour, dignity or integrity of the judiciary, according to the context in which they occurred, in order to conclude that there is a breach of judicial ethics."

Lamoureux and L'Écuyer, CM-8-95-83 (inquiry)

SEE ALSO:

St-Louis and Gagnon, 2003 CMQC 35 (inquiry) Dadji and Polak, 1999 CMQC 44 (inquiry) Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)

Section 8, page 211.

### 4.4.5.2 Undermining of public confidence in the judiciary

> The committee must decide whether the judge's conduct during the alleged incident constitutes a breach of a section of the *Judicial Code of Ethics* such "that it undermines public confidence in and respect towards the judiciary, the judicial institution and the justice system."

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry), par. 58

SEE ALSO:

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 72 (inquiry)
Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, conclusion
Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry)
Couture *et al.* and Houle, 2002 CMQC 26 (inquiry)
Principles and Foundations, page 21.

## 4.5 END OF AN ACTIVE INQUIRY

Under certain circumstances, the committee can put an end to an inquiry.

In this case, a judge who had criticized the absence of the Commission des droits de la personne et des droits de la jeunesse during an inquiry involving youth protection was the subject of a complaint before the Commission.

As the provisions of the *Youth Protection Act* calling for the Commission's presence in court had been modified since the complaint was filed, the Commission asked the inquiry committee to take these new facts into consideration.

In the light of certain factors liable to provide a measure of the importance of the case to the judiciary, the inquiry committee concluded that the unusual aspect of the situation that gave rise to the complaint, the particular nature of the matter, its impact on the public trust and the need to soundly manage the administration of justice warranted putting an end to the inquiry.

Pierre Marois, Esq. on behalf of Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3 (May 2, 2012), referring to Pierre Noreau, *Jurisdiction in Judicial Ethics. Actions available to the Conseil de la magistrature when a judge against whom a complaint is pending retires, resigns, or dies.*

Working document submitted to the Conseil de la magistrature, April 2008 (reproduced in Appendix 5).

## 4.6 IMPACT OF THE INQUIRY REPORT

**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 or Section 167.

> "According to the Act, the Conseil is, in fact, bound to apply the decisions of the inquiry committee, and is not empowered to alter them."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 79

SEE ALSO:

Gagnon and Drouin, CM-8-94-17 (inquiry)

> In accordance with the "he who decides must hear" rule, the Conseil is bound by the inquiry report filed by the committee.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ1796 (CA)

## 4.7 REOPENING OF AN INQUIRY

> "A petition to reopen an inquiry must state the facts one wishes to prove so their essential nature may be assessed."
>
> "[O]nly the facts that are likely to affect the committee's conclusion will be considered essential."
>
> Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry)

COURTS OF JUSTICE ACT

# 5 Procedural Protections during the Inquiry

> "[T]he procedural rights expressly acknowledged in Section 271 and subsequent sections of the [*Courts of Justice Act*] essentially ensure that the judge concerned has a right to take part in the inquiry, which is initiated by the Conseil and conducted by the committee."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

## 5.1 NATURAL JUSTICE AND PROCEDURAL FAIRNESS

> The inquiry committee must comply with the rules of natural justice, which apply to all administrative bodies "under the term 'rules of procedural fairness.'"

These rules essentially comprise two aspects: the right to be heard and the right to an impartial hearing.

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3

SEE ALSO:

Paré and Fortin, 1999 CMQC 56 (inquiry)
Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 75

> "[T]he committee must ensure that in the hearings before it, the principles of natural justice and procedural fairness are respected."

Viau and Ruffo, CM-8-90-30 (inquiry)

## 5.2 ADMINISTERING THE INQUIRY

### 5.2.1 Communication of the complaint

**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 or the third paragraph of Section 168.

> The judge who is the subject of a complaint must be able to know the specific facts alleged against him or her.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

#### 5.2.1.1 Defect in form

> The purpose of Section 271 of the *Courts of Justice Act* is the communication of alleged breaches. A procedural deficiency will be considered fatal only if it results in a violation of rights or a sufficiently serious prejudice.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

#### 5.2.1.2 Capacity of the sender

> Section 271 does not specify the sender's capacity.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

A letter mentioning "the essence of decisions made during the meeting of the Conseil de la magistrature" and including the complete report of the judge responsible for gathering the information needed to examine the complaint "made it possible to understand at least the basics of the alleged breaches."

Even though it was issued by the Conseil and sent by its secretary, who is not a member of the committee, the complaint was communicated in compliance with Section 271 of the *Courts of Justice Act*.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC)

#### 5.2.1.3 Communication timeframe

**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 or the third paragraph of Section 168.

> "[T]he law sets no timeframe within which the complaint must be communicated to the judge."

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), par. 71

#### 5.2.1.4 References to the provisions of the *Judicial Code of Ethics*

> Since the inquiry committee is not limited to examining the alleged conduct with respect to a specific section of the *Judicial Code of Ethics*, the Conseil does not have to mention the ethical rule that will be the subject of the inquiry.

Paré and Fortin, 1999 CMQC 56 (inquiry)

AUTHORS' NOTE:

If the Conseil does choose to do so, it is only for reference purposes.

See also on this topic: Gagnon and Drouin, CM-8-94-17 (inquiry)

SEE ALSO: INQUIRY, PAGE 66.

> It is only "after or during the hearing or the filing of documents that the committee will be able to determine which section of the *Judicial Code of Ethics* may have been infringed, of course subject to informing [the judge] and allowing him or her to provide any response" deemed appropriate.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), par. 37

### 5.2.2 Time limit for notification

**271.** 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.

> Section 271 of the *Courts of Justice Act* is not an imperative provision. Therefore the thirty-day period provided for in the second paragraph is not an essential formality.

Moreover, the Conseil or the committee will not break the rule regarding reasonable delay if there is no prejudice regarding the rights to a prompt inquiry.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

In this case, the time spent finding a suitable date was useful with respect to notification, since the committee chair sought to set hearing dates that were as close as possible and compatible with the busy schedule of the respondent judge's counsel.

Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC)

## 5.2.3 Making of rules of procedure

**275.** The committee may make rules of procedure or rules of practice for the conduct of an inquiry.
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.

> [T]he committee is the master of its own procedure.

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35

SEE ALSO:

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint 2001 CMQ 45, [2002] RJQ 2754 (SC)

> In light of the committee's investigative function, "the actual conduct of the case is the responsibility not of the parties but of the committee itself, on which the CJA confers a pre-eminent role in establishing rules of procedure, researching the facts and calling witnesses."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 73

> The committee is not compelled to make rules of procedure. Even without them, it can guarantee the judge "an inquiry that respects his or her right to a full and complete defence."

Descôteaux and Hamann, CM-8-98-3, CM-8-98-4 (inquiry) and Paré and Fortin, 1999 CMQC 56 (Municipal Court) (inquiry), referring to Hôpital Maisonneuve-Rosemont v. Québec (Ministère de la Santé et des Services sociaux), [1999] RJQ 2066 (CQ)

## 5.2.4 Receipt of preliminary applications

> The judge had submitted an "amended motion designed to show that there was inadequate grounds for an inquiry, and that it should be dismissed at the preliminary stages."

The inquiry committee granted the motion, recognizing the [judge's] right to submit this argument to the committee on a preliminary basis, since this was his first official opportunity to exercise his procedural rights."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 45 (inquiry)

AUTHORS' NOTE:

However, the committee had previously determined that it was under no legal obligation to render an immediate decision on a preliminary matter, "even when this question falls under its jurisdiction."

SEE ON THIS TOPIC:

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint 2001 CMQ 45, [2002] RJQ 2754 (SC), repeated in Paré and Fortin, 1999 CMQC 56 (inquiry)

## 5.2.5 Committee composition and quorum

**269.** Three persons are a quorum of the committee.

**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.

> "The fact that certain committee members stop being members of the Conseil during an inquiry is of no consequence since, on the one hand, Section 269.3 of the *Courts of Justice Act* allows them to continue to sit on the committee in order to complete an inquiry that is already underway and, on the other hand, the quorum for the committee is three 'persons,' not three 'members'of the Conseil."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 53

SEE ALSO:

Horne and Ruffo, 2001 CMQC 26 (inquiry)
Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

> "By means of this Section 269.3, the legislator clearly expressed its intent to uphold committee members' required qualifications, despite their having lost the status of members of the Conseil, so they may continue acting as members of the committee in the same way that they had these qualifications before losing their status as members of the Conseil."

The goal is clearly "to ensure the continuity, efficiency and sound administration of the ethical process."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 5.2.5.1 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.

> A committee member who subsequently loses his or her capacity as member of the Conseil does not have to be sworn in again.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

### 5.2.5.2 Committee with an even number of members

"The Court of Appeal deemed the decision by the inquiry committee to continue its work, although there was an even number of members, 'unwise.'"

The Court was critical of the Conseil's failure to reach a decision with regard to the complaint in question, due to the fact that "the members of the inquiry committee, although unanimous in concluding there was a breach of the *Code of Judicial Ethics*, were evenly divided on the appropriateness of imposing a sanction."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 342 and 343

### 5.2.5.3 Replacement of a member before the hearing starts

> The Conseil has the power to replace a member of an inquiry committee.

Horne and Ruffo, 2001 CMQC 26 (inquiry)

> "[R]eplacing members before the hearing starts is part of the Conseil's administrative jurisdiction."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 11

#### Recusation of a member

> The Conseil has "not only the right but the obligation to replace an inquiry committee member who recuses him or herself, [. . .] provided that the presentation of evidence has not begun."

Fortin v. Conseil de la magistrature du Québec, 1999 CMQC 56, [2003] RJQ 973 (SC), par. 23

**Voluntary withdrawal of a member**

> The Conseil may by resolution replace members of the committee who ask to be released from the responsibility to hear an inquiry, provided the hearing has not yet begun and no aspect has yet been heard or decided.
>
> Horne and Ruffo, 2001 CMQC 26 (inquiry)

### 5.2.5.4 Replacement of a member after the hearing of the preliminary exceptions

The new committee member, appointed to replace a member who had recused himself, was present at the hearing of the evidence on the merit of the complaint lodged against the judge. His absence when the preliminary exceptions were heard did not invalidate his appointment to the inquiry committee.

Fortin v. Conseil de la magistrature du Québec, 1999 CMQC 56, [2003] RJQ 973 (SC)

### 5.2.5.5 Dissolving an inquiry committee

"The Conseil established a second inquiry committee after the first was dissolved, without first advising the judge concerned and without giving her the opportunity to be heard. This 'does not constitute a violation of the basic rights to which she is entitled.'"

Viau and Ruffo, CM-8-94-43(3) (inquiry)

### 5.2.5.6 Replacement of a committee chair

> Since the legislator clearly expressed its desire to "ensure the continuity and efficiency" of the committee, the Conseil's power to appoint the committee chair implies the power to replace him or her.
>
> Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 5.2.5.7 Chair who has lost the status of member of the Conseil

> The right to continue sitting on an inquiry committee after losing the capacity of member of the Conseil "implies the right to be appointed chair."
>
> Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 5.2.6 Loss of quorum

> "[A]ny decision made without the necessary quorum will be null and void."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

> "The lack of a quorum renders the inquiry committee incompetent, and it then has no other choice but to relinquish the matter."

Viau and Ruffo, CM-8-94-43(3) (inquiry)

> A letter addressed to the Conseil in which the committee withdraws from the inquiry underway "shall not be considered" as an inquiry report ending the case.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

> The loss of a quorum renders the committee incompetent, and it must withdraw from the case. The Conseil must then form a new committee in order to completely restart the inquiry undertaken by the previous committee that withdrew due to its incompetence.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

### 5.2.7 Judicial procedures and suspending an inquiry

#### 5.2.7.1 Judicial review

> "The Court feels it would be poorly serving the public interest, which holds judges to certain ethical standards, if a stay of proceedings were ordered every time a point is contested in the courts."

Lafond v. Conseil de la magistrature du Québec, CM-8-95-74, REJB 1998-06950 (SC)

> The criteria for suspending an inquiry committee which is part of a request for judicial review are as follows:
>
> 1. The party requesting the suspension of the inquiry must establish colour of right so as to convince the court that there is a serious matter to be decided.
> 2. In the absence of a suspension, the party moving for suspension would incur irreparable damages unlikely to be compensated with damages and interest.
> 3. The inconvenience to the petitioner outweighs that to the public interest, in the light of the preponderance rule.

Dionne v. Conseil de la magistrature du Québec, 2007 CMQC 7, 2008 QCCS 1264

> "[T]he public's confidence in the judicial institution rests, among other things, on the credibility of complaint examination mechanisms and the speed of the process."
>
> Plante v. the inquiry committee of the Conseil de la magistrature, REJB 1999-11229 (CA)

The judge moved to suspend the inquiry on the grounds that the questions raised had already been considered by the Court of Appeal in an earlier report, over which she was seeking leave to appeal to the Supreme Court.

The inquiry committee, invoking its obligation to "ensure justice is administered soundly, and the resources of the judiciary are used appropriately," granted the motion in part by ordering the suspension of the inquiry while awaiting the Supreme Court's decision.

Horne and Ruffo, 2001 CMQC 26 (inquiry)

After the Superior Court and the Court of Appeal ordered a suspension of the investigation on two occasions, the Committee deemed that "given the time already elapsed since its formation, it was [the Committee's] responsibility to pursue the investigation with diligence." However, it concluded that it was reasonable to grant the judge in question sufficient time to present before the competent court her motion for an order to suspend until the Supreme Court's final decision, an order that was pronounced by the Supreme Court.

Gobeil and Ruffo, CM-8-90-30 (inquiry)

#### 5.2.7.2 Pending motion on a constitutional matter

The committee deemed necessary to suspend its inquiry for a six-month period in order to await a decision on the constitutional issue raised by the respondent judge regarding payment of her attorneys' legal fees by the government.

Viau and Ruffo, CM-8-90-30 (inquiry)

The Committee decided to suspend its inquiry "so the issue regarding fees could be ruled on" by a competent authority, and asked the respondent judge to file his motion "as soon as possible."

Descôteaux and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

SEE ALSO:

Paré and Fortin, 1999 CMQC 56 (Municipal Court) (inquiry)

#### 5.2.7.3 Pending penal proceedings

> "The committee may carry on with its work even though the criminal process is not completed. It is a matter of expediency [. . .]."
>
> Descôteaux and Hamann, CM-8-98-3, CM-8-98-4 (inquiry), par. 16

The committee considered it "expedient to stay its inquiry until the end of the proceedings before the criminal courts." Since the judge was suspended from his office for the duration of the inquiry and was not receiving any remuneration, the committee decided that the public's confidence in the judicial system was already preserved and that there was no risk of conflicting decisions between the two authorities.

Descôteaux and Hamann, CM-8-98-3, CM-8-98-4 (inquiry)

### 5.2.8 Insufficient notice for potential conclusions

> The judge, as a party to the proceedings, is informed from the outset of the allegations made against him or her. So the inquiry committee is not required to warn the judge of findings that may be made against him or her in the final report.
>
> Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3

### 5.2.9 Separate hearing on the sanction

> By virtue of the procedural autonomy enshrined in Section 275 of the *Courts of Justice Act,* "the inquiry committee is fully justified in refusing to hold a separate hearing out of concern for efficiency."
>
> Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 89, [2001] 2 SCR 3

### 5.2.10 Makeup of the Conseil when submitting an inquiry report

> The Conseil members present when the decision to make an inquiry is made in a specific case do not have to be present when the report on that case is examined.
>
> Ruffo v. Conseil de la magistrature du Québec, CM-8-88-37, [1989] RJQ 2432 (SC), upheld in Ruffo v. Conseil de la magistrature du Québec, [1992] RJQ 1796 (CA)

## 5.3 EVIDENCE

### 5.3.1 Communication of the evidence

#### 5.3.1.1 Duty of communication

> The investigative function of the inquiry cannot prevent the judge who is the subject of a complaint "from making a full answer and defence."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

> "[T]he principle of communication of evidence applies to disciplinary law.

The inquiry committee is the architect of this communication."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 13 and 16

> "The duty to communicate the evidence includes the relevant information and the documents the Conseil was made aware of during the examination of the complaint."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 16

SEE ALSO:

Horne and Ruffo, 2001 CMQC 26 (inquiry)

The committee granted the respondent judge's request and ordered that the following be communicated to her: "[a]ny reports, transcripts or summaries of the testimonies of persons who have been contacted by or met with, transmitted to or in the possession of the Conseil, [a]ny excerpts from minutes of the Conseil's meetings in relation with the complaint as well as [a]ny resolution passed by the Conseil de la magistrature in relation with the complaint."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

AUTHORS' NOTE:

It has been established that the *Courts of Justice Act* does not oblige the Conseil to give reasons for its decision to hold an inquiry.

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 31 (inquiry)

SEE ALSO:

Gagnon and Drouin, CM-8-94-17 (inquiry)

Examination, page 47.

### 5.3.1.2 Elements stricken from the communication

#### Minutes of the Conseil's meetings

> The whole of the minutes of the meeting when the decision to form an inquiry committee was made shall not be accessible to the judge who is the subject of a complaint.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

#### Examiners' personal notes

> Examiners' personal notes containing points of strategy, analysis and the list of questions for the witnesses are not subject to the duty to communicate the evidence.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 96 and 97

SEE ALSO:

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

Horne and Ruffo, 2001 CMQC 26 (inquiry)

#### Mixed documents

> Documents containing mixed items, "that is to say notes taken during interviews and personal notes, as in a working document," must be removed by the counsel assisting the committee before being given to the respondent judge.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

SEE ALSO:

Horne and Ruffo, 2001 CMQC 26 (inquiry)

#### Draft decisions

> "Draft decisions and draft reports are not [. . .] subject to the duty to communicate" the evidence.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 27

SEE ALSO:

Horne and Ruffo, 2001 CMQC 26 (inquiry)

> A judge "cannot demand that part of a draft decision put aside by the Conseil be communicated to him or her."

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

### Deliberations

> "All documents representing the work and preliminary reports submitted to the Conseil to help it fulfil its duty to perform a preliminary examination of the complaint, as well as all [. . .] Conseil decisions are considered part of its deliberations and, as such, are confidential."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 101

### Accounts of legal fees for the counsel assisting the committee

> Only "activities tied to meetings and communications with persons likely to have provided information with respect to the complaint" and listed in the accounts of the counsel assisting the committee may be disclosed. "[A]ny other information appearing in the accounts" is the purview of the privileged counsel-client relationship."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 26

SEE ALSO:

Horne and Ruffo, 2001 CMQC 26 (inquiry)

## 5.3.2 Admissibility of evidence

### 5.3.2.1 Hearsay

> "The committee enjoys broad authority in carrying out its inquiry. It may make its own investigation rules and establish a broad framework regarding the admissibility of evidence so that it may, in some circumstances, accept evidence based on hearsay, provided that rules of natural justice are complied with."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 179

SEE ALSO:

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 205 *et seq.*

SEE ALSO:

Principles and Foundations, page 27

### 5.3.2.2 Events occurring during the inquiry

> Events that are within the scope of the inquiry are admissible evidence before the committee.
>
> Thus any interview given by a judge on the proceedings of the inquiry, while the inquiry is active, is admissible.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 220 *et seq.*

SEE ALSO:

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

### 5.3.2.3 Previous Conseil decisions and inquiry committee reports

> Reports from previous inquiries concerning the judge under investigation are admissible as evidence, not to establish the validity of the current allegations, but only during discussions on the sanction.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

### 5.3.2.4 Statements made to the examiner

The judge maintained that the inquiry committee's decision to allow as evidence statements she made to the examiner would jeopardize the fairness of the proceedings.

The Court of Appeal established that these declarations, which were part of the inquiry file, could be disclosed, particularly since the inquiry committee had offered the judge the opportunity to "clarify her comments."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 220 *et seq.*

### 5.3.2.5 Relevance of the evidence

The lawyer representing the judge wished to cross-examine a witness to shed light on certain questionable judicial issues in the matter that led to the complaint.

The lawyer in attendance at the inquiry committee objected on the grounds of irrelevance. The committee upheld the objection.

The Court of Appeal, asked to rule on procedural fairness, sided with the committee.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 113 *et seq.*

The judge's attorney submitted to the inquiry committee certain documents on events that occurred more than eight years prior, relating to the judge's personal life. The documents were deemed inadmissible as they did not concern the judge's conduct or statements.

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 4

### 5.3.3 Non-broadcasting and non-publication of the evidence orders

> The committee has broad discretion in issuing orders forbidding the broadcast or publication of documents filed during the inquiry. In so doing it must follow the applicable principles laid down by the courts.
>
> St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

The respondent judge filed a motion with the committee in order to forbid access to, broadcast and publication of the videos and photos taken on the evening when the alleged conduct was observed.

A majority of the committee members considered that they had to assess whether broadcasting the document could have an impact on "the sound administration of justice" but concluded that they "did not have to consider the effects of broadcasting the video on the judge's personal image since he had voluntarily put himself in the situation shown in the video."

The committee members concluded that broadcasting the video could actually have such an impact and granted the motion in part. They allowed however that the documents be consulted or seen by members of the public and the media so they "could eventually comment on them."

St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

### 5.3.4 Calling and hearing of witnesses

**272.** The committee hears the parties, their attorneys and their witnesses.
It may inquire into the relevant facts and call any person apt to testify on such facts.
The witnesses may be examined or cross-examined by the parties.

**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.

> "Section 272 confers on the committee the power to call any person who is apt to testify on facts relevant to the complaint. According to Section 273 its members enjoy, for this purpose, the powers of commissioners appointed under the *Act respecting public inquiry commissions*, except the power to order imprisonment."
>
> Gagnon and Drouin, CM-8-94-17 (inquiry)

#### 5.3.4.1 Order of hearing of the witnesses and the judge

> As a general rule, the judge must be heard at the end of the inquiry process.
>
> The inquiry committee may, however, depending on the circumstances, opt to hear the judge before all other witnesses if it "[ensures] that evidence is disclosed in a timely manner and [permits] a judge who so wishes to add to their statements at the end of the inquiry."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 104 and 112

> The judge who is the subject of a complaint acquires the right to be heard after the Conseil has formed the inquiry committee and chosen its members, "when the actual inquiry has begun (Section 274 and following CJA)."
>
> Viau and Ruffo, CM-8-94-43(3) (inquiry)

#### 5.3.4.2 Absence of the judge involved for health reasons

> While the inquiry committee deems the judge's presence essential to enable him or her to "hear the accusations made and respond to them," the committee can also accept a judge's absence for health reasons.
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 130

## 5.4 RIGHT TO A PUBLIC AND IMPARTIAL HEARING

> The inquiry committee "must comply with the requirements of Section 23 of the *Québec Charter,*" which "guarantees the right to a public and impartial hearing."
>
> Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

### 5.4.1 Public nature of debates

> "If debates are held *in camera*, or the identity of complainants kept secret, there is reason to believe that the level of transparency required by the inquiry process would not be achieved."
>
> Gagné and Pinard, 2007 CMQC 58 (4-30-2008), par. 17 (inquiry)

#### 5.4.1.1 Confidentiality of the complainant's identity

When informed that an inquiry was to be held, the complainant asked to be heard and requested that his identity be kept confidential as per Section 7 of the *Canadian Charter of Rights and Freedoms,* alleging that he could be threatened by other inmates or the public.

As per Section 23 of Québec's *Charter of Human Rights and Freedoms,* Conseil de la magistrature and inquiry committee hearings are public. "By submitting to the Conseil a complaint on an issue that had already garnered substantial media attention, the complainant had to expect that his complaint would become known and that if it were to lead to an inquiry, the hearings held by the committee of inquiry would be subject to the rule of public debates."

Gagné and Pinard, 2007 CMQC 58 (4-30-2008) (inquiry)

#### 5.4.1.2 *In camera* sitting order

**252.** The council meets as often as necessary, when convened by the chairman. It may sit *in camera* and hold its sittings at any place in Québec.

> The inquiry committee's power to sit *in camera,* which is not expressly provided in the Act, can be inferred from Section 252 of the *Courts of Justice Act* and Section 23 of the *Québec Charter,* which acknowledge the power "to sit *in camera* in the interests of morality or public order."
>
> The committee's orders in this respect may however be subject to the test established in order to verify whether they constitute a reasonable limit to freedom of the press and to the right to a public hearing, as can be demonstrably justified in a free and democratic society.
>
> Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

> "The committee may order an *in camera* sitting even though the facts involved are otherwise known to the public."
>
> Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

An *in camera* sitting was ordered by the committee based on the apprehension that justice may not be served in the future if the young litigants were informed of the conflict between Justice Ruffo and the director of the Laurentides-Lanaudière social services centre.

Though this conflict had already been publicized for a long time, no evidence was presented to support this apprehension. The Court considered that, even if the aim of this order met the required emergency criteria, the chosen action was out of proportion given its negative consequences on freedom of the press and the right to a public hearing. Since the committee had exceeded its jurisdiction, its order was quashed.

Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

### 5.4.2 Impartiality of the inquiry

> "[W]e must presume that the persons the legislator entrusted with broad powers affecting the rights of third parties will act in good faith."

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), quoting Girard v. the disciplinary committee of Corporation des médecins, 500-05-013903-917, 10-29-1991 (SC)

#### 5.4.2.1 Applicable criteria

> In order to establish reasonable apprehension of bias, "One must ask oneself whether a reasonably well-informed person might fear a biased decision; this fear must be based on sufficiently proven facts, and not on simple suspicions. However, this fear need only be reasonable, without the probability of bias having to be proven."

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 26 and 29. Regarding the three criteria, the Superior Court quotes Molson-O'Keefe v. Tremblay, [1991] RJQ 442 (SC). These criteria are applied by the inquiry committee of Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 86 *et seq.* (inquiry). As regards the last part of the quote, the Superior Court quotes Girard v. the disciplinary committee of Corporation des médecins, 500-05-013903-917, 10-29-1991 (SC)

SEE ALSO:

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

Gobeil and Ruffo, CM-8-90-30 (inquiry)

> "The fear of bias must be reasonable and liable to occur to a reasonable and sensible person who would ask the same question and gather the relevant information on the subject."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

5.4.2.2 | Absence of bias

### Complaint lodged by a member of the Conseil

> "[W]here the Conseil decides to conduct an inquiry after examining a complaint lodged by one of its members, the committee does not thereby become both judge and party" since the ethical process does not initiate litigation.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 73

### Conseil members party to the decision to send the complaint to inquiry

> According to the judge, the fact that members of the inquiry committee had taken part in the examination of the complaint as Conseil members suggested they had "already made up their minds" on the issue.
>
> The committee, referring to Section 269 of the Courts of Justice Act, noted that it would run counter to the spirit of the law if "members of the committee were among those appointed to the inquiry committee."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 12, 13 and 95 (inquiry)

AUTHORS' NOTE:

Appointing a committee, and more specifically selecting its members, is the subject of a special section in this work.

SEE ALSO: INQUIRY, PAGE 56.

### Tone and language of the complaint

The judge's concerns related to the fact that the complaint, which was worded in a definitive manner by the chief judge, who vigorously condemned her conduct, could give rise to reasonable apprehension of bias on the part of the committee because of the tone used in the complaint and the particular status of its author.

Having examined the powers conferred on the chief judge and "without approving the wording" he had chosen, a majority of the Supreme Court judges dismissed this allegation, considering that a reasonable and well-informed person would not fear "that committee members would be influenced by" these factors since "their professional experience confirms their independence and impartiality."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267

AUTHORS' NOTE:

This solution was applied in Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry), which relates to a lawyer's complaint constituting a "vehement plea" against the judge.

### Letter from the chief judge to all judges

After the chief judge sent a letter to all judges of the Court of Québec inviting them to consult him before agreeing to take part in radio or television programs, the respondent judge, who was the subject of an inquiry for such an activity, alleged reasonable apprehension of bias "by association" on the part of the committee members. The committee considered that these circumstances were not "likely to raise such a fear in a reasonable and well-informed person's mind."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

### Knowledge of potentially inadmissible evidence

> Since Conseil members are "mainly judges whose profession often requires them to disregard evidence they were made aware of but subsequently considered inadmissible," a "sensible and well-informed" person would not fear they might become unable to exercise "the same intellectual discipline" in performing their duties within the Conseil.
>
> Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 35

The allegation of bias on the part of the Conseil and the committee by the respondent judge was based in particular on the following paragraph of the minutes of the Conseil's meeting:

"Conseil members are aware that this is a new case concerning Madam Justice Ruffo, who has been reprimanded in certain previous cases. They agree that it is up to the inquiry committee to take into consideration previous reprimands, if need be."

"One cannot blame the members for obtaining information regarding Madam Justice Ruffo's past records that might be irrelevant."

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 32 and 35

AUTHORS' NOTE:

Previous reprimands addressed to a judge have ultimately been considered relevant when determining the appropriate sanction.

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 98.

### Statements by the Conseil's information officer

> "The information officer is neither a member of the Conseil nor *a fortiori* of the inquiry committee. Her remarks, although possibly inappropriate, do not raise any legitimate fear that committee members might necessarily agree with her."
>
> Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 29

## 5.5 CONSTITUTIONAL PROTECTIONS

### 5.5.1 Abuse of process

> The Conseil de la magistrature of Québec may apply the abuse of process theory, which is included in the *Canadian Charter of Rights and Freedoms*.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### 5.5.2 Reasonable delay between the alleged offence and the filing of the complaint

> "Reasonable delay is an issue of fact, at least to a certain extent. It is also a way to set aside alleged breaches of a disciplinary nature."

St. Germain v. Conseil de la magistrature du Québec, CM-8-66, [1986] DLQ 223 (SC)

> The issue of reasonable delay, which may be raised independently of the Charter, may be submitted to the "committee formed by the Conseil de la magistrature" which is the appropriate forum.

St. Germain v. Conseil de la magistrature du Québec, CM-8-66, [1986] DLQ 223 (SC)

Despite the four-year delay between the commission of the offence and the filing of the complaint, the Court could not conclude that there had been any abuse of judicial process, since the respondent "did not present any evidence that this delay was excessive and detrimental to him."

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

SEE ALSO: PRINCIPLES AND FOUNDATIONS, PAGE 26.

### 5.5.3 Protections granted by the principle of judicial independence

#### 5.5.3.1 Payment of the legal fees of a judge who is the subject of a complaint

> The payment of the legal fees of a judge who is the subject of a complaint is guaranteed by the constitutional principle of independence of the judiciary.

Ruffo v. Québec (Ministère de la Justice), [1998] RJQ 254 (SC)

> "[A]ccording to a quasi-constitutional obligation, the Minister of Justice must bear the legal fees for defending judges who are the subject of complaints before the Conseil, whether these complaints arise from acts committed inside or outside of judicial functions."

Fortin v. P.G. (Quebec), [2003] RJQ 1323 (SC), par. 25, quoting P.G. (Quebec) v. Hamann, REJB 2001-24062 (CA)

> Judges who are convicted by a court of criminal jurisdiction "still have the right to defend their function without their judicial independence being compromised by the Minister's refusal to pay their legal fees."

The court therefore upheld the judge's right to have his legal fees paid by the government.

Fortin v. P.G. (Quebec), [2002] RJQ 1323 (SC)

### 5.5.3.2 Autonomy in rendering a judgement

> "[A]fter delivering a decision, a judge must not be required to justify it before a government body. For this reason the judge's advisement must remain strictly confidential."

Conseil de la magistrature du Québec v. Commission d'accès à l'information, [2000] RJQ 638 (CA), par. 71

> "Judicial councils and review bodies must remain alert to the high level of protection afforded judges' comments during hearings."

"When going about its work, the Conseil must pay close attention to the requirement of the independence of the judiciary, and never discourage the expression of unpopular views, provided they be sincerely held, within the justice system."

It is in cases where the judge's words "raise doubts about the integrity of the judiciary function itself" that the judicial ethics process becomes necessary."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 93, quoting the Supreme Court in Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 54, 58 and 72

> Judges must not be put in a position of justifying their rulings to the Conseil.

"What could one day be expressly protected under the constitution [. . .] is the act of judging itself, as it is the essence of the judiciary function. To judge is not only to decide but also to assess evidence, analyze the case made, weigh competing arguments and, finally, hand down a ruling on the matter at issue."

Commission des droits de la personne et des droits de la jeunesse and DuBois, 2004 CMQC 3, par. 99 (inquiry)

AUTHORS' NOTE:

The inquiry committee specified that this constitutional right did not extend to "all statements made in judgements": "It would be hard to fathom [. . .] that the framework of a judgement could provide a protective shell around statements that fall outside the judging process." Therefore, judges who make

statements on matters that did not arise in the proceedings before them" or "involve people not seemingly connected to the dispute" would not be protected.

See paragraphs 98 to 100 of the decision.

> "Since the Conseil hears neither appeals nor reviews of the decisions delivered by judges subject to the *Judicial Code of Ethics*, these judges do not have to justify the position taken in their decision nor the reasoning that led to it."

2003 CMQC 34 (examination)

"Justice Paré's attorney raised the issue of secrecy of advisement throughout the inquiry before the committee. We wish to reaffirm our deepest respect for this sacred privilege linked to the judge's advisement."

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry), par. 93

SEE ALSO: ABSENCE OF ETHICAL BREACH, PAGE 288.

### 5.5.3.3 The process of removal of judges

> In order to meet the constitutional requirements of the independence of the judiciary, the removal process must basically meet two criteria: "1) the removal must be made for an established reason connected to the judge's ability to exercise his or her judicial functions; and 2) a judiciary inquiry must be planned to establish such a reason, during which the judge in question must have the opportunity to be heard."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 39, recently repeated by the Court of Appeal in Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 33

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 105.

## 5.6 JUDICIAL REVIEW

> "The scope of a judicial review of the inquiry committee's report, and the Conseil's decision that upholds it, must be governed by the nature and specific roles of these bodies."

It is therefore important to remember that "the Committee's recommendation and the Conseil's decision must be in the interest of the judiciary as a whole" and "not serve to punish the particular judge under investigation, but rather serve a remedial function for the judiciary as a whole."

Provost v. Conseil de la magistrature du Québec, 2007 CMQC 22, 2009 QCCS 5116 (appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 72–73

> "We must show a great deal of restraint on matters of legislative interpretation by the Conseil, and the review process must not intervene except in cases where the Conseil has adopted an interpretation that cannot reasonably be supported. [. . .] It would be absurd for a judge sitting alone and for a court of appeal not to display restraint with regard to Conseil decisions in a field where they do not possess any greater expertise."

That said, "An error of law by an administrative tribunal interpreting the Constitution can always be reviewed fully by a superior court."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 13 and 19, quoting the Supreme Court in Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002, CSC 11 par. 50 and 62

SEE ALSO: DISCIPLINARY JURISDICTION OF THE CONSEIL, PAGE 31.

### 5.6.1 Applicable standards of review

> "Judicial councils are more experienced than review judges in drawing distinctions between judges' alleged acts that can be handled through a normal appeal process, and those that pose a threat to the judiciary as a whole, and thus demand an intervention through the application of disciplinary measures applicable to judges [. . .]

The preliminary decision of the inquiry committee can only be reviewed if it is unreasonable [. . .]."

Conseil de la magistrature du Québec v. DuBois, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, no. 33973), par. 13 and 17, referring to Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 62

> According to the Supreme Court, "the standard of 'reasonableness *simpliciter*' must apply when reviewing Conseil de la Magistrature decisions on its mandate [. . .]."

The Superior Court decided that "the same standard would apply to other matters of law to be decided by the Conseil de la magistrature, and particularly on the question of knowing what would come under appeal or judicial review, on the one hand, and what is to be addressed through judicial ethics or disciplinary measures, on the other."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, par. 14 and 15, referring to the Supreme Court in Moreau-Bérubé v. New-Brunswick (Conseil de la magistrature), 2002, par. 67

### 5.6.2 Procedure

> "The only way the Superior Court may intervene [in a matter under the committee's jurisdiction] is through the review process, but before doing so, it must make an official application to the committee and the latter must decide on the matter."

Southam Inc. v. Mercier, [1990] RJQ 437 (SC)

The arguments brought up before the Superior Court required "that the facts be examined and the *Courts of Justice Act* be interpreted," tasks that are "completely within the inquiry committee's jurisdiction." Since the committee had not yet decided on these matters, the Court determined that it was "inopportune and premature" to intervene at this stage.

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 22

### 5.6.3 Review at the interlocutory stage

> "Recourse to judicial review is an interlocutory decision of an administrative tribunal, and generally not allowed."

According to the Court of Appeal, "there are exceptions under which the Superior Court can conduct a judicial review of a pending case. These are exceptional cases of manifest lack of jurisdiction [. . .] where there is the likelihood of a long inquiry unjustified by the clear and uncontestable inapplicability of the law."

The Court of Appeal also "deemed admissible a request for review at the interlocutory stage, on questions within the jurisdiction of an administrative tribunal, when the decision maker has issued an order or handed down a decision that stands to be difficult to correct during the final ruling."

This can apply to a judicial ethics inquiry carried out by an inquiry committee that seeks to investigate a complaint whose grounds does not permit such an investigation, or in a clear case of lack of jurisdiction, because inquiries carried out under such conditions are liable to be lengthy and unfruitful. In addition, such inquiries are liable to cause prejudices difficult to correct during the final ruling."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 27, 28 and 29, referring to the Court of Appeal in Mascouche City v. Houle, [1999] RJQ 1894 (CA), p. 1913 and 1914.

SEE ALSO: CONSEIL DE LA MAGISTRATURE DU QUÉBEC V. DUBOIS, 2004 CMQC 3, 2010 QCCA 1864 (APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 5-12-2011, NO. 33973), PAR. 18

### 5.6.4 Review for reasonable apprehension of bias

> "When reasonable apprehension [of bias] is proven, the Superior Court must intervene, even at the earliest stage."

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 27

> "The Superior Court cannot intervene in order to deprive the Conseil of any means to fulfil its mission, unless the Court is convinced that there is reasonable apprehension of bias."

Ruffo v. the inquiry committee of the Conseil de la magistrature formed to hear the complaint, 2001 CMQ 45, [2002] RJQ 2754 (SC), par. 38

### 5.6.5 Judicial review at the request of a third party

> A third party, even one granted standing in the inquiry committee, cannot take the place of the judge named in the complaint, or exercise the right to judicial review in the judge's stead.

Asking a third party to request a judicial review of a committee inquiry decision could run counter to "the choices and interests of the judge involved [. . .] the very person who will pay the price for the inquiry's findings."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 120 *et seq.*

### 5.6.7 Power to refuse the review

> "The power to refuse judicial review of interlocutory evidence is subject to the discretion of the Superior Court judge, mainly when the public interest of proceeding with diligence in a thorough examination is at issue, and there is a real chance that the inquiry will be paralyzed."

Plante v. Inquiry committee of the Conseil de la magistrature, REJB 1999-11229 (CA)

## 5.7 LAWYER–CLIENT PRIVILEGE

> "The request to disclose legal fees under the *Act respecting Access to documents held by public bodies and the Protection of personal information* does not compromise lawyer–client privilege as it pertains to the judges' lawyers, whose fees are paid by the Québec government.

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 647, par. 67 to 69

COURTS OF JUSTICE ACT

# 6 Reprimand and removal

## 6.1 POWER OF REPRIMAND AND REMOVAL

**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 or Section 167.
If it makes the recommendation provided for in paragraph b, the council suspends the judge for a period of thirty days.

**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.

**167.** The Government may dismiss a presiding justice of the peace only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.

> "It would be [. . .] inappropriate for the committee, having concluded that a complaint is justified, to recommend a sanction the Conseil does not have the authority to accept according to Section 279."

Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry), quoting Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267 and Patrick Glenn, "Indépendance and déontologie judiciaire" (1995) 55 *R du B.* 295, 304

> According to Section 279 of the *Courts of Justice Act* "a justified complaint can lead to only one sanction."

Gobeil and Ruffo, CM-8-90-30 (inquiry)

> "According to the *Courts of Justice Act*, the committee must issue a recommendation to the Conseil for each breach, i.e., reprimand the judge or recommend that the Minister of Justice file a motion with the Court of Appeal in accordance with Section 95 of the Act."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO:

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry), par. 51

AUTHORS' NOTE

The Court of Appeal has ruled that the Conseil can determine the outcome of a complaint, even when the inquiry committee has not reached a unanimous agreement on the nature of the sanction. In the absence of a Conseil decision on a complaint that results in an inquiry, the Court of Appeal felt the interpretation of sections 278 and 279 CJA invoked by the Conseil, "as requiring a decisive report from the inquiry committee before dismissing or upholding a complaint [. . .] may reflect the letter of the law but none were able to put forward another that would be more liberal and closer to the Conseil's judicial ethics role."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 343

## 6.2 THE PURPOSES OF SANCTIONS

> "[T]he extraordinary vulnerability of individuals who appear before" a judge justifies consideration "above all" of their right "to have justice done in their case and to have the general public perceive that justice has been done."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 151, [2001] 2 SCR 3, repeated in Paré and Fortin, 1999 CMQC 56 (inquiry), par. 69

> The committee fullfils a remedial function for the judiciary, not for the judge being sanctioned.

The committee's objective is not to punish inappropriate behaviour, but rather to uphold the integrity of the judiciary.

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, p. 309 repeated in Ms. A. and Turgeon, 2011 CMQC 37 (inquiry), par. 65

SEE ALSO:

Therrien (Re), [1998] RJQ 2956 (CA)

> "When it recommends imposing a sanction on a judge, the inquiry committee plays an educational and preventive role in order to avoid any other infringement of the integrity of the judiciary."

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), par. 40

> "Judicial ethics is [. . .] essentially turned towards the future." The measures recommended must be sufficient, according to the seriousness of the breaches, to ensure that the respondent judge's conduct will be appropriate in the future.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

## 6.3 DETERMINATION OF THE SANCTION

> Since "judges are appointed during good behaviour, neither the non-compellability privilege they enjoy nor their immunity from any suit releases them from responsibility for their conduct."

G.R. and Lafond, CM-8-95-74 (inquiry)

SEE ALSO: SECTION 8, PAGE 211.

### 6.3.1 Proportionality

> "The sanction must be proportional to the seriousness of the breach(es)."

Charest v. Alary, 2008 CMQC 87 (3-24-2010), par. 47 (inquiry)

> The sanctions provided in the *Courts of Justice Act* "are appropriate measures, considering the seriousness of the judge's misconduct and the aggravating and extenuating circumstances shown by the evidence presented in each case referred to the Conseil."

St-Louis and Gagnon, 2003 CMQC 35 (inquiry), par. 105

> "Each case is specific," and judges who have made an ethical mistake must be dealt a sanction that is proportional to the act they are blamed for and that takes into account all particular circumstances.

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry), par. 52, quoting Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO:

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 92

Charest and Cloutier, 2004 CMQC 18 (inquiry)

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry)

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)

### 6.3.2 Aggravating circumstances

> "In its decision to remove Judge Ruffo, the Court of Appeal noted that "not only was the reprimand imposed [by the Conseil] justified, but the judge's behaviour [prior to the sanction] betrayed a lack of understanding of the role and obligations of judges in our society. Seen in this light, the breach was more serious."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA) 2005 QCCA 1197, par. 398

> When determining the sanction, the main criteria are the seriousness of the demeaning act, the degree of prejudice suffered by the litigant in question and the public in general and the existence of prior breaches.

Hadjem and Giroux, CM-8-95-27 (Justice of the Peace) (inquiry)

SEE ALSO:

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

### 6.3.2.1 Prior ethical breaches

> "When assessing a judge's overall conduct, the Court must evaluate the judge's career as a whole; thus in the case at hand it would treat less seriously a single, minor breach committed in the course of an exemplary career than the same breach that is one of a series. In short, if there is to be a sanction it must be assessed within the broader context of the judge's career, in order to achieve the objective set by the Supreme Court."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 244, referring to Therrien c. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3

> "The behaviour of Judge Ruffo or her receptiveness to previous measures may constitute an indicator of her state of mind and, as such, guide decision makers on the appropriate sanction to impose for a given breach of conduct."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 397

> The fact that a judge repeats the same misconduct would be an aggravating factor to be considered when determining the sanction.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 414

SEE ALSO:

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), *obiter dicta*

> The inquiry committee cannot consider the judge as having a history of judicial ethics complaints if no final ruling has been made on the prior complaint at the date of the events at issue in the current complaint, even if the alleged breach is the same in both cases. However, the fact that the complaints were filed must be viewed as a "red flag" to incite the judge to change his or her behaviour.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 96 (inquiry)

#### 6.3.2.2 Absence of regrets

"Judge Ruffo seems incapable of accepting the rules of the disciplinary process. Reprimands have had no effect on her behaviour. Only once—when she had to disqualify herself after making comments on an active matter before her—did Judge Ruffo express any regret whatsoever for her actions, which had earned her repeated reprimands from the Conseil. Quite to the contrary.

A few weeks after being reprimanded by the Conseil [. . .] Judge Ruffo again affirmed her intention to continue handing down the only rulings she deemed acceptable, without regard for their legality.

Close to fifteen years later, Judge Ruffo has not changed her ways. [. . .] She makes a mockery of the reprimands she has received [. . .]."

The Court of Appeal recommended that the government remove Judge Ruffo from her position at the Court of Québec.

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 414

#### 6.3.2.3 Refusal to acknowledge a breach

Despite the fact that in the other impaired driving cases the inquiry committee recommended that the Conseil reprimand the judge, "we must conclude that this case is different from the other two because Justice Claude Fortin was found guilty following a judgement questioning his credibility."

The judge's conduct during his trial, which was "especially reprehensible since it occurred in court," his attitude before the committee in failing to acknowledge any fault "under such circumstances" as well as the judgement finding him guilty of impaired driving due to alcohol have "manifestly and totally damaged the integrity and independence of the judiciary to such an extent that it undermines litigants' and the public's confidence in the justice system and makes the judge incapable of carrying out the duties of his office."

Consequently, the committee recommended that the Conseil undertake steps to remove the judge.

Paré and Fortin, 1999 CMQC 56 (inquiry)

#### 6.3.2.4 Lack of transparency before the committee

Justice Cloutier did not perform the duties of his office with integrity and honesty, breaching Section 2 of the *Judicial Code of Ethics*. He has no past ethical record and "his legal skills to carry out his office as municipal judge" are not in question, but he lacked transparency during the disciplinary process.

Moreover the committee noted that the judge "completely avoids the fact that he embezzled considerable sums of money for his profit [and] does not express any remorse" in relation with his conduct.

Taking into account "the perception and opinion any member of the community informed of the judge's conduct would have," the committee considered that a reprimand would not be the appropriate measure under these circumstances and recommended that the municipal judge be removed.

Charest and Cloutier, 2004 CMQC 18 (inquiry)

#### 6.3.2.5 Public statements made during the inquiry

The committee considered that the respondent judge's remarks in a television interview—given during the inquiry regarding the pending complaint before the committee and the report filed by another committee recommending she be reprimanded—should be taken into account "when making a recommendation to the Conseil regarding the appropriate sanction."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

#### 6.3.2.6 Other aggravating circumstances

The following aggravating circumstances have also been taken into account:

- the large number of judicial procedures introduced by the judge throughout the examination and inquiry
- the lack of respect demonstrated toward the Conseil and its conclusions
- the impact of the behaviour or statements of the judge on the citizens appearing before him
- the degree of public disapproval of the behaviour of the judge named in the complaint

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 412 *et seq.*; Ministère de la Justice du Québec and Dionne, CM-8-89-35 (inquiry); Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

### 6.3.3 Extenuating circumstances

#### 6.3.3.1 Absence of prior ethical breach

> The absence of prior breach must work in the judge's favour, especially when he or she has many years of experience as judge.
>
> Couture *et al.* and Houle, 2002 CMQC 26 (inquiry)

SEE ALSO:

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)
Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry)
Conseil municipal de Ville Mont-Royal and Smyth, CM-8-96-65 (inquiry)
Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

In concluding its inquiry into the conduct of a "judge who committed an intial ethical breach after twenty years in the judiciary," the committee deemed that a reprimand was an appropriate sanction.

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry)

A judge deemed to have committed a first ethical breach in close to twenty years of service "must not be made to bear responsibility for previous breaches committed by his or her colleagues."

Despite the description of the ethical breach in question as "a serious breach," a "serious reprimand" seemed to the committee to be "the fairest, most equitable, and most proportional sanction" given the absence of any intermediary measure between a reprimand and a recommendation for removal.

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

The "spotless past" of the judge found guilty of impaired driving, "her appropriate behaviour when she was arrested, her early acknowledgement of her guilt and her regret, as well as her outstanding reputation among her colleagues" justified maintaining her in office.

Considering that her situation being advertised was already the equivalent of a "public reprimand," the committee recommended that the Conseil reprimand her, in accordance with all Canadian and American case law filed.

Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry)

### 6.3.3.2 Acknowledgement of breaches

> "A reprimand is meaningful and its use as an appropriate disciplinary measure is credible to the public only to the degree that the subject of the reprimand [. . .] accepts it with dignity, recognizing his or her failings and sincerely wishing to mend his or her ways. Allowing another course of action would make the reprimand an absolutely useless, if not ridiculous, remedy [. . .]."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 9

SEE ALSO:

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), par. 53

Principals and Fundamentals, page 24.

### 6.3.3.3 Cooperation during the inquiry

> The judge's cooperation with the disciplinary body is one of the main criteria to consider when determining the sanction.

Conseil municipal de Ville Mont-Royal and Smyth, CM-8-96-65 (inquiry)

SEE ALSO:

Hadjem and Giroux, CM-8-95-27 (Justice of the Peace) (inquiry)
Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)
Principles and Foundations, page 25.

### 6.3.3.4 Other extenuating circumstances

The committee also considered the following extenuating circumstances:

- the judge's willingness to improve his or her knowledge, competence and skills needed to judge
- regular participation in training courses offered by the Court of Québec
- the absence of risk of repeat breach
- the judge's public apologies
- the absence of personal conviction with regard to his or her remarks or behaviour
- the judge's service to society over his or her career

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry); St-Louis and Gagnon, 2003 CMQC 35 (inquiry); Ministère de la Justice du Québec and Dionne, CM-8-89-35 (inquiry); Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

### 6.3.4 Common suggestion by the parties

> "[A]n inquiry committee must not be bound by a common suggestion if the proposed sanction is obviously unreasonable or out of proportion compared to the nature and impact of a judge's faulty conduct, considering all the circumstances shown by the evidence."

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), par. 43, quoting R. v. Verdi-Douglas, 500-10-002149-019, 1-17-2002 (CA)

SEE ALSO: SECTION 5, PAGE 161.

## 6.4 REPRIMAND

**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; [. . .]

### 6.4.1 Impact of the reprimand

> "[A] reprimand constitutes strict blame with a view to improving and correcting a behaviour while remedying the harm done to the judiciary. [. . .] It is a severe sanction for a judge."

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry), par. 51–52

SEE ALSO:

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 90

Charest and Cloutier, 2004 CMQC 18 (inquiry)

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry)

Beaudry and L'Écuyer, CM-8-97-14 (inquiry)

> "A reprimand, in the ordinary meaning of the word, is blame addressed with authority and severity to a person in order to improve his or her behaviour."

Paré and Fortin, 1999 CMQC 56 (inquiry), par. 62

> For a judge, a reprimand is a severe sanction "and a kind of statement of incompetence."

Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry)

### 6.4.2 Objectives of the reprimand

#### 6.4.2.1 Preserve public confidence

> "In judicial ethics, a reprimand must be a way of restoring public trust in judges and the justice system."

Ms. A. and Turgeon, 2011 CMQC 37 (inquiry), par. 67

SEE ALSO:

Paré and Fortin, 1999 CMQC 56 (inquiry), par. 62

> "[A] judge shall not be reprimanded simply to punish him or her for conduct that breaches the *Judicial Code of Ethics* but in order to serve the judiciary's interest and to preserve the confidence placed in it."
>
> Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 18

The judge said before the committee that he was aware that the way he intervened in the debate and his remarks could contribute to a negative perception of the way justice is dispensed, and that he had taken steps to correct the situation.

The committee took note of these statements and considered that "[a] reprimand would be the appropriate measure in order to restore the public's confidence in the judicial function."

Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry)

#### 6.4.2.2 Ensure better conduct in the future

> "The purpose of a reprimand is to indicate that a judge must improve his or her conduct."
>
> Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 252

Since the committee found four ethical breaches after inquiring into ten of the fifty-eight complaints lodged with the Conseil, a majority of the committee members deemed that a reprimand for each justified complaint was a sufficient measure, "considering the seriousness of the breaches, to ensure that the respondent's conduct will be appropriate in the future, since the judge's remarkable preparation, as well as her skills and dedication are not in question."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO:

Gobeil and Ruffo, CM-8-90-30 (inquiry)

#### 6.4.2.3 Preserve the integrity of the judiciary as a whole

> "In this light, the recommendations the committee can make in terms of sanctions, its power only to reprimand and its lack of authority to take definitive action to remove a judge, take on their full meaning and reflect the committee's underlying objective: not to punish one part of the institution whose conduct has been found to be unacceptable, but rather to uphold the integrity of the institution as a whole."
>
> Therrien (Re), [1998] RJQ 2956 (CA), quoting Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 68

## 6.5 RECOMMENDATION TO MOVE FOR A JUDGE'S REMOVAL

**86.** The Government shall, by a commission under the Great Seal, appoint the judges during good behaviour. The notice of appointment of a judge shall determine, in particular, the judge's place of residence.

**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,
[. . .]
*b)* recommends that the Minister of Justice and Attorney General file a motion with the Court of Appeal in accordance with Section 95 or Section 167.
[. . .]

> "A judge is always responsible for his or her conduct and accountable for it before the competent body."

G.R. and Lafond, CM-8-95-74 (inquiry)

> "Recommending removal affects judicial independence but it may become necessary in order to preserve the image of the judiciary as a whole."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 256

SEE ALSO:

Charest and Cloutier, 2004 CMQC 18 (inquiry), par. 104

Procedural Protections, page 69.

### 6.5.1 Applicable principles

> In order to justify a recommendation to file a motion of removal, the alleged ethical breach must be such that the judge is no longer apt to carry out his or her office.

FTQ and Dionne, CM-8-89-2 (inquiry)

#### 6.5.1.1 Minimum seriousness

> The removal of a judge is justified only when "the objective seriousness of his or her misconduct is irreconcilable with [t]he irremovability principle and with the public's confidence in the integrity and impartiality of the judiciary and the judge in question."

Ministère de la Justice du Québec and Dionne, CM-8-89-35 (inquiry)

SEE ALSO:

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 91, referring to Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), 2002 CSC 11, par. 5

> "[A]n isolated act that may arise from an error in judgement, without revealing a fault related to character, personality or behaviour, should not result in removal of the judge, unless there are exceptional circumstances.
>
> A judge shall be considered no longer able to usefully carry out his or her duties when his or her conduct, on more than one occasion, reflects faulty behaviour incompatible with the judicial function."

Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)

> "[T]he irremovability of judges is a key principle in a democratic society. Removal must be recommended only in cases where it seems impossible for the judge in question to continue to carry out his or her office."

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

> "Filing a motion to remove a judge shall not be recommended unless the seriousness of his or her fault is such that it defeats the irremovability principle."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

### 6.5.1.2 Criteria for assessing seriousness

#### Public trust

> Since recommending removal is in some ways equivalent to recusation or permanent incompetence, we must refer to the principles that apply to recusation requests, especially to the notion of "reasonable apprehension of bias," where the reasons must be deemed serious by a "reasonably informed person."
>
> The committee may refer to the following criteria in order to decide whether a judge is able to carry out his or her duties with dignity, honour and impartiality:
>
> "Did the conduct destroy the undisputed confidence [impartial persons] had in his or her rectitude, moral integrity and the honesty of his or her decisions, all factors contributing to public honour? If such is the case, incompetence is then demonstrated."
>
> "Is the alleged conduct so manifestly and profoundly destructive of the impartiality, integrity and independence of the justice system that public confidence in the judge's capacity to carry out his or her functions would be undermined?"

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry), quoting M. L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada,* Ottawa, Canada Judicial Council, 1995, pp. 90–91

SEE ALSO:

Therrien (Re), [1998] RJQ 2956 (CA)

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35 [2001] 2 SCR 3

"Under these circumstances, the committee members considered that Madam Justice Andrée Ruffo's alleged conduct for over 15 years was 'so manifestly and profoundly destructive of the impartiality, integrity and independence of the judiciary as to undermine the confidence of the litigant and the public in the justice system,' and they concluded that she could no longer carry out the functions of her office in the Court of Québec."

They recommended that the Minister of Justice and the Attorney General file a removal motion with the Court of Appeal.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

AUTHORS' NOTE

See the Court of Appeal's arguments in its report on the removal of Justice Ruffo.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 103.

Considering the judge's failure to disclose his previous conviction to the selection committee, even though he had obtained a pardon for the offence, "a reprimand was not an appropriate sanction, as it could not restore public confidence in the judge in question and in the judiciary."

The committee members noted that "[t]he pardon did not erase the past as the facts still remain in popular memory." They considered that despite the fact that an impartial observer might conclude that Justice Therrien had "the skills necessary to deliver fair decisions," this observer would not conclude that the public would be convinced not only that justice would be dispensed but that it would give the appearance of being dispensed.

The committee consequently recommended that the Minister of Justice file a removal motion with the Court of Appeal in accordance with Section 95 of the *Courts of Justice Act*.

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

SEE ALSO:

Therrien (Re), [1998] RJQ 2956 (CA)

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3

**Expectations specific to the judicial function**

The judge does not have any prior ethical record and his legal competence to carry out his office as a municipal judge is in no way in question, but he showed a lack of transparency in his explanations, both to the plaintiff and during the disciplinary process.

Moreover, the alleged acts were repeated ten times over a four-year period, each act "violating the integrity, dignity and honour of his office as a municipal judge," for which he has shown no remorse.

Considering the fact that, on the one hand, cities were "entitled to an honest judge in their municipal court" and, on the other hand, that a citizen might fear the judge would be biased in favour of the city, which would be indulgent with him, the committee concluded that the judge could no longer carry out his judicial functions and recommended his removal.

Charest and Cloutier, 2004 CMQC 18 (inquiry)

Despite the fact that two similar complaints in the past have led the respective inquiry committees to recommend that the Conseil reprimand the judges in question, "we have to conclude that this case is different from the other two because Justice Claude Fortin has been found guilty in a judgement that calls his credibility into question."

No extenuating circumstances were raised by the judge, who did not acknowledge any fault. The committee concluded that the judge's conduct had undermined "public confidence in him and the justice system."

"How could a litigant who appears before him or an impartial observer still have confidence in the impartiality and integrity of this judge after reading a judgement in which his credibility is strongly questioned?"

The committee consequently recommended the judge's removal.

Paré and Fortin, 1999 CMQC 56 (inquiry)

## 6.6 THE COURT OF APPEAL'S ROLE IN THE REMOVAL OF JUDGES

**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.

**167.** The Government may dismiss a presiding justice of the peace only upon a report of the Court of Appeal made after inquiry at the request of the Minister of Justice.

> "The Court has express and exclusive jurisdiction to apply Section 95 of the CJA."

Ruffo (Re), [2005] RJQ 1637 (CA), par. 74

> "The courts of appeal were created under the law and hold exclusive powers under said law. [. . .] What is more, certain specific provisions grant them particular jurisdiction: such is the case of Section 95 CJA, which covers judicial ethics."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 34, referring to R. v. W. (G.), [1999] 3 SCR 597, par. 8

> "The Court's jurisdiction does not depend on the complaint [. . .], nor on the Conseil's subsequent report. Rather, the Court's jurisdiction arises from Section 95 CJA, and the decision of Québec's Minister of Justice to ask it to report back to the government on the case of Justice Ruffo, after conducting an inquiry.

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 25

> "In my opinion, where a request is properly made to the Court of Appeal by the Minister of Justice under Section 95 CJA, following a recommendation to that effect by the Conseil de la magistrature in accordance with Section 279 CJA, it is precisely the intent of the legislature that the Court of Appeal determine the matter to the exclusion of any other court. Although this is not spelled out, it clearly follows from the wording and the general scheme of the *Courts of Justice Act*. This is the only interpretation that will give true meaning to the provision in s. 95 CJA that "[t]he Government may remove a judge only upon a report of the Court of Appeal" (emphasis added).

Thus, where a request is referred to it under s. 95 CJA, that Court exercises its jurisdiction exclusively."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 48 and 50

### 6.6.1 Constitutionality of the removal procedure

> "[T]he procedure for removal of a judge set out in the *Courts of Justice Act* is part of the more general context of the constitutional requirements relating to judicial independence. The fact that the report of the Court of Appeal is judicial and is in the nature of a decision is one of the conditions that ensure the constitutionality of the process for removal of judges provided by the CJA"

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 39

> "Furthermore, this interpretation is consistent with the legislature's intention of complying with the constitutional requirements regarding tenure of provincial court judges by assigning responsibility to the Court of Appeal, the highest court in the province, exclusively and in the first instance, for conducting an inquiry and making a report on the conduct of a judge."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 48

### 6.6.2 The Court of Appeal's powers in the removal of a judge

> "In view of the non-limitative wording of s. 95 CJA, and given the importance of the report, in terms of both the process relating to ethics, itself, and the principle of judicial independence, the Court of Appeal has, in my view, very broad powers. It must put together a complete picture of the situation for the Minister of Justice who has requested it. [. . .]"

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 40

#### 6.6.2.1 Investigative nature of the Court of Appeal's powers

> "As part of the process of removing a judge, the Court of Appeal is responsible for "conducting an inquiry and making a report on the conduct of a judge."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 48

> "The duty entrusted to the Court under Section 95 CJA is to produce a comprehensive picture of the situation to determine the judge's ability to exercise their judicial functions."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 86

> "The report of the Court of Appeal is something quite different. First, the terms used by the legislator are different. Section 95 CJA does not require that the Court of Appeal make a report of an inquiry, but a report made after inquiry, and it imposes no restrictions in terms of how it should be done. It does not limit the inquiry to collecting and analyzing the facts and evidence relating to the judge's conduct."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 37

> "The inquiry cannot be assimilated into the appeal, nor is it a proceeding between parties. Its aim is to ascertain the facts of the matter: it is the foundation of the Court's analysis, which in turn aims to uphold or overrule a sanction recommended by the Conseil. Its function is therefore to investigate."

Ruffo (Re), [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 76

> "The mission [of the Court of Québec] is, after the inquiry has been carried out, to submit a report that provides a comprehensive picture of the situation for the Minister of Justice."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 244, quoting Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 40

### 6.6.2.2 Power to review procedural fairness

> "The Court must [. . .] assess whether the inquiry involves breaches of procedure and, specifically, examine whether the rules of procedural fairness have been followed."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 87, quoting Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 41

SEE ALSO: PROCEDURAL PROTECTIONS, PAGE 69.

### 6.6.2.3 Power to examine previous judicial ethics complaints

> "However, determining an appropriate sanction requires examining the judge's judicial ethics record. [. . .] In short, if there is to be a sanction, it must be assessed within the broader context of the judge's career, in order to achieve the objective set by the Supreme Court.

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 244

> "The recommendation that must be made to the Minister of Justice requires in-depth study of Justice Ruffo's judicial ethics record, and a careful assessment of the situation in the light of these circumstances."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 17

### 6.6.2.4 Power to rule on the law and on the facts

> "The Court's duty under Section 95 CJA provides it with broad powers to rule on any matters of law or of fact related to the case at hand."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 86

> "[The Court] has to determine all questions of fact and law relevant to the finding it must ultimately make."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 40

### 6.6.2.5 Power to rule on the constitutionality of its jurisdiction

> "The court must, *inter alia,* determine the constitutionality of the provisions that form the basis of its immediate jurisdiction."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 41

### 6.6.3 Mandatory nature of the Court of Appeal's report

> "The report which [the Court] must submit to the Minister of Justice has both judicial and decisional purposes, which means that the removal of a judge can never be decreed unless specifically authorized by the Court."

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 647, par. 74

> "From a careful study of the law and of its context and purpose, I conclude that the report of the Quebec Court of Appeal pursuant to s. 95 CJA is in the nature of a decision."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 34

> "[T]he report of the Court of Appeal amounts to much more than the expression of a mere opinion; rather, it is substantially in the nature of a decision."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, par. 43

> "[T]he report of the Court of Appeal amounts to much more than the expression of a mere opinion; rather, it is substantially in the nature of a decision."

Therrien v. Ministère de la Justice, CM-8-96-39, [2001] 2 SCR 3, par. 43

> "Second, this is a judicial report and, moreover, one made by the highest court in the province. Its purpose is not simply to assist the Minister in making a decision; rather, it is an essential condition of the proceeding that may lead to the removal of a provincially appointed judge. In fact, Quebec is the only Canadian province that requires that the Court of Appeal be involved in the removal process."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 38, referring to Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government,* Toronto, McGraw-Hill Ryerson, 1987, p. 181, and to Martin L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada,* Ottawa, Canada Judicial Council, 1995, pp. 145 and 146

> "Though the government makes the final decision regarding removal, as I stated in Ruffo, *supra,* at paras. 67 and 89, nonetheless the government, under the actual terms of Section 95 CJA, "may remove a judge only upon a report of the Court of Appeal" (emphasis added). The use of that wording is not a mere question of style; rather, it indicates a real intention on the part of the legislature that the Executive be bound by a finding of the Court of Appeal exonerating the judge."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 77, referring to Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, par. 67 and 89

SEE ALSO:

Therrien (Re), [1998] RJQ 2956 (CA)

### 6.6.4 The Court of Appeal's review power

> "In the case at bar, this is sufficient to satisfy the definitions of "judgement" or "final judgement" in s. 40(1) SCA and to enable this Court to review it. Having regard to that section, the Court of Appeal should not be permitted to make determinations that are final and not subject to appeal on constitutional questions and questions of law that are of such importance for the administration of justice, lest this lead to inequitable results."

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3, par. 43

### 6.6.5 Procedure

> "Concretely [. . .] the Court will be guided by the normal rules of civil procedure, but will exhibit flexibility in their application."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 77

#### 6.6.5.1 Rules specific to the inquiry into removal of a judge

> The Court of Appeal has developed five rules specific to the inquiry:
>
> 1) The inquiry must be public.
> 2) The inquiry must concern itself only with events preceding the initial proceeding initiated by the Minister, which the Conseil has already ruled on.
> 3) The judge's counsel has the right to demand full disclosure of the evidence.
> 4) Lawyers must disclose their inquiry plan, identify their witnesses, state the purpose and length of their deposition and describe all documents they intend to submit.
> 5) All proceedings must be transcribed or recorded.

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 98 *et seq.*

### 6.6.5.2 Value of previous judicial ethics decisions

**Inquiry committee reports**

> "The Court [. . .] has chosen to give the inquiry committee reports the same value as decisions of administrative tribunals and courts of law."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 246

SEE ALSO: INQUIRY, PAGE 59.

**Conseil decisions**

> "The Court is bound to respect the Conseil's decision in every case [. . .]. The Supreme Court has recognized the inquiry committee, and the Conseil itself, as impartial bodies."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 94

SEE ALSO:

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 252

### 6.6.5.3 Admissibility of evidence

**Evidence submitted to the inquiry committee**

> "The Court [. . .] considers it neither useful nor appropriate to revisit the evidence submitted earlier during the comprehensive inquiry committees concerning Justice Ruffo."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 245

> "At this point, given the aforementioned principles, evidence [admitted by the Conseil] [. . .] has caused the inquiry committee to recommend the ultimate sanction, removal. This evidence is of capital importance to the decision at hand, which requires an in-depth knowledge of the evidence submitted, under oath, to the inquiry committee. [. . .] However, it is not necessary to hear all the witnesses a second time; that would be pointless. The witnesses have already been heard and cross-examined under oath. The transcriptions of their statements are sufficient to inform the Court."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 89 and 90, confirmed in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 86

### Admissibility of new evidence

The inquiry committee's investigation concerned "a single meeting between Justice Ruffo and Ms. Jodoin," a meeting that gave rise to the complaint. New evidence concerning a second meeting was brought forward before the Court of Appeal.

On the evidence concerning this second meeting, the judge's lawyer noted an issue of procedural fairness, as the debate was no longer concerned with the question of whether the meeting had taken place on a given date, but rather on "whether there had been private meeting(s) between these two people while the youth protection inquiry was under way."

The Court determined that the judge "had had every occasion to respond to this new evidence," and so the procedural fairness had not been compromised."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 180 *et seq.*

### Submitting additional evidence for the defence

> "With regard to the impact of these facts on the case as a whole, the Court allows Justice Ruffo and her lawyer to fill in or clarify certain aspects of the case with additional useful or relevant evidence, to be detailed in the inquiry plans [. . .]. In addition, the Court reserves the right to request a hearing with one or more witnesses."
>
> Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 90

### Hearsay

> "In principle, only those people who have first-hand knowledge of a fact relevant to the case can establish this fact by testifying."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 205

## 6.6.5.4 Legal principles and the removal procedure

### Inapplication of the rules of criminal law

> "While the Court saw fit to insist that rules of criminal law evidence and procedure cannot be imported wholesale and unchanged into disciplinary law, the same certainly applies for judicial ethics, where the entire notion of a suit is nonexistent."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 110

> "Because the judicial ethics procedure is not part of a criminal law charge, the Court cannot accept what amounts to a motion for non-suit."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 35

## Stay of proceedings

> "A stay of proceedings must be an exceptional circumstance reserved for cases where "the applicant demonstrates the existence of an irreparable damage that irremediably compromises either his or her right to present a full and complete defence, or the integrity of the justice system."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 64

AUTHORS' NOTE

This work has a dedicated section on the legal principles applicable to judicial ethics.

Principles and Foundations, page 21.

## Makeup of the tribunal

The judge's lawyer asked that the Court sit *in pleno*.

The Court of Appeal noted that "although under Section 95 of the *Courts of Justice Act,* [it] had no jurisdiciton to grant appeal, this had no bearing on the number of judges needed to exercise its jurisdiction."

Ruffo (Re), 2001 CMQC 84, [2005] RJQ 1637 (CA), 2005 QCCA 647, par. 35

AUTHORS' NOTE

The Supreme Court had already ruled on this matter in rejecting an appeal against the report submitted by "a Court of Appeal comprising five judges."

SEE ALSO:

Therrien v. Ministère de la Justice, CM-8-96-39, 2001 CSC 35, [2001] 2 SCR 3

# III The Code of Ethics

CODE OF ETHICS

# 1 The judge should render justice within the framework of the law

## GENERAL PRINCIPLES

> The obligation to "render justice within the framework of the law" must be met during the hearing and in the handing down of the ruling.

CM-8-95-38 (examination)

> "Only in cases where the judge acts in bad faith or on a whim, deliberately fails to apply the law or acts according to his or her own personal agenda may Section 1 of the Judicial Code of Ethics be invoked before the disciplinary body."

DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 73

> "An error of law will constitute a breach of the ethical obligation to render justice within the framework of the law only if it is proven that the judge who made this error showed a gross ignorance of a rule of law or wilfully infringed it."

Tamilia and Surprenant, CM-8-90-21 (inquiry)

SEE ALSO:

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry)

CM-8-92-20 (examination)

## SCOPE OF APPLICATION

> "[Judges] cannot [. . .] invoke a noble cause dear to their heart as a reason to refuse to render justice within the framework of the law and apply what they deem fair and relevant."

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 407

> "The committee has already established that the fact that a judge errs in applying the law is not in itself an ethical breach. However, a judge's deliberate failure to apply the rules of law, his or her gross ignorance of a rule of law or the fact he or she acts outside the law are all considered ethical breaches."

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 78 referring to Ruffo, 2001 CMQC 84, 2005 QCCA 1197, par. 285–290

> "[T]he mere fact of rendering a poor judgement does not constitute a breach of Section 1 of the *Judicial Code of Ethics*. If a judge forgets to apply a provision of the law, or does so inadvertently or even out of gross ignorance, or if he or she wrongly concludes that the provision does not apply to the case at hand, or misinterprets said provision, the proper channel to remedy the decision is through the appeal courts. The same is true when a judge, in good faith, uses his or her judicial discretion to accept arguments he or she should not legally have considered. In such cases, the judge committed an error within the framework of his or her judicial discretion and cannot be blamed for this before a disciplinary body.

> However, the situation differs in cases where a judge deliberately fails to apply the law or accepts certain arguments in reaching a decision, knowing that the law requires that he or she dismiss them.

> In these cases, the judge may be sanctioned by the disciplinary body, regardless of the reasons that led him or her to act in such a way.

> Therefore a judge is in breach of the *Judicial Code of Ethics* when he or she deliberately fails to apply the law for reasons other than his or her interpretation of it."

Guillemette and Verreault, CM-8-93-40 (inquiry) DuBois v. Conseil de la magistrature du Québec, 2004 CMQC 3, [2007] RJQ 2750, 2007 QCCS 4761, par. 67

SEE ALSO:

CM-8-88-37 (examination)
Bernheim and Pigeon, CM-8-80 (inquiry)

> The fact that a judge might have made an error of law is not a breach of Section 1 of the *Judicial Code of Ethics*.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO:

CM-8-87-23 (examination)
CM-8-87-14 (examination)

## 1.1 PROCEDURAL FRAMEWORK

> "The expression 'render justice within the framework of the law' implies that the judge, following an open debate, delivers a decision that is in accordance with the interpretation of the law that applies to the case and with the procedural rules that governs it."
>
> Verrier and Bélanger, CM-8-88-32 (inquiry)

### 1.1.1 Breaches of duty

#### Misuse of the correction of a judgement

The judge, out of compassion for the tenants and with the intention of avoiding their eviction, modified his judgement according to what he had been told, not under oath, during his meetings with only one of the parties involved in the litigation. He admits having deliberately used the procedure to correct a judgment (s. 475 C.C.P.) in an incorrect manner.

The reasons he put forward do not constitute a legitimate excuse. The judge went beyond the framework of the law and breached one of the duties of his office. The judge was reprimanded for his actions, which also violated sections 2 and 5 of the *Judicial Code of Ethics*.

Verrier and Bélanger, CM-8-88-32 (inquiry)

#### Unilateral modification of hearing minutes

> "[T]he unilateral modification of minutes by a judge may raise serious difficulties [. . .] [I]t would be a lot wiser to correct them only after hearing the parties."
>
> Lapointe and Ruffo, CM-8-88-37 (inquiry), *obiter dicta*

Despite the judge's representations to the contrary, his remarks at the hearing contained two essential elements of a decision, that is to say the grounds and the ruling. The committee is convinced that a judgement in favour of the plaintiff was rendered at the hearing. The further modification and correction of the minutes of the hearing in order to change the conclusions constitute a violation of the fundamental rules of natural justice. According to the committee, this breach is a "surprising procedural anomaly" and "an unorthodox process on the part of a judge."

While the committee accepted the judge's version, because of these rules and "the most basic caution" the judge should have shown when he read the conclusions in the minutes which had already been filed at the office of the court and made available to the public, it was necessary to immediately convene all the parties.

The whole situation generated by the judge's conduct undermined the public's confidence in an impartial justice, threw serious doubt on the transparency and integrity of the judicial system, and discredited the administration of justice. The judge violated Section 1 of the *Judicial Code of Ethics* and was severely reprimanded.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

AUTHORS' NOTE:

In a decision concerning a municipal court judge, the Conseil deemed it "important to mention that the fact that a judge asks the prosecuting attorney, in the absence of the plaintiff, to argue on the issue of jurisdiction places him in a rather delicate situation."

Since the judge "subsequently agreed to receive a written argument, a copy of which [would have to] be forwarded to the plaintiff, the Conseil concluded that the complaint did not justify an inquiry."

2011 CMQC 70, par. 19 and 20.

SEE ALSO: INQUIRY, PAGE 55, SECTION 2, PAGE 131 AND SECTION 10, PAGE 249.

## 1.1.2 Insufficient seriousness of allegations

### *Ex parte* consultation of an expert

During the postponement of a trial concerning roof repairs, the judge declared that he had consulted one of his friends who is an expert in this matter. He stated before the Conseil that he had disclosed the name of this expert so that the parties could summon him in due course. "He added that if the attempts to reach a settlement had failed, he would have disregarded this witness's declarations."

Since this unfortunate procedure, from which the judge should have abstained, did not result in any unfounded grounds on the judge's part, it was decided at the stage of the examination that the nature and importance of this complaint did not justify an inquiry.

CM-8-91, CM-8-86-6 (examination)

### Common yet problematic judicial practices

After being registered by the court clerk, the parties are usually requested to wait their turn outside the courtroom. The judge proceeds this way in order to encourage the parties to reconcile with each other, without actually ordering an *in camera* hearing.

"Despite the fact that the judge's directives do not appear to infringe the provisions of the *Judicial Code of Ethics,* the Conseil is of the opinion that prior to urging the parties to meet each other and attempt to reach a settlement, the judge should first inform the litigants that hearings are public and that everybody is allowed to attend."

CM-8-96-59 (examination)

The evidence has shown that many Youth Division judges often deliver their judgement by signing the minutes. The judge believed under these circumstances that she was entitled to annotate the minutes in order to complete them. The committee concluded that she did not violate Section 1 of the *Judicial Code of Ethics* but warned against this practice that can easily lead to confusion.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

### 1.1.3 Unfounded complaints

**Erroneous interpretation of procedural law**

> "When events occur that could open the door to an appeal, the mere existence of these circumstances does not necessarily mean there has been an ethical breach."
>
> CM-8-93-29 (examination)

"The decision rendered by the judge [. . .] on [an] objection made by the plaintiff [. . .] reveals noethical breach. Even if it were erroneous, it would still have been rendered within the framework of the law."

2002 CMQC 35 (examination)

As regards the judge's decisions to continue the trial in another district and to substitute one defendant for another, "[t]here is no ground for concluding that these two decisions might have been delivered for reasons exceeding the framework of the law. If the judge in fact committed errors of law, it does not mean that in doing so he infringed the *Judicial Code of Ethics*.

In such a case, the appropriate remedy is appeal, when it is allowed by law."

CM-8-97-27 (examination)

The judge realized her error of law when she received the complaint. After she had delivered her judgement, in the absence of the plaintiff who had already left the courtroom, she granted the defendant a delay and terms of payment of her debt.

She explains her mistake as stemming from her concern that the plaintiff be paid back in full. A mistake made in good faith cannot be considered an ethical breach.

CM-8-96-32 (examination)

### Exercise of judicial discretion

When an arrest warrant has been issued, the judge has the authority to order that the accused be detained until a decision has been reached on whether he or she shall be released, even if the accused appeared in court of his or her own free will. There is no ethical breach, as the decision was made within the framework of the law.

2008 CMQC 3 (examination)

While presiding over the pre-hearing conference of nearly 250 persons accused of unlawful assembly, the judge repeated many times that his only goal was to set dates for the hearings for the cases. As a result, he considered that he was entitled to see only one attorney at a time and to forbid the public and some of the defendants access to the courtroom.

This decision was dictated by his understanding of a pre-hearing conference as per Section 625.1 of the *Criminal Code*. "It is not up to the Conseil de la magistrature to decide whether the judge's understanding of the pre-hearing conference is correct."

2003 CMQC 12 (examination)

SEE ALSO: DISCIPLINARY JURISDICTION OF THE CONSEIL, PAGE 31.

Since the respondent company's representative did not have any proxy, the judge ordered the Crown to present its evidence. It would have been preferable to postpone the hearing of the case in order to allow the defendant to file this proxy. However in acting this way the judge did not violate the *Judicial Code of Ethics*.

CM-8-93-29 (examination)

### Decision in exceptional circumstances

The judge went into the accused's cell before the scheduled time of the hearing and subsequently decided to have him examined by a psychiatrist. While it is possible the judge may have misinterpreted Section 738, subsection 6, and Section 442, subsection 1 of the *Criminal Code,* the circumstances show that he believed he was acting in good faith in carrying out his duties, as the accused was obviously in a state of crisis and it was difficult to reach the lawyers as well as the court reporter and court clerk on that Saturday morning, December 28, 1985.

Bernheim and Pigeon, CM-8-80 (inquiry)

### Hearing without consideration of an irregularity

The judge agreed to hear a motion for revocation of a judgement in which there were various procedural irregularities. He chose a broad interpretation of the provisions concerned by such motions, so as to ensure that form would not prevail over substance. "[T]his interpretation of the law does not constitute an ethical breach."

Tamilia and Surprenant, CM-8-90-21 (inquiry)

## 1.2 FRAMEWORK OF SUBSTANTIVE LAW

### 1.2.1 Breaches of duty

### Denial of the presumption of innocence

The judge intervened on numerous occasions during the examination and cross-examination of the complainant, who was accused of criminal harassment of his ex-wife. The judge asked him a series of questions designed to get him to contradict himself and extract a confession. He also displayed an ironic attitude with regard to some of the complainant's explanations. Furthermore, during the hearing and in his written judgment, the judge described the complainant as "badly raised," "a boor," "a rude individual," and "a troublemaker." The inquiry committee found that the judge "appeared to have forgotten that the witness [. . .] is the accused, and as such, is entitled to the presumption of innocence until the end of the trial." By acting in this way, "[t]he judge betrayed his personal opinion rather than arriving at a reasoned decision based on the evidence presented" and sent "the message that his mind was already made up."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (inquiry)

At his appearance by way of summons, the accused, who was pleading non-guilty, was blamed by the judge for the facts at the origin of the information and for his past record. Through his questions, the judge led the accused to reveal his grounds of defence and commented on them.

The judge acknowledges the fact that he takes certain liberties with the penal procedure in cases of conjugal violence. He deliberately acted outside the framework of the law, notably by ignoring the principle of the presumption of innocence. The judge was reprimanded for this breach as well as several others.

Dubé and Bilodeau, CM-8-88-26 (inquiry)

SEE ALSO: SECTION 5, PAGE 161 AND HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 261.

### Failure to respect the rule of law

> "A judge who admits out loud that there is no evidence of guilt and who finds the person guilty regardless is in breach of the *Judicial Code of Ethics*."

2010 CMQC 16, par. 4 (examination)

> Judges who base their decisions on certain grounds, while aware that the law requires that they dismiss such grounds, are committing a breach of ethics.

Guillemette and Verreault, CM-8-93-40 (inquiry), *obiter dicta*

> "[A] judge who is aware that a legal provision applies to the case before him yet wilfully fails to apply it for a reason other than his interpretation of it, is in breach of the Code."

CM-8-88-37 (examination), repeated in CM-8-92-20 (examination) and in Guillemette and Verreault, CM-8-93-40 (inquiry)

### Transgression of judicial jurisdiction

> "[T]he fundamental principles of Canadian constitutional law prescribe the separation of powers, which makes it unacceptable for the government to exert pressure on a judge and, likewise, for a judge to exert pressure on the government.
>
> While judges cannot exert such pressure directly, they are, however, at liberty to make constructive suggestions or issue appropriate warnings within their duty to act with reserve."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 287 and 288

> "There is no law authorizing a judge to decide, *proprio motu,* to extend his or her jurisdiction to an examination of the way an organization operates, unless this is the specific subject of the judicial proceedings of which he or she has been seized. The judge must differentiate his or her own role from the role of administrative overseer that the government assumes with regard to the institutions it creates. In other words, judges rule on cases and the State oversees government. These roles, like levels of jurisdiction, should not be confused."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 287 and 288

By ordering that two children be handed over to the Minister of Health and Social Services instead of entrusting the director of youth protection with ensuring their placement as provided by law, the judge issued an order with no legal grounds and that cannot be considered as being in the interest of the children. She wilfully refused to apply sections 62 and 92 of the *Youth Protection Act,* justifying her decision by the fact that there were insufficient resources available to carry out her order.

Despite the fact that Justice André Savoie of the Superior Court quashed her order after concluding that she had acted "without jurisdiction or beyond her jurisdiction," at the time of the inquiry the judge was still convinced that this was a procedure legally available to her. This is a misinterpretation considering the requirements of the law, and an "activist gesture that is inappropriate for a judge and that the committee condemns." The judge was reprimanded for violating Section 1 of the Judicial Code of Ethics.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

### 1.2.2 Insufficient seriousness of allegations

#### Considerations outside the facts

In light of some of the judge's comments regarding the jurisdiction of notaries, the complainant questioned whether the judgement rendered was based on the facts. While the Conseil noted that such considerations were imprudent, it did not feel they justified an inquiry.

2010 CMQC 44 (examination)

### 1.2.3 Unfounded complaints

#### Jurisdiction of the Court

"The complainant, [who was claiming damages further to a sexual assault] was seeking some form of understanding from the judge with regard to herself [. . .] and, in fact, every other woman who has been in a similar situation [. . .]. This is not the role of the Court, and the judge cannot be blamed for failing to meet her expectations."

2011 CMQC 6 (examination), par. 10

#### Error in good faith

The judge made an error in releasing a lawyer from his professional privilege at his request, since counsel-client privilege is a right that belongs to the client, not to the lawyer. The examination of her conduct does not reveal "a wilful refusal or inability to enforce the rule of law. [. . .] This is a case of judicial error, not judicial misconduct."

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

Nine persons filed a complaint against the judge, after she delivered a decision that received a lot of media attention. In this case of sexual assault, she was blamed for having taken into account a number of extenuating factors and for the inadequacy of the sentence she imposed on the accused.

"We are convinced the respondent tried to make the right decision according to the law and to take into account factors she deemed relevant to the judgement she had to deliver. If she made an error, she obviously made it in good faith, and it will be up to the Court of Appeal to decide.

Therefore, the respondent did not breach Section 1 of the Judicial Code of Ethics."

Guillemette and Verreault, CM-8-93-40 (inquiry)

The City submitted to the Conseil for consideration a number of cases in which it claimed the judge either allowed defences that were inadmissible in law in cases of absolute liability offences or required *mens rea* evidence in cases of strict or absolute liability offences.

"Nothing in the file allows us to conclude that the respondent judge, even if he had made errors of law, acted the way he did deliberately and knowingly or out of gross ignorance."

CM-8-92-20 (examination)

SEE ALSO: SECTION 3, PAGE 149.

The evidence did not support the conclusion that the judge knew, when she issued the order, that there was no consent in the case or that she had deliberately mentioned in her judgement a consent she knew did not exist. The judge pleaded that she made an error in good faith because of the great number of cases placed on the roll that day. The error was subsequently corrected by the Superior Court.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

### Jurisdiction

By ordering that the child appear before her, despite the fact that the Superior Court had issued an order to stay proceedings, the judge made an unwise decision that appears to show a lack of respect for this Court. However the evidence showed that she acted in good faith, according to her interpretation of the right of the child to be given information regarding her file (s. 89 of the *Youth Protection Act*), and that she did not have any intention to hold an inquiry at that time.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

The plaintiff blames the judge for declaring that a child's rights had been infringed, without being seized of an application to this effect. In doing so, the judge acted in conformity with her interpretation of the relevant sections of the law, an interpretation supported by many previous and subsequent judgements delivered by her colleagues.

It is not the committee's duty to decide on the soundness or merits of this interpretation. The fact that she seized the case "*proprio motu*" "does not constitute a breach of Section 1 of the *Judicial Code of Ethics*."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO:

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

The judge, who was seized of a motion for provisional compulsory foster care, issued an order that a pregnant child be given an abortion. The judge explained she was only confirming the decision made by the child and that she believed she was entitled by law to order health care.

While it is possible that, by seizing this case *proprio motu,* the judge may have acted wrongfully and may have exceeded her jurisdiction, she nonetheless acted in accordance with the interpretation she gave to the *Youth Protection Act*. The Conseil concluded that her actions therefore did not breach Section 1 of the *Judicial Code of Ethics.*

CM-8-88-37 (examination)

CODE OF ETHICS

# 2 The judge should perform the duties of his office with integrity, dignity, and honour

## 2.1 DUTY OF INTEGRITY

### GENERAL PRINCIPLES

> "Integrity is the quality of a person whose probity is absolute and who is honest and incorruptible."

CM-8-85, CM-8-86-11 (examination)

### SCOPE OF APPLICATION

> "When it comes to integrity judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 52, referring to Canadian Judicial Council, *Ethical Principles for Judges,* Ottawa, 1998.

### 2.1.1 Conduct while exercising judicial functions

#### 2.1.1.1 Breaches of duty

**Undisclosed situations**

**Meeting with only one litigant party**

> "The integrity, dignity, and honour with which judges are expected to act imply the imperative duty to totally and absolutely abstain from any communication, in the absence of the opposing party, with or on behalf of one or the other party, with regard to whom they must deliver a decision."

Verrier and Bélanger, CM-8-88-32 (inquiry)

**Friendly relations with a witness**

The judge failed to disclose to the parties the fact that she was friends with the psychologist who was an expert in a case before her. Even though this expert witness had been chosen together by both parties, the judge breached the duties provided for in Section 2 of the *Judicial Code of Ethics*.

Because of her numerous prior violations of the *Judicial Code of Ethics,* and her apparent inability to improve her conduct, the committee recommended the removal of the judge.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197

SEE ALSO: SECTION 5, PAGE 169.

**Meeting with a witness**

> "It is unacceptable for a judge to meet with a witness in private during a trial over which he or she presides, without the knowledge of the parties."
>
> Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 160, upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 189 and 197

The evidence showed that the expert witness chosen by the parties involved in the case before the judge had met with the judge in her office. At the time of the judicial proceedings, the judge did not inform either the parties or the attorneys of this meeting.

The committee concluded that this was a breach of Section 2 of the *Judicial Code of Ethics* and, in consideration of her concurrent and prior violations of the *Judicial Code of Ethics* as well as her apparent inability to improve her conduct, it recommended that the judge be removed from her office.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

**Falsified or modified minutes of a hearing**

The judge denies having rendered a judgement at the hearing, but rather states that he changed his mind after the hearing. The committee is convinced that he had already delivered his decision at the hearing. The subsequent modification of the conclusions recorded in the minutes of the hearing, without convening all parties first, created an impression of "lack of concern" and "casualness" on the part of the judge, who showed "a lack of respect for the litigant and the judicial process."

The committee concluded that he breached the obligations provided for in Section 2 of the *Judicial Code of Ethics,* and recommended the Conseil serve him a severe reprimand.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

SEE ALSO: INQUIRY, PAGE 55, AND SECTION 1, PAGE 121.

#### 2.1.1.2 Unfounded complaints

**Destruction of recordings at a party's request**

The evidence showed that the judge ordered, at the plaintiff's request, that the tape of the hearing be destroyed because the plaintiff was concerned the judge's unfavourable comments towards him had been recorded. "This order constituted the logical follow-up to the favourable outcome of the situation." The Committee concluded that the blame directed at the judge was not justified.

Kane and Alary, CM-8-94-83 (inquiry)

AUTHORS' NOTE

The committee did, nevertheless, admit all other aspects of the complaint, which translated into a sanction for the judge concerned.

SEE ALSO: SECTION 5, PAGE 175.

### 2.1.2 Conduct in society

#### 2.1.2.1 Breaches of duty

**Tax evasion**

The judge "filled his tax return with false information in order to claim credits he was not entitled to," claiming expenses that he did not, in fact, incur. What is more, when municipal officials refused to approve his claims, the judge "brushed the matter off" and behaved "shamelessly" and "complacently."

The committee found the judge in breach of Section 2 of the *Judicial Code of Ethics*.

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

**Appropriation of sums of money**

The municipal court judge claimed from the cities where he was exercising his office the reimbursement of invoices he paid himself only several months after the complaint had been filed. This situation reoccurred ten times over a four-year period, so it was not an isolated or fortuitous act.

Despite the fact the judge stated that he had always intended to return the amounts in question, this temporary embezzlement is still an appropriation for personal purposes, which is contrary to the duty to perform the duties of his office with integrity and honesty provided for in Section 2 of the *Judicial Code of Ethics*.

"[T]he intention to reimburse the sums owed does not exonerate the judge from the appropriation of which he is accused."

Because of the seriousness of his actions and his lack of transparency before the inquiry committee, it was recommended the judge be removed from his office.

Charest and Cloutier, 2004 CMQC 18 (inquiry)

### 2.1.2.2 Unfounded complaints

#### Attempts to be appointed chief judge

While the process for naming a new chief judge was under way, a judge approached someone with close ties to the government to express interest in the position. In the absence of a more formal candidacy process, the judge's behaviour, "though it cannot be described as prudent, does not constitute an ethical breach." It has not been demonstrated that the judge did anything beyond expressing interest. It would thus be difficult for the Conseil to conclude that the judge could have exerted any influence on his subsequent nomination to the position of chief judge.

2010 CMQC 55 (examination)

#### Denunciation without malicious intent

The judge wrote to the chair of a government commission to inform him that he had serious reason to believe that an American ex-convict, who had been convicted for manslaughter and prosecuted for tax evasion, was the secret co-promoter of a boxing gala. The judge suggested he inquire into the matter.

Since the judge did not claim the facts in question to be true, and they turned out in fact to be true, the complaint alleging a lack of integrity was deemed unjustified. "The only way [the judge] could have been [dishonest and unjust] would be to willfully affirm things he knew perfectly well to be untrue or unproven."

CM-8-85, CM-8-86-11 (examination)

#### Lack of professional transparency in the lead-up to a nomination

At the time he was practising as a lawyer, the judge failed to disclose to his clients that he had received an important sum of money from an American legal firm to which he had referred certain aspects of their case. However, he had taken this fact into consideration when billing them.

The inquiry committee concluded that, although the judge had shown a lack of transparency towards his clients, the absence of fraud, embezzlement, or deprivation towards them reduced the seriousness of his actions to a level such that the complaint was not deemed justified.

Québec Minister of Justice and Houle, CM-8-97-38 (Municipal Court) (inquiry)

SEE ALSO: INQUIRY, PAGE 66.

## 2.2 DUTY OF DIGNITY AND HONOUR

### GENERAL PRINCIPLES

> "According to *Le petit Robert* dictionary, the word 'dignity' is synonymous with 'reserve and restraint' and is the opposite of 'disgracefulness, casualness and vulgarity.'"

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 81

SEE ALSO:

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), split decision, par. 58

### SCOPE OF APPLICATION

> "Judges must understand that the power and prestige of their office give great importance to what they say."

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 82, quoting Conseil canadien de la magistrature, *Propos sur la conduite des juges,* Cowansville, Éditions Yvon Blais, 1991, p. 86

SEE ALSO:

Beaudry and L'Écuyer, CM-8-97-14 (inquiry), *obiter dicta*

## 2.2.1 Remarks made while exercising judicial functions

### 2.2.1.1 Breaches of duty

**Disparaging remarks toward one of the parties or an attorney**

The judge made disparaging remarks with reference to the pronunciation and posture of one of the parties: "You know those muscles next to your mouth? They're called cheeks. You need to work them a bit. [. . .] Do you have a problem with your spine? [. . .] A lot of people do: it says a lot about them."

He also disparaged the party's French with the following comments:

"That's basic French, Madame. If we have to start teaching French in the courtroom, we're in real trouble! [. . .] Dammit! Excuse me, we're speaking French here!" The Conseil felt these comments breached the duty of impartiality."

Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

Without any justification, the judge insinuated that the accused's attorney was getting his witness to perjure himself. This attitude on the part of the judge showed a lack of respect at odds with his duty to serve with dignity. Because of this breach, and various others, the judge was reprimanded.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### Inappropriate statements and actions

> "By exercising restraint and moderation when expressing themselves, judges can prevent inappropriate or irrelevant remarks from rapidly becoming undignified comments from the mouths of those who represent the public face of the judiciary."
>
> Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), dissidence

When the counsel for the defence asked him to postpone the case to the following day, the judge, referring to the defence's allegations, uttered certain comments inconsistent with a judge's reserve, dignity, and serenity:

"Why did he give an address he knew he had been thrown out from? [. . .] To influence us again [. . .] because we're naïve [. . .] This is not the Régie des loyers or the office in charge of finding a dwelling for all these people [. . .]"

In another case, the judge's language was inconsistent with a judge's duty to act with dignity, reflecting his impatience, aggressiveness, and obvious lack of serenity:

"Just a minute! Who's the master of this Court? You or me? That's it. I've had enough of this nonsense. Hurry up because I've got other things to do this afternoon [. . .]."

Because of this breach, and several others, the judge was served a reprimand.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

In delivering his judgement, the judge used inappropriate and "not very judicial" language: ". . . guilty of assault by kicking the hell out of [. . .]." He therefore "demonstrated an obvious casualness in the exercise of his duties and a conduct unworthy of the office he holds."

This breach, combined with the other actions and remarks he was accused of making during the forty-minute trial, earned him a reprimand.

Beaudry and L'Écuyer, CM-8-97-14 (inquiry)

The judge acknowledged his misconduct at the trial, where he used colloquial swearwords and the familiar "tu" with the attorneys.

"The problems Justice Gilles Gagnon experienced in getting from the lawyers the documents requested at the hearing in no way justify such language." The judge was served a reprimand for this and various other breaches.

St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

### 2.2.1.2 Insufficient seriousness of allegations

**Unjustified reproach towards an attorney**

> "Except under the most obvious circumstances, a judge should refrain from suggesting that a lawyer is acting in bad faith when his or her claims are without grounds."
>
> 2002 CMQC 21 (examination), par. 26, *obiter dicta,* quoting Procureur général du Québec v. Bouliane, [2004] RJQ 1185 (CA), par. 123, a judgement in which the Court of Appeal analyzed statements by the inquiry judge

> "Considering the difficult and demanding circumstances under which judges are sometimes required to work, certain remarks could be tolerated," including those that insinuate that a counsel is not accurately reporting his or her earlier remarks, "especially if these remarks are toned down with expressions like 'I believe' or 'It seems to me that this is not what was said.'"
>
> Chamard and Brunet, CM-8-62 (inquiry), *obiter dicta* contained in the opinion that found there was a breach.

Justice Drouin used rather strong words with the counsel for the defence—"You disappoint me," "You're acting in bad faith," "I'm not impressed," and other such comments—in an attempt to maintain order and to correct situations he felt were unacceptable, such as numerous unjustified delays and what he interpreted as a lack of preparation.

While the committee concluded that the judge did not breach his duty to perform his duties with dignity, as provided in Section 2 of the Judicial Code of Ethics, it pointed out that criticism coming from a judge often takes on a "seriousness in the eyes . . . of the litigant parties and media representatives," quoting from the Canadian Judicial Council's publication *The Conduct of Judges*.

Gagnon *et al.* and Drouin, CM-8-94-17 (inquiry)

The judge, accepting the accused's version of the facts concerning the mandate he had apparently granted to the attorney, publicly spoke out against the attorney regarding his absence at the trial.

The Conseil found it would have been preferable to discuss with the attorney before making the allegations. Under the circumstances, the Conseil did not, however, consider that a breach had been committed.

2004 CMQC 13 (examination)

The plaintiff had been granted a postponement based on allegations that eventually proved to be false. "The judge may have had the impression [. . .] that he had been misled so as to grant the postponement, in which case he was entitled to share his opinion with the plaintiff [. . .] however, this does not justify him doing so in the insistent manner he did."

He described the attorney's mistake as a "lie," admitting that a lie could be unintentional. In doing so, he attributed a different meaning to the word than its usual one. "Since the Conseil could not conclude that there was grounds for an inquiry," it stated that the nature and importance of the complaint did not justify an inquiry.

2001 CMQC 2 (examination)

An inexperienced judge mistakenly believed that the counsel for the defence had used a ploy to try to disorient a witness for the prosecution. When the judge publicly reproached the lawyer, he "felt that his integrity was being questioned in front of his client and the other persons present in the courtroom."

The judge now acknowledges that she should have raised the matter with the lawyer and asked him to explain his conduct. Considering her commitment to act differently in the future, the Conseil concluded that the nature and importance of this complaint did not justify an inquiry.

CM-8-98-18 (examination)

The words the judge addressed to the attorney in a courtroom full of people—"That's not what was said the other day [. . .] There are all kinds of things that are said in certain places and that's not exactly what was said here"—raised the ire of a number of lawyers who were present. The judge also reacted to a letter written by the attorney in question, stating: "These comments are laughable," "And you're pitiful if you don't understand that," "[. . .] considering your negative attitude, I don't mind from now on treating you the same way as the others, even if you are a Chamard."

With one of its five members absent, the committee's opinion was equally divided. Half of the committee members considered that the attorney in question had been reckless in stating she was ready to proceed on that particular date, and that the

judge was merely reminding the attorneys of their duty to make sure witnesses are available before setting trial dates. As for the remarks concerning the letter, the committee members felt that while they were a "deplorable error in judgement," they were not sufficiently serious to be considered a breach of Section 2 of the *Judicial Code of Ethics*.

The other half of the committee members concluded that the judge demonstrated a lack of courtesy and dignity towards this attorney since his unjustified reproaches were actually meant to "pass on a message" to two other attorneys who were present in the courtroom. While they did not recommend a sanction, they also concluded that the offensive remarks regarding the letter breached his obligation to perform the duties of his office with courteousness, serenity, and dignity.

Chamard and Brunet, CM-8-62 (inquiry)

AUTHORS' NOTE

See Section 267 of the *Courts of Justice Act*.

SEE ALSO: EXAMINATION, PAGE 47.

### Disparaging remarks about notaries

During a proceeding over a hidden defect further to the sale of a house, the judge found that the notary involved had not fulfilled his obligations. He made the following comments: "Notaries like to place ads that say things like, 'We help people come to an agreement. We're not like lawyers who like to make people disagree. We like to help people find a middle ground, help them solve their problems.'"

The Conseil found that "it is imprudent for a judge, in court, to make comments that add nothing to the proceedings at hand." The comments were disparaging and inappropriate, but their nature and importance did not justify an inquiry.

2010 CMQC 44 (examination)

### Inappropriate remarks

A judge who was interrupted while reading out his ruling made the following statement: "Sir, I'm the one speaking here, I'm not going to be interrupted, not by you, not by anyone. Ma'am, please call security or there's going to be a problem this evening. You're going to shut up when the judge is talking to you."

The Conseil found that "the alleged statements made by the judge were not serious enough that an impartial and well-informed individual would believe the judge's behaviour undermined the confidence of the people appearing in court or citizens generally, or damaged the integrity, dignity or honour of the judiciary."

2012 CMQC 1 (examination), par. 7 and 13

At the beginning of the hearing the judge asked the complainant if there were any witnesses. He answered: "Just my wife [. . .]." The judge interrupted him with the following remarks: "When someone says that, 'just my wife'. . .You're lucky she's still talking to you. Just my wife, no big deal!"

The Conseil found that these statements, which upset the complainant, to be inappropriate. However, they were not intended to be hurtful. The nature and importance of the remarks did not justify an inquiry.

2010 CMQC 68 (examination)

Annoyed by the crying of the complainant's baby, and the fact that the complainant was breastfeeding during the hearing, against his express wishes, the judge made the following remarks: "Madame, silence please. I'm trying to help you, don't make me change my mind. All right? That's enough already!"

The Conseil found that, while these remarks were uncalled for and inappropriate [. . .] the nature and importance of the complaint did not justify an inquiry.

2005 CMQC 47 (examination)

The judge overheard the plaintiff complaining about the decision he had just rendered as she was coming out of the courtroom. He told the security guard: "Would you go and get her, the woman there, the one who's yelling. Would you grab her and bring her here?" He then told her he disapproved of her behaviour and that she could appeal his decision if she wasn't happy with it.

The judge, who was angry that his decision was being questioned, said some words that "have no place in a courtroom." However the members of the Conseil considered that they were not serious enough to constitute an ethical breach.

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry)

After growing impatient with the plaintiff's insistent attitude, the judge exclaimed: "Enough is enough, damn it, move on," "And he didn't meet the priest either, and he didn't meet so and so," "That's enough with the comments already, we're gonna spend 3 days here, damn it."

The Conseil considered that the judge had heard everything the parties had to say before delivering his judgement, and concluded that the nature and importance of the complaint did not justify an inquiry.

2000 CMQC 41 (examination)

SEE ALSO: SECTION 8, PAGE 240.

The judge told the accused: "That'll teach you not to sleep with people who [. . .] can't be trusted."

While the judge's remarks were meant to warn the woman to be careful, they were deemed inappropriate. The Conseil informed the judge of its opinion, but did not feel the need to establish an inquiry committee.

CM-8-90-33 (examination)

### Inappropriate tone

During the hearing, the judge attempted to persuade the complainant to accept a compromise; she refused. The Conseil reports that the audio recording revealed that the judge repeatedly raised his voice and betrayed impatience. He addressed the complainant thus: "Well, finish what you have to say. I asked you a question that would put the matter to rest. You don't want to. I warned you. You are—and in my judgement I consider you as such—a person who can't be trusted. Understand? I'm making my decision right now by saying that you can't be trusted. [. . .]."

While the Conseil acknowledges that the complainant should have presented the facts and laid out her claims, it nevertheless found that "the tone used by the judge was inappropriate and may have exacerbated the complainant's situation and negatively impacted her view of the justice system," particularly since the judge revealed his conclusion while the affair was still in deliberation. The Conseil found that "the nature and importance of the complaint did not warrant an inquiry" while warning the judge to "weigh his words more carefully in the future."

2004 CMQC 63 (examination)

The judge noted certain inconsistencies in statements made by the accused, an elderly person with Parkinson's disease, using a very firm tone of voice and harshly stating that the accused was not credible and that he would not be convinced otherwise.

The Conseil felt it "would have been preferable for the judge to show compassion [. . .] in light of the accused's frailty, use a friendlier tone of voice and be more moderate in his remarks." While regrettable and unfortunate, the judge's comments were not found to constitute an ethical breach of the dignity and honour that must guide a judge's actions.

2009 CMQC 31 (examination)

### Criticism expressed in a written judgement

> "When the judge criticizes a situation or denounces a particular case in a judgement, he or she must be extremely careful in choosing the wording.
>
> The question is not whether a situation can be denounced, but rather how to do so."
>
> 2004 CMQC 4 (examination)

In his written judgement, the judge harshly criticized the work of the counsel for the prosecution in a case he was seized of. Noting that the defendant found herself embroiled in a long and arduous administrative procedure, he wanted to redress the balance between her situation and that of the prosecution. The plaintiffs felt offended, especially by the judge's references to presumed ethical offences. The Conseil urged the judge to be more prudent in his comments towards others, and concluded that the nature and importance of the complaint did not justify an inquiry.

2003 CMQC 32 (examination)

In his written judgement the judge analysed a situation he felt the need to denounce, noting that the children's rights were too often violated because of a chronic lack of public resources. He then severely criticized the apparent inaction of *Commission des droits de la personne et des droits de la jeunesse* with regard to this situation. Although he was not acting in bad faith nor with the intention to harm the Commission, the latter "could have been hurt by [his] comments."

"The judge must make sure the expression of his remarks does not go beyond the limits of the wide latitude judges enjoy." Considering the context in which the judge expressed himself and this reminder to act prudently, the Conseil concluded that the nature and importance of the complaint did not justify an inquiry.

2004 CMQC 4 (examination)

### 2.2.1.3 Unfounded complaints

**Reproaches towards an attorney**

> "It is certainly better to avoid using certain expressions that are likely to sidetrack the debate and create a tense atmosphere, although this doesn't necessarily constitute an ethical breach."
>
> Gagnon *et al.* and Drouin, CM-8-94-17 (inquiry)

The judge suspended the hearing of a case so as to reprimand a lawyer who arrived several hours late in Court. Since his remarks did not affect the course of the applicant's case, the Conseil concluded that the complaint was not justified.

CM-8-98-32 (examination)

### Reproaches towards the parties

After accepting the judge's apologies and his commitment to attend an intensive course on the conduct of a trial, the plaintiffs withdrew their complaint. Given the circumstances, a majority of the committee members concluded that, despite the fact that the judge's conduct was "subject to criticism," the complaint was not founded.

However a minority of the inquiry committee members considered that because of his unjustified reproaches and the way he conducted the case by constantly interrupting the plaintiffs, the judge infringed Section 2 of the *Judicial Code of Ethics*. The judge admitted that he behaved improperly.

Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry)

### Use of Latin maxims

> "Very few people understand Latin maxims nowadays. Judges who insist on using them should explain their meaning."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 22, obiter, a majority of the members considered that the complaint was not justified.

### Inappropriate remarks

The judge admitted he had said things "he should not have." The inquiry committee deemed his remarks surprising, inappropriate, irrelevant and unfortunate: "I don't have to discuss this with you," "This is a Court, not a scrapyard," "Do you take me for an idiot, Sir?" "So shut up. I'm fed up." However a majority of the committee members concluded that they did not constitute an ethical breach. The main reasons for this conclusion were as follows:

- his conduct was generally calm, patient and courteous
- the numerous demands placed on Small Claims Division judges. Since there is no intermediary between them and the parties, they are forced to act as attorney for each party, to examine the witnesses themselves, to explain to the parties certain rules regarding inadmissible evidence and "occasionally to ensure discipline by calling to order an aggressive party or recalcitrant witness"
- it is impossible to expect a judge to be like a sphinx—"impassive, silent and smiling in every situation."

The dissenting member of the inquiry committee would have recommended a reprimand for a breach of sections 2 and 8 of the *Judicial Code of Ethics*. He pointed out that many of the inappropriate remarks the judge was accused of making were made at the very beginning of the hearing, while he was still in control of the trial.

He also stressed the inherent danger in "admitting or even insinuating" that the specific characteristics of the Small Claims Division are such that one may more easily excuse inappropriate remarks on the part of judges, as this would, according to him, be akin to "accepting two levels of justice quality."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry)

## 2.2.2 Conduct while exercising judicial functions

### 2.2.2.1 Breaches of duty

#### Undisclosed situations

The judge agreed to speak with one of the parties involved in a judgement he had delivered. He advised this party on how to deal with one of the conclusions of his judgement and modified his decision, without the knowledge of the opposing party, "following the recriminations expressed by the party who claimed to have been aggrieved by this decision."

In doing so, he breached his duty to perform the duties of his office with dignity and honour. However, the committee concluded that "the judge's integrity [. . .] could not be called into question since his intention was merely to avoid an eviction that seemed unreasonable to him." Since his acts also infringed sections 1 and 5 of the *Judicial Code of Ethics*, the judge was served a reprimand.

Verrier and Bélanger, CM-8-88-32 (inquiry)

#### Unjustified detention

During a hearing on assault charges the complainant (alleged victim in the case) answered sarcastically when the judge stated he did not believe the complainant's version of events. The judge made the following remarks: "You, you are either going to shut up or go to jail" [. . .] Your little sarcastic remarks. . . Get it?" The complainant answered in the negative, to which the judge replied: "No. Go then! To your cell! I don't let people like you talk to me that way." The exchange lasted 30 seconds. The speed of the judge's reaction (whereas he could have asked the complainant to leave the courtroom or found him in contempt of court), the familiar tone, the seriousness of the consequences of his decision and the disproportion between the judge's conduct and the incident were found to constitute a breach of Section 2."

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267)

### 2.2.2.2 Insufficient seriousness of allegations

#### Dress code

The judge presided over a proceeding without wearing a robe, in contravention of Section 6 of the Regulation of the Court of Québec. The Conseil found that under the circumstances this could not be deemed a breach of ethics: the judge had been called to replace a colleague at the last minute and his robe was at the cleaner's. He chose to sit in a suit to avoid unnecessarily delaying proceedings, which would have forced the individuals involved to travel unnecessarily.

2007 CMQC 73 (examination)

#### Populist style

The judge admitted that his style was rather vernacular and acknowledged the fact that the words he chooses may be wrongly perceived. "[T]his style may not be desirable on the part of a judge presiding over a criminal or penal trial," but the Conseil considered that the judge's conduct was not, in all objectivity, sufficiently serious to conclude that there was an ethical breach.

Dadji and Polak, 1999 CMQC 44 (inquiry)

SEE ALSO: INQUIRY, PAGE 66.

### 2.2.2.3 Unfounded complaints

#### Lack of compassion

> A "rigid and impassive" behaviour shall not constitute "an ethical breach, unless there is a shocking abuse."
>
> CM-8-85-6 (examination)

The plaintiffs expected to be treated with compassion, considering the difficult situation they were going through. The judge acknowledged that her attitude may have been perceived as offensive because of her general approach to cases of motions for clinical psychiatric examination, especially when they are not supported by any psychiatric report. However, no inquiry was ordered, since the examiner considered that it was the system in place to deal with such motions that was in question and that certain directives needed to be issued to make changes to them.

CM-8-88-16 (examination)

SEE ALSO: THE CONSEIL'S DISCIPLINARY JURISDICTION, PAGE 31.

Towards the end of the plaintiff's testimony, she sat down and explained that she had just got out of hospital the previous evening and that she was about to faint. The judge asked her to stand again for the final two questions, which lasted one minute and eight seconds, after which she fainted. Since there were no warning signs the plaintiff was about to black out, and given that the judge made his request in a calm and patient manner, the examiner concluded that the judge could not be held to blame.

CM-8-87-4 (examination)

The plaintiffs would have liked the judge to show compassion given the age and frail condition of the octogenarian who was the defendant in a case the judge was hearing. "Even if the plaintiff were right, her complaint in this regard would not be admissible."

CM-8-85-6 (examination)

### Attempt to get an expert witness to admit his error

> "The answers provided by an expert witness must be considered as being sufficient to draw the appropriate conclusions." While the attempt to get a witness to admit his error is useless and unnecessary, it does not constitute an ethical breach per se.
>
> Gagnon *et al.* and Drouin, CM-8-94-17 (inquiry)

The judge was very exacting towards the experts, insisting that witnesses not only have rights but also obligations. He explained that they were the Court's assistants and that, as such, they must testify as objectively as possible. The judge's insistence on getting them to admit they might be mistaken "may have played a negative role, however, it did not constitute an ethical breach."

Gagnon *et al.* and Drouin, CM-8-94-17 (inquiry)

### Perceptible irritation

The judge's irritation with the behaviour of the plaintiff, who interrupted the witness and made disobliging remarks about the Court, "is not the kind of conduct that breaches the *Judicial Code of Ethics,* especially Section 2, which stipulates that judges must perform the duties of their office with integrity, dignity and honour."

CM-8-98-22 (examination)

## 2.2.3 Remarks made in public

### 2.2.3.1 Breaches of duty

**Comments on the status of a part-time municipal judge**

A part-time municipal judge made false tax returns in order to claim credits he was not entitled to. When municipal officials refused to approve the returns, he contacted them and complained about the fact that once he had reached the remuneration threshold, he was not paid for additional sessions. For him, "he was doing volunteer work, plain and simple."

These unacceptable statements "cast the judge's function in a sordid light, far removed from the dignity expected of the office. In light of this situation, added to other facts noted in his file, the Conseil recommended the removal of the judge."

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

## 2.2.4 Conduct in public

### 2.2.4.1 Breaches of duty

**Inappropriate pressure placed on court staff**

The judge "filled his tax return with false information in order to claim credits he was not entitled to," claiming expenses that he did not, in fact, incur. What is more, he tried to have his returns, which he knew to be false, approved by municipal officials, for the sole purpose of procuring a pecuniary benefit. The committee found the judge's behaviour "highly reprehensible" and "unbecoming."

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

**Implausible testimony and refusal to accept a conviction**

The judgements rendered by the Court of Québec and the Court of Appeal clearly pointed to the lack of credibility of the judge who was prosecuted for impaired driving. He acknowledged the guilty verdict without accepting his conviction.

In doing so, he breached his ethical obligation to perform the duties of his office with dignity and honour. The committee recommended that the Conseil take the necessary steps in order to remove the judge from his office.

Paré and Fortin, 1999 CMQC 56 (inquiry)

SEE ALSO: SANCTION, PAGE 97 AND SECTION 10, PAGE 255.
REPRIMAND AND REMOVAL, PAGE 97

### Abuse of judge status for personal benefit

> "[Judicial independence] does not entitle a judge to overstep his role. It does not shield him from criticisms or appropriate sanctions if he takes advantage of his situation for personal benefit incompatible with the kind of conduct expected of his office."
>
> CM-8-97-3, CM-8-97-41 (examination)

CODE OF ETHICS

# 3 The judge has a duty to foster his professional competence

## 3.1 LEGAL COMPETENCE

### 3.1.1 Unfounded complaints

#### Errors of law and ongoing education

The plaintiff City claimed that the judge did not apply the proper legal principles in the cases referred to him. For instance it submitted cases in which it claimed that the judge either allowed defences that were inadmissible in law in cases of absolute liability offences or required *mens rea* evidence in cases of strict or absolute liability offences.

However, the evidence showed that the judge had been taking part in "almost every ongoing education course given by the Conférence des juges municipaux du Québec under the aegis of the Conseil" for more than eight years.

Therefore the judge was in compliance with his duty to foster his professional competence, and the alleged breach of Section 3 of the *Judicial Code of Ethics* was not justified.

CM-8-92-20 (examination)

SEE ALSO: SECTION 1, PAGE 128.

#### Hasty and laconic judgement

The plaintiff reproached the judge for not having compensated for his ignorance of the applicable law with a thorough analysis of the case and the relevant laws. According to her, the quick and laconic judgement he delivered is proof of this.

"It cannot be [. . .] inferred from the mere fact that the judgement was rendered rapidly that the judge neglected to foster his professional competence."

CM-8-95-38 (examination)

SEE ALSO: SECTION 6, PAGE 204.

## 3.2 SOCIOECONOMIC COMPETENCE

### 3.2.1 Breaches of duty

**Indifference towards contemporary social problems**

> Indifference is an attitude that is simply unacceptable for a judge nowadays.

"[I]deally a judge who is confronted with certain kinds of social problems in his or her daily work must always be well prepared and constantly informed of the latest solutions to these problems."

While greater participation in specific ongoing education programmes is desirable, these courses cannot, in and of themselves, constitute an absolute guarantee against indifference.

"It is up to the judges themselves to become this absolute guarantee."

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO: SECTION 10, PAGE 250 AND HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 269.

CODE OF ETHICS

# 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

## 4.1 CONFLICT OF INTEREST

### GENERAL PRINCIPLES

> "[T]his section deals primarily with conflict of interest that may arise only upon exercising judicial power during a specific dispute."
>
> Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry)

### SCOPE OF APPLICATION

> Judges must ensure "not only that there is no actual conflict but also that there is no appearance of conflict."
>
> R. v. Cloutier, [1999] RJQ 1533 (CQ), quoting Succession MacDonald v. Martin, [1990] 3 SCR 1235

### 4.1.1 Personal relationships

#### 4.1.1.1 Breaches of duty

**Intimate relationship with an attorney involved in the case**

> Any judge presiding over a case defended by an attorney with whom he or she has an intimate personal relationship would be putting him or herself in a position of conflict of interest.
>
> 1999 CMQC 29 (examination), *obiter dicta*

**Undisclosed personal relationship with an expert witness**

The discovery by some of the attorneys involved in the case that the judge was friends with the expert witness led to the judge's late recusation and to the repeat of four days of hearing in a matter related to youth protection.

In continuing to preside over the case without disclosing her friendship with the witness, the judge "put herself in a position of conflict of interest in which she could no longer continue to carry out the duties of her office in the child's case." Because of

her numerous prior violations of the *Judicial Code of Ethics,* and her apparent inability to improve her conduct, the committee recommended the removal of the judge.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 176.

SEE ALSO: SECTION 2, PAGE 132 AND SECTION 5, PAGE 169.

#### 4.1.1.2 Unfounded complaints

**Prior relationship with a party**

> "A judge has the legal obligation to ensure he or she does not hear a case in which there is the appearance of conflict of interest due to a past or current relationship with one of the parties."
>
> 2012 CMQC 13 (examination), par. 14

The judge interrupted one of the parties to ask whether he or she might be an old acquaintance he had once "played music with."

The Conseil interpreted this statement as necessary so that the judge could establish that there was no apparent conflict of interest. No inquiry was held.

2012 CMQC 13 (examination), par. 14

**Blood relations**

As the judge disclosed that she was related to a lawyer from the firm of the prosecutors of the opposing party, the complainant cannot at a later date claim to the Conseil that there was a conflict of interest. The complaint was dismissed.

2011 CMQC 80 (examination)

### 4.1.2 Institutional relations

#### 4.1.2.1 Breaches of duty

**Inappropriate pressure placed on court staff**

A part-time municipal judge made false returns in order to claim credits he was not entitled to. When municipal officials refused to approve the returns, he contacted them and complained about the fact that once he had reached the remuneration threshold, he continued to preside over additional hearings without pay. He claimed in a letter that he had secured significant settlements for the city over the course of his career by ruling against citizens appearing before him. These statements "damage

the principle of the appearance of impartiality that judges must uphold, to be perceived as a neutral arbiter. In this case, he is confusing his roles: the judge is positioning himself as a municipal employee and boasting of saving the city substantial sums." The committee found the judge had breached Section 4 of the Code of Ethics.

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

#### 4.1.2.2 Unfounded complaints

**Using the status of judge**

The judge named in the complaint is both a part-time judge and a practicing lawyer. The judge communicated with the complainant, the opposing party in a case on which he was working as a lawyer, using the Court's phone line. The committee deemed this an exceptional circumstance: there was an urgent deadline to be met and the judge had forgotten his cellphone in the car. The complainant's confusion was caused involuntarily and accidentally, by an isolated incident. What is more, the judge clarified the situation during their next communication."

Saba and Alary, 2008 CMQC 43 (inquiry)

**Use of official letterhead for personal reasons**

> The judge must avoid using his letterhead when the matter at hand concerns his duty to act in a reserved manner or contains certain aspects that could see him act as a party before the judicial system.
>
> Cressaty and Alary, CM-8-93-3 (inquiry), *obiter dicta*

A judge who uses his or her official Court of Québec letterhead for writing a letter regarding his or her personal affairs, where said letter poses no threat of legal proceedings, does not constitute an ethical breach.

CM-8-92-45 (examination)

### 4.1.3 Other professional activities

#### 4.1.3.1 Breaches of duty

**Defending an accused in the judicial district of his jurisdiction**

The municipal judge agreed to act on behalf of the defence in a case where charges were laid following a police investigation in the town over which he had penal and civil jurisdiction. He denied being in a conflict of interest, arguing mainly that should a problem arise because of his role, all he would have to do is to declare

himself incompetent. "This is tantamount [. . .] to admitting that he is in a delicate situation, to say the least."

Even though his personal and professional integrity as well as his good faith were not being called into question, the Court of Québec concluded he infringed Section 4 of the *Judicial Code of Ethics,* since the obligation it sets out consists "precisely to avoid this kind of potential or apparent conflict."

The Court ruled that the judge was not in a position to represent the accused, and ordered that he desist.

R. v. Cloutier, [1999] RJQ 1533 (CQ)

SEE ALSO: SECTION 10, PAGE 259.

### 4.1.3.2 Unfounded complaints

**Training given to future witnesses**

The judge regularly gives training courses to staff members of a reception centre to whom she entrusts children and who she could potentially hear as witnesses.

"The fact that a judge delivers skills development courses to staff members of an institution does not imply that in doing so, he or she puts him or herself in a position of conflict of interest [. . .] towards the employees or the institution." The Youth Protection Act "in fact urges Youth Court judges to provide advice and help improve the fate of unhappy and neglected children."

The complaint was deemed inadmissible.

CM-8-88-37 (examination)

SEE ALSO: SECTION 5, PAGE 173.

## 4.2 SITUATIONS THAT PREVENT A JUDGE FROM FAITHFULLY CARRYING OUT HIS OR HER DUTIES

GENERAL PRINCIPLES

> "The word 'functions' must be understood as referring to judicial functions, primarily the judge's work in Court."
>
> Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry)

SCOPE OF APPLICATION

> A judge can no longer faithfully carry out his or her duties when his or her conduct, on more than an occasion, reveals a failing in his or her behaviour that is incompatible with the judicial function. In general, an isolated act is insufficient to draw such a conclusion.

Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)

> "Section 4 of the *Judicial Code of Ethics* forbids judges to place themselves in a position that prevents them from faithfully carrying out their judicial duties." Therefore this section is not breached when a judge is thrown into such a situation.

Guillemette and Verreault, CM-8-93-40 (inquiry)

## 4.2.1 Conduct while exercising judicial functions

### 4.2.1.1 Breaches of duty

#### Taking a stance in support of his or her own decision

> "Violating the clear principle stated by the authorities to the effect that judges cannot either plead on appeal to defend their decisions or appeal judgements quashing them, except when defending their jurisdiction, could, in some circumstances, constitute a breach of Section 4 of the *Judicial Code of Ethics*."

Lapointe and Ruffo, CM-8-88-37 (inquiry), *obiter dicta*

The judge phoned the lawyer representing the union, to encourage her to appeal the Superior Court decision overturning his own ruling.

"The notion that it is acceptable for a judge to defend his or her own judgement, or to call on someone else to do so, has been clearly discredited by the Court of Appeal."

Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry), dissidence, quoting Lancup v. Commission des affaires sociales, [1993] RJQ 1679 (CA)

SEE ALSO: SECTION 8, PAGE 214.

#### Intervention in proceedings regarding the judge's own recusation

> "It is worth questioning whether a judge should have the opportunity to intervene in a recusation procedure so as to submit not only facts but also legal arguments and to put him or herself in a position where his or her impartiality and objectivity may be thrown into question."

CM-8-89-28 (examination), *obiter dicta*

### Intoxication while exercising judicial functions

> "[T]here is a flagrant breach of the requirements of Section 4 when a judge is intoxicated while exercising his or her judicial functions."
>
> Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry), *obiter dicta*

### Unreasonable and wrongful order

According to the judge, the role of a judge of the Youth Division "is not to decide between rights nor to settle conflicts, but to declare the child's rights." Based on this understanding of her role she issued an order requiring the director of a reception centre to appear in court the next day with all his employees' resumes.

This order, which was deemed "unreasonable and wrongful in terms of its content, tight deadline and necessity," exceeded the investigative powers granted to the courts under Section 77 of the *Youth Protection Act*. The order reflected "Madam Justice Ruffo's widely known and long-held opinion of the Centre Huberdeau" and her general intent not to entrust any child to it.

"Declaring the child's rights neither requires nor permits the judge to take sides and surrender her ability to listen, reflect and pass judgement in the eyes of the other persons involved in the same mission to act in the best interests of the child." The Conseil reprimanded the judge for this breach of Section 4 of the *Judicial Code of Ethics*.

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

SEE ALSO:

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 322

SEE ALSO: SECTION 10, PAGE 254.

### Private meeting with a witness

> "A meeting between a judge and a witness, in the absence of the parties or their attorneys," puts the judge in a position that prevents him or her "from continuing to faithfully carry out his or her functions."
>
> Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 159 and 162, upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 196 and 197

Noting that "the judge's decision [. . .] to meet a witness in her office [could] raise a number of questions about the extent of their conversation and suspicions among the parties and their attorneys," the committee concluded that the judge infringed Section 4 of the *Judicial Code of Ethics,* but dismissed the plaintiff's allegations regarding the content of the conversation.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

SEE ALSO: SECTION 5, PAGE 182.

#### 4.2.1.2 Unfounded complaints

**Petition for revocation of a judgement in order to re-establish the truth**

The judge filed a petition for revocation of a judgement in a case disputed by the director of youth protection. Since the director often acts as a party in cases she is seized of as a judge, he claimed that in doing so, the judge put herself in a position where she could no longer faithfully carry out her functions.

It was established that the judge had used "the only recourse available to her to re-establish the truth regarding the facts of the case and to have the judgement corrected, as it attacked her credibility and could put her in a position of contempt of court." Consequently, she did not infringe Section 4 of the *Judicial Code of Ethics*.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

**Intervention in the judge's recusation proceedings for defending the interests of a child**

Considering the judge's reasons for intervening in his recusation proceedings, that is, to demonstrate that the interests of the child justified his remaining on the case, the examiner concluded that his intervention was not a breach of the *Judicial Code of Ethics.*

CM-8-89-28 (examination)

### 4.2.2 Remarks made in public

#### 4.2.2.1 Breaches of duty

**Opinion about a pending case expressed in public**

Before having heard the evidence on its merits, the judge expressed her feelings about a case she was seized of to a magazine journalist. The facts reported in the article allowed those in the know, especially the parties, to recognize their case, which was the only case of its kind in the region of the judge's jurisdiction.

Despite the fact that she heard the case as planned, since the parties in all likelihood did not see the article before the hearing on the merits, in acting the way she did, the judge placed herself in a position that kept her from faithfully carrying out her functions. The majority of the inquiry committee members recommended that the judge be reprimanded for this breach of Section 4 of the *Judicial Code of Ethics.*

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 5, PAGE 189.

At an informal talk she gave to the members of a women's club, the judge referred to a case in which the presentation of the evidence was not over to illustrate "society's passivity in the face of the suffering of children." She then denounced the sexual abuse of a child in front of witnesses, even though the alleged aggressor was contesting the accusation.

The judge's immediate and spontaneous recusation, at the father's request, in no way diminishes the seriousness of this breach of Section 4 of the *Judicial Code of Ethics*. Since the judge placed herself in a position where she could not faithfully carry out her functions, she was served a reprimand, as recommended by the majority of the inquiry committee members.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 8, PAGE 216.

#### 4.2.2.2 Unfounded complaints

### Observation of shortcomings in public administration

The director of youth protection felt the judge was pointing fingers at him with her comments that appeared in a magazine article: ". . . everyone protects their territory, their budget, and too bad for the children." However, the judge's remarks, which deplored the facts that were not contradicted by the evidence, was targeting the way the youth protection system works as a whole and the director as a social services administrator in charge of implementing the measures ordered by the court. The remarks "in no way targeted the role of the director of youth protection before the Court or the way he performed his duties." No breach of Section 4 was established.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 8, PAGE 217.

## 4.2.3 Conduct in public

#### 4.2.3.1 Unfounded complaints

### Impaired driving offence

Since the judge, who was found guilty of the offence of operating a motor vehicle while his blood alcohol concentration exceeded the legal limit, committed, outside the exercise of his functions, an isolated act to which he admitted "at the first possible occasion," "the committee concluded there had been no breach of Section 4 of the *Judicial Code of Ethics*."

Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)

SEE ALSO: SECTION 8, PAGE 218 AND SECTION 10, PAGE 255.

The judge, who was found guilty of impaired driving, committed "an error that deserves society's condemnation." Nevertheless, the evidence showed that she is "unanimously acknowledged as a highly competent legal expert and that her career is beyond reproach, reflecting a know-how and sense of fairness that has never failed her in the past."

"The offence she committed in no way lessens the judicial capability she has shown until now." Since her "error" did not interfere with her duty to faithfully carry out her functions, the committee concluded that it did not constitute a breach of Section 4 of the *Judicial Code of Ethics*.

Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry) (complaint upheld under Section 8)

### Attempting to secure an appointment

When a successor to the position of Chief Judge was being sought, a judge contacted a "friend who was politically active and who, he believed, would be able to express his interest in the position to the Minister." In the absence of a more formal candidacy process, the judge's behaviour, "while it cannot be described as prudent, does not constitute an ethical breach." It has not been demonstrated that he did anything beyond express his interest. It is thus hard for the Conseil to conclude that this action could have had any influence in his subsequent appointment as Associate Chief Judge.

2010 CMQC 55 (examination)

### Pending charge against the judge

> "The fact that a judge continues to sit despite the fact that there is a charge weighing on him or her does not constitute a breach of the *Judicial Code of Ethics*."

Paré and Fortin, 1999 CMQC 56 (inquiry)

CODE OF ETHICS

# 5 The judge should be, and be seen to be, impartial and objective

GENERAL PRINCIPLES

> Any conduct that is "likely to cause a reasonable and sufficiently informed person to have doubts about the judge's obligation to be, and be seen to be, impartial and objective" infringes Section 5 of the *Judicial Code of Ethics*.

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)

> "[S]ection 5 is applicable only

1. if the judge has to render a judicial or quasi-judicial decision (commission of inquiry, special coroner, etc.);
2. before the judge renders his or her decision or files his or her report since, from then on, he or she necessarily favours one party over the other."

CM-8-85, CM-8-86-11 (examination)

SEE ALSO: 2001 CMQC 82 (EXAMINATION)

## 5.1 DUTY TO BE IMPARTIAL

GENERAL PRINCIPLES

> "Impartiality is a state of mind or an attitude of the Court towards the points in litigation and the parties in a given case. The word 'impartial' [. . .] refers to a real or apparent lack of bias."

R. v. Valente, [1985] 2 SCR 673, p. 685, quoted in 2006 CMQC 15 (examination)

> "The essence of impartiality resides in the judge's obligation to disclose any grounds for recusing him or herself and approach all cases with an open mind, eschewing any act or inclination that might lead a reasonable and sufficiently informed person to believe the judge is favouring a particular party or outcome."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 53

> "The guarantee of impartiality, as seen from the angle of the individual decision-maker, is a characteristic that ensures the litigant that the person presiding over the court will not be influenced by any personal interests or bias in the matter before them."

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), par. 48, quoting *Droit de la famille* – 1559, [1993] RJQ 625 (CA), p. 15 of the online version

SCOPE OF APPLICATION

> "Impartiality is a fundamental quality in judges and the attribute central to the judicial function [. . .] and [. . .] its existence must be presumed."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 53, referring to the Supreme Court in Wewaykum Indian Band v. Canada, [2003] 2 SCR 259, par. 58–59

SEE ALSO:

CM-8-91-12 (examination)

> "Impartiality is one of the fundamental requirements of the function of judge. According to the criterion applicable to judicial ethics, the judge must be and remain truly impartial," as "his or her apparent impartiality does not suffice."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 161, quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire,* Montréal, Wilson & Lafleur, 2000, p. 206

> "It has been established that the judge's duty of impartiality is ongoing. The oath of office attests as much. Constant vigilance on the part of judges is required to preserve citizens' rights and maintain their trust in the justice system. It thus behooves judges, first and foremost, to scrupulously guard their impartiality and ensure it remain both real and apparent [. . .].
>
> The impartiality of the judge is at the very heart of the judicial function. It is a principle that people using the justice system hold particularly dear, as impartiality is tied very closely to the notion of justice."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 148 and 291

> "True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind."

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry), par. 27, quoting R. v. R.D.S., [1997] 3 SCR 484

> No one can tell, especially during a long trial, "when the scales tip in the judge's mind. The important thing is that despite his or her growing conviction, the judge remains open-minded and ready to take into account everything he or she hears based on its merit."

CM-8-94-17 (examination)

## 5.1.1 Remarks made while exercising judicial functions

### 5.1.1.1 Breaches of duty

**Disparaging remarks toward a party**

The judge made disparaging remarks with reference to the pronunciation and posture of one of the parties: "You know those muscles next to your mouth? They're called cheeks. You need to work them a bit. [. . .] Do you have a problem with your spine? [. . .] A lot of people do: it says a lot about them."

He also disparaged the party's French with the following comments: "That's basic French, Madam. If we have to start teaching French in the courtroom, we're in real trouble! [. . .] Dammit! Excuse me, we're speaking French here!" The Conseil felt these comments breached the duty of impartiality."

Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

**Comment indicating an obvious bias**

The judge expressed "a formal comment, with supporting argumentation, in which he displayed an obvious bias in favour of the Crown attorney":

"[. . .] this Crown attorney, I'll trust him 100% until I'm given reason otherwise. And until now, I've had no reason not to trust him . . . We work together. For the first time in three years I have a right-hand man."

This attitude "is a prime example of denial of justice and violates the rule of impartiality in a flagrant manner." The judge was subsequently reprimanded for this and various other breaches.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

**Disparaging remarks about a particular type of business**

The judge's disparaging remarks about insurance companies—"[. . .] insurance companies make their contracts complicated so they never have to pay anything," and "You insurance companies are rich, your deep pockets are going to pay"—constitute "a manifestly unacceptable conduct which goes against Section 5 of the *Judicial Code of Ethics*." The committee served the judge a reprimand.

Alliance, Compagnie mutuelle d'assurance-vie and Long, CM-8-84 (Small Claims Division) (inquiry)

**Hurtful remarks aimed at a group of persons**

While the committee considered it the judge's indisputable right to denounce the severe failings of the Centre jeunesse des Laurentides "within the limits of her status as a judge," it disapproved of the hurtful remarks she addressed, without distinction, to a group of social workers.

"In seeking the best interests of the child, this does not mean that the judge must have neither sympathies nor opinions, but it does require that he or she be free to entertain and act upon different points of view with an open mind, so as to render a decision in accordance with the evidence and the law."

The Conseil served the judge a reprimand, considering that she denied the social workers their right to be treated with justice, "[t]hat is to say, with a fundamental, and not merely apparent, lack of prejudice and bias."

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

### Remarks made about a judgement cited by a party

The judge intervened directly in the debate to express his opinion on a judgement cited in support of a party's argument. He informed the attorney that he had pleaded that particular case when he was a lawyer for the City and that he disagreed with the ruling.

"This kind of attitude from a judge presiding over a trial is totally unacceptable and shows a distinct bias on his part." The judge was reprimanded.

St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

## 5.1.1.2 Unfounded complaints

### Encouragement to the victim after recusation

After having granted the accused's application for recusation, the judge said some words of encouragement to the presumed victim. Since the judge had been removed from the case, her words could in no way affect its outcome.

Far from constituting a proof of bias, the judge's remarks were instead inspired by "a concern for the preservation of the credibility of justice for all," as the victim found herself back in a position where she had to begin her testimony all over again.

CM-8-95-36 (examination)

### Opening remarks on applicable law

With an educational objective in mind, the judge in his opening remarks explained the law applicable to the case before carefully listening to the parties. The plaintiffs were demoralized as they felt the principles he outlined were unfavourable to them. "After listening [to the tape of the hearing], we detect no impartiality on the judge's part."

CM-8-98-48 (examination)

## Opinions expressed about a case

### Opinion expressed in a dubious manner

Before the defence presented its evidence, the judge exclaimed that he was eager to hear it "tell me that these aren't hidden defects" and that "[t]he hill [was] rather steep [. . .]"

These remarks may appear to suggest that the judge had already formed an opinion about the case at that time. "But the atmosphere in which this conversation took place leaves no doubt that the judge expressed his opinion in a dubious manner."

2000 CMQC 30 (examination)

### Opinion on the advisability of the proceedings

The judge wanted to be sure that the petitioner really wished to bring an action which, in his opinion, had little chance of succeeding. He said: "Do whatever you want but it doesn't look good right from the start, it looks like abuse," and eventually concluded: "Okay then, maybe you'll win."

"Although the judge could have expressed himself in different terms, the fact remains that he did not express an opinion about the eventual outcome of the dispute."

2000 CMQC 41 (examination)

### Opinion on the proportionality of costs

The judge reminded the parties that the file was growing out of proportion to the issue at dispute, and that it would have been better to settle out of court. The Conseil concluded that this did not constitute an expression of bias."

2010 CMQC 6, par. 20 (examination)

Given the suggestion of a financial compromise proposed by the opposing party, the judge advised the complainant that if he did not accept the offer he would have to "call in the accountants" which "would cost a whole lot more!" The Conseil admits that this may have influenced the complainant's decision and that the statements could "be described as inappropriate or clumsy." But it added that "the argument itself was valid, in the sense that it would have been inappropriate to make the parties incur the costs of hiring expensive accountants given the amount under dispute." The Conseil concluded that, given the context, the comments were not sufficiently important to constitute an ethical breach."

2007 CMQC 79 (examination)

**Remarks on the explanations provided by the accused**

At the hearing, the plaintiff could not prove a valid link between the loss of memory and the ingestion of prescription drugs which, according to her, were responsible for the actions at the origin of the charges against her. The judge replied in great detail, but without animosity, that the fact that a person suffers from depression does not entitle them to shoplift. Since the judge's intent was to urge the plaintiff to have an expert testify on the matter, the accusation of bias against the judge was deemed unjustified.

2001 CMQC 83 (examination)

**Pressure on a party**

During the hearing, the judge said to the complainant: "Hurry up and convince me otherwise." This comment "made it clear to the complainant and his counsel that the explanations provided up to that point had not convinced the judge, but that he was still open to changing his mind." The Conseil found that there had not been a demonstration of bias.

2010 CMQC 62 (examination)

## 5.1.2 Conduct while exercising judicial functions

### 5.1.2.1 Breaches of duty

**Behaviour demonstrating manifest bias**

Displeased that a party was representing itself and refusing mediation in a youth protection case, the judge demonstrated bias by repeatedly interrupting the complainant and betraying signs of impatience on numerous occasions, creating a tense atmosphere. The Conseil noted that "the last 30 minutes of the hearing are littered with inappropriate remarks made by the judge to the complainant, and several jokes at the complainant's expense are totally unsuitable."

For all the abovementioned reasons, the Conseil reprimanded the judge.

Ms. A. and Turgeon, 2011 CMQC 37 (inquiry), par. 54.

**Usurping the role of crown prosecutor**

The judge intervened with great frequency during the examination and cross-examination of the complainant, who was accused of criminal harassment of his ex-spouse. The judge asked a series of questions designed to make the complainant contradict his story, and obtain admissions; he also displayed an ironic attitude. In addition he made the following comment: "I don't think he'll find it funny for long."

The Conseil found that the judge "seems to have forgotten that the witness [. . .] is the accused, and entitled to be presumed innocent until the end of the trial. He is acting like a second prosecutor, engaging in nothing less than a cross-examination of the complainant and expressing his personal opinion before the verdict has been delivered. The Conseil found that Section 5 of the *Judicial Code of Ethics* had been breached.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (inquiry)

### Discussion with only one party

After ordering that the microphones be turned off, in the absence of the accused and before the latter could inform the judge whether he intended to testify in defence, the judge referred the Crown attorney to a judgement dealing with the maximum sentence.

This "'error' on the part of the judge generated a serious apprehension of bias, resulting in the Court of Appeal ordering a new trial. The committee could not conclude that the judge made up for his mistake the next day by inviting the legal aid attorney to read the same judgement, while failing to mention the incident that occurred the previous day.

The committee concluded that this conduct was "likely to cause a reasonable and sufficiently informed person to have doubts about the judge's obligation to act in a completely impartial and objective fashion and to be seen to be impartial and objective," and that it infringed Section 5 of the *Judicial Code of Ethics*. It unanimously recommended to the Conseil that the judge be served a reprimand.

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 103 AND SECTION 10, PAGE 252.

The judge breached his duty to be impartial and objective, first by discussing possible strategies with one party in relation to the consequences of his own decision and, second, by modifying his judgement without consulting the opposing party first.

"Regardless of the reasons that motivated the judge to justify such an initiative, it constitutes a flagrant breach of the fundamental and immutable rule of impartiality and objectivity that judges must abide by in relation to any and all litigation referred to them."

The judge was served a reprimand as a sanction for his actions, which also infringed sections 1 and 2 of the *Judicial Code of Ethics*.

Verrier and Bélanger, CM-8-88-32 (inquiry)

SEE ALSO: SECTION 1, PAGE 121 AND SECTION 2, PAGE 144.

5.1.2.2 | Unfounded complaints

### Bias affecting the fairness of the proceeding

The complainant is counsel for a person accused of the sexual assault of a minor. She complained that the judge intervened frequently, interfering with her ability to do her job as defense counsel. The committee's view is that "if the complainant wishes to attack the conduct of the judge during cross-examination, claiming that the judge's attitude hindered the fairness of the process, she must appeal the decision." The committee cannot assess what repercussions the judge's conduct may have had on the fairness of the trial."

Corriveau and Dionne, 2007 CMQC 7 (6-18-2008) (inquiry)

### Prior knowledge of a party or the party's attorney

#### Close relationships in outlying regions

> "In smaller outlying regions where all the judges, attorneys and litigants know each other very well and are comfortable with this situation, it cannot be inferred that the judge is biased simply because of this acquaintance."

CM-8-96, CM-8-86-18 (examination)

#### Prior professional relations

> "The recusation option is in place to ensure judges act impartially [. . .].

Section 234 (3) of the *Code of Civil Procedure* states that a judge should be recused if he or she has previously represented either party as a lawyer.

"Recusation is not automatic. In each case, several factors and circumstances must be considered by the courts for recusation to be considered necessary and reasonable."

The time that has passed between a person's most recent work as a lawyer and the moment when they preside over a hearing is one factor to be considered. [. . .] A lack of previous involvement is another. Other circumstances to consider include the number of cases the lawyer has had involvement in [. . .]."

The examination of how the hearing unfolded and the reasoned decision that followed "did not suggest any bias."

2006 CMQC 15 (examination)

SEE ALSO:

CM-8-94-14 (examination)

The plaintiff reproached the judge for having heard her case despite the fact that he knew the opposing party's attorney. Since the judge confirmed to the Conseil that he knew this attorney "on a professional basis only," he did not infringe the *Judicial Code of Ethics*.

2002 CMQC 23 (examination)

"[I]t is certain that Justice Bilodeau attributed greater credibility to Constable Clavet because he knew him as a constable and what was being said about him did not correspond to the judge's knowledge of him. In our opinion, this does not prove that the judge was biased but rather that he did not base his decision on a very valid grounds."

Talbot and Bilodeau, CM-8-87-10 (inquiry)

The City, which was a party in a civil litigation before the judge, was a former client of his legal firm, which specialized in municipal law. The judge never had social relations with the mayor, and he did not know the City's main witness. Besides, when he was appointed, he and his chief judge agreed that he would abstain from hearing cases involving his former clients for a two-year period, now expired.

This evidence, combined with the duration of the hearing and the fully reasoned eight-page judgement, led to the conclusion that the plaintiffs, for whom it was their first experience before a court of justice, subjectively arrived at the conclusion they had not been fully understood or heard. Their complaint alleging a lack of impartiality and objectivity was dismissed.

CM-8-86-4 (examination)

**Declared relationship with an expert witness**

The complainants alleged that the judge was a friend of the expert witness of the defendants, and had unfairly ruled in their favour.

The hearing transcripts showed that the judge had disclosed to the parties that he was a friend of the author of the expert report produced by the defence. He expressly offered to hand the trial over to another judge. The defenders did not ask him to do so.

"Having informed both parties of a formally recognized reason for recusation as required [. . .] under the *Code of Civil Procedure,* and having conducted himself in an impartial manner and let both parties express their points of view, 'the judge did not breach any article of the *Judicial Code of Ethics*.'"

2006 CMQC 38 (examination)

#### Being a neighbour of a party

The complainant complained that the judge did not recuse himself although he has lived, for ten years, just a few doors down from him. However, the complainant and the judge had never spoken, and the judge didn't even recognize him. "Nothing in the judge's conduct constituted an ethical breach."

2008 CMQC 65 (examination)

#### Obvious level of ease with one party

> The fact a judge is noticeably more at ease with one of the litigant parties does not necessarily indicate favouritism on the part of the judge.
>
> CM-8-94-17 (examination), *obiter dicta*

#### Judge involved in a previous hearing

> "The mere fact of having appeared previously before a judge, with or without words being exchanged between accused and judge, does not require the judge to recuse him or herself from any subsequent proceeding involving the same person. The judge can hear an accused more than once in different trials, because he or she is able to distinguish between different situations and ensure justice is served."
>
> 2010 CMQC 99, par. 13 (examination)

#### Presumption regarding the parties' linguistic competence

Just after the judge indicated that he would take the case under deliberation, the complainant objected to the fact that a witness had testified in French. The judge, "exasperated, reminded her that there were two official languages in Quebec and that she should be able to understand testimony in French, and if not she could have used a translator." What is more, the judge had good reason to believe the complainant understood French, as she "had replied to statements made by the witness."

The Conseil found that "the judge's conduct throughout the trial was beyond reproach," and the complaint was unfounded.

2005 CMQC 9 (examination)

### Suggestions made during the trial

#### Attempts to reconcile the parties

> Attempts to reconcile the parties "may often be made during a trial, and only the particular circumstances of each case make it possible to determine, upon analysis, whether such an attempt may have constituted a breach of the judge's obligation to be manifestly impartial and objective."
>
> CM-8-94-16 (examination)

SEE ALSO:

2012 CMQC 9 (examination)
2004 CMQC 63 (examination)

"In this case, there is no doubt that the judge acted in good faith in attempting to explain to the defendant (the plaintiff) that since he admitted in his testimony that he owed something to the opposing party, it might be better for him to negotiate the terms instead of waiting for a judgement that would likely order him to pay."

Although the judge acknowledged that he may have given the plaintiff the impression that he was forced to settle, he did not infringe his duty to act in a manifestly impartial and objective manner.

CM-8-94-16 (examination)

**Suggestions designed to put an end to the trial**

> "[T]he judge is responsible for the conduct of the trial. As such, [he or she] may make a suggestion that would put an end to the trial and bring about a result both parties understand."
>
> 2002 CMQC 87 (examination)

During the trial, the judge asked the parties to consider the option of the defendant making a commitment to refrain from disturbing the peace. The purpose of this suggestion was to spare the witnesses from having to reveal certain parts of their private life in public, and it caused no harm to the defendant.

2002 CMQC 87 (examination)

**Repeated interruptions during arguments**

"It is true that during the trial the judge, on several occasions, interrupted the counsels for the defence while they were presenting their arguments. He spoke to them at great length, sometimes vehemently. It is quite likely that these repeated interventions on the part of the judge gave the plaintiff the impression of bias, of which, however, there is no indication in the judgement he rendered. While it would certainly have been preferable for the judge to refrain from such interruptions, they, in themselves, do not prove the judge was biased"

CM-8-97-55 (examination)

**Interruption and closing of a party's argument**

The judge admitted that, during the interlocutory application, he "acted swiftly and with authority so as to make the plaintiff understand that he had understood his arguments and that he had had enough time to express his point of view."

After a thorough examination of the facts of the case, the Conseil concluded that "despite the judge's harsh remarks and firm tone, nothing indicates that he favoured the applicant over the plaintiff or showed any bias."

2000 CMQC 6 (examination)

**Systematic rejection of accuseds' testimonies**

Neither the fact that the judge dismissed the accuseds' arguments on four occasions to conclude they were guilty, basing his judgment on a written statement of offence only, nor the discussions he had with them regarding the quality of the evidence presented before him, led to the conclusion that he showed any bias.

The committee, after holding an inquiry into the judge's decisional process in order to "clear up any misunderstanding," concluded that the judge "had dispensed justice with complete impartiality, according to his understanding of the principles of law and his conscience."

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry)

SEE ALSO: ABSENCE OF ETHICAL BREACH, PAGE 281.

**Rejection of various requests and motions**

The complainant claimed he had not been able to be represented by the lawyer of his choosing because the judge had refused his requests to postpone proceedings and to liberate witnesses, as well as his motion to cease representing. The proceeding thus went forward that same day. The Conseil, after examining the relevant transcripts, found that "the judge's actions in this case were entirely legal and exhibited objectivity and partiality."

2004 CMQC 68 (examination)

## 5.1.3 Remarks made in public

### 5.1.3.1 Breaches of duty

**Avowed intention to hand down decisions without regard for their legality**

> "The judge [. . .] damaged the integrity of the judiciary and failed in her duty of impartiality when she expressed, in strong language and in numerous public appearances, and particularly those at the time of the inquiry committee [. . .], her intention to hand down the only rulings she deemed acceptable, without regard for their legality, because she refused, in her own words, 'any compromise' because 'children's rights are non-negotiable.'"
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 322

## 5.1.4 Conduct in public

### 5.1.4.1 Unfounded complaints

**Training given to future witnesses**

> "The fact that a judge gives advanced training courses to the personnel of an institution does not imply that in so doing, he or she puts him or herself in a position of potential conflict of interest [. . .] with regard to the employees or institution in question."

CM-8-88-37 (examination)

SEE ALSO: SECTION 4, PAGE 154.

## 5.2 DUTY TO BE SEEN TO BE IMPARTIAL

GENERAL PRINCIPLES

> The test to appraise a judge's conduct "consists of asking 'whether an informed person who thoroughly examines the matter in a realistic and practical fashion would have doubts about the judge's impartiality.'"

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry), par. 14, quoting Committee for Justice and Liberty v. Office national de l'énergie, [1978] 1 SCR 369 and R. v. R.D.S., [1997] 3 SCR 484, par. 31 and 111

> "The judge's impartiality is at all times presumed. However it is called into question whenever there is a probability that a reasonable person has a reasonable doubt that the judge is biased."

Couture *et al* and Houle, 2002 CMQC 26 (inquiry), par. 47

SCOPE OF APPLICATION

> "The impartiality of the judge is one of the foundations of the independence of the judiciary, because it allows the public to believe they can be judged without prejudice in the matter of the dispute they are involved in. It is often a question of perception or appearance. That is why it is important to determine whether a case has been judged not only fairly, but also in a manner that appears to be fair."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 84 (inquiry)

> "When we say that judges must guarantee their independence and impartiality, it means that they must not only remain independent and impartial, but also make sure that their attitude and conduct give the appearance of being so."

Viau and Ruffo, CM-8-94-43(3) (inquiry), par. 25, majority

> "Not only must justice be dispensed but it must also give the appearance of being dispensed."
>
> Verrier and Bélanger, CM-8-88-32 (inquiry)

## 5.2.1 Remarks made while exercising judicial functions

### 5.2.1.1 Breaches of duty

#### Criticism of a prosecutor

The complainant is counsel for a person accused of the sexual assault of a minor. The judge criticized the complainant's behaviour in several passages of his written decision, which he read out loud when pronouncing the verdict: "repeated, aggressive assaults," "essentially, a battered child," "undermining, basically destroying the child." He added that he had to intervene to keep the lawyer from "yelling at the child."

These criticisms were not borne out by the facts. They were picked up in the media and had significant repercussions on the complainant's reputation. The judge thus created confusion that could lead "the defendant to believe he had been found guilty" [. . .] due to poor representation by his counsel rather than due to an accumulation of facts proving that he had committed the alleged acts."

The Conseil found "this abuse of office on the part of the judge, whether or not he meant well" had the effect of "showing the justice system in a bad light." The Conseil concluded that Section 5 of the *Judicial Code of Ethics* had been breached and reprimanded the judge."

Corriveau and Dionne, 2007 CMQC 7 (6-18-2008) (inquiry)

#### Insinuations regarding an attorney's probity

The attitude of the judge who, without good reason, insinuated that the accused's counsel was inciting his witness to commit perjury, is an affront to the image of impartiality the judge is duty bound to project. For this and other breaches, the judge was reprimanded.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

#### Testimony aggressively rejected before being heard

By aggressively and impatiently refusing to take the word of the accused against that of two policemen, even before the accused could testify, the judge "showed a bias that flouted justice and any appearance of justice." Because of this breach, and several others, the judge was served a reprimand.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### Opinion on the credibility of a particular group

The judge expressed his disappointment in the constable appearing before him, publicly stating the latter had, until then, been part of the "trilogy of credible policemen," but that his behaviour that day had been very detrimental to him.

The committee could not conclude that the judge had an actual unfavourable bias towards policemen but considered that this remark could be perceived as signifying that only three officers from the Longueuil Police Department were deserving of his trust.

The committee stated that the judge's remark was "likely to cause a reasonable and sufficiently informed person to have doubts" about his impartiality. Basing its decision on Section 8 of the *Judicial Code of Ethics*, the committee concluded that there was an ethical breach and served the judge a reprimand.

Kane and Alary, CM-8-94-83 (inquiry)

### Denigration of a party before their hearing

Before even hearing the witnesses for the defence, the judge told the presumed victim, in a joking tone, that the defence was "coming to vomit on" her, referring to the questions she was going to be asked the next day. Since these comments could suggest a lack of impartiality, the counsel for the defence immediately filed an application for recusation. These comments constituted a breach of Section 5 of the *Judicial Code of Ethics*. Because of this breach, and several others, the judge was served a reprimand.

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry)

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 98.

## 5.2.1.2 Insufficient seriousness of allegations

### Opinion on the competence of notaries

During a proceeding over a hidden defect further to the sale of a house, the judge found that the notary involved had not fulfilled his obligations. He made the following comments: "Notaries like to boast, 'We help people come to an agreement. We're not like lawyers who like to make people disagree. We like to help people find a middle ground, help them solve their problems.'"

The Conseil found that "it is imprudent for a judge, in court, to make comments that add nothing to the proceedings at hand." The comments were disparaging and inappropriate, but their nature and importance do not justify an inquiry."

2010 CMQC 44 (examination)

### Criticisms of a party's attitude

The judge made repeated comments on the complainant's behaviour (in a charge of criminal harassment). The complainant smiled and laughed during the alleged victim's testimony. The judge spoke sternly, ordering the complainant to change his attitude. The Conseil notes that "it is the judge's responsibility to keep order during the trial."

However, the judge made the following comments: "He seems to find it funny. I don't think he'll find it funny for long." The Conseil felt that this "could be taken as a warning, and lead the complainant to believe it would count against him [. . .] and create a vengeful atmosphere." The Conseil nevertheless concluded that the judge was performing the duties of his office in bringing the complainant to order.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (inquiry)

### Remarks about a party's presumed intentions

While the judge acknowledged having made a statement suggesting the father was out to get what he wanted without contributing to the child's financial support, he affirmed that the plaintiff's right to a just and fair hearing had not been jeopardized.

"This statement on the part of the judge was inappropriate and, in any case, unnecessary. It should probably not have been said, but its importance and nature clearly do not justify an inquiry."

CM-8-90-5 (examination)

### Apparent bias against a particular group

The judge did not deny having made remarks similar to those described by the plaintiff, who is in the military (e.g., references to "Rambo" and the Lortie affair, mention of alcohol being sold at low prices on military bases), but he categorically denied having made them with the intent of discrediting the Canadian Forces or expressing a negative opinion of them.

Given the context in which they were made, these remarks could suggest an impression of bias against the military. Since there was no audible tape recording of the trial, and since the plaintiff was not able to report the judge's exact words, it was concluded that the nature and importance of the complaint did not justify an inquiry.

CM-8-87-24 (examination)

5.2.1.3 Unfounded complaints

**Comments on the failure of a party to disclose evidence**

During the hearing, the defendant complained that the complainant didn't submit a document to her The judge then indicated it would have been a good idea, and complained that all too often the parties do not disclose to the other party the documents with enough notice. These statements were made calmly and courteously, and reflected neither partisanship nor bias.

2009 CMQC 75 (examination)

**Denunciation of a behaviour introduced as evidence**

At the end of the hearing, the judge told the plaintiff that she should be "ashamed of herself for doing things like that," and gave her to understand that her behaviour had been "detrimental" to her neighbourly relations. This does not constitute either a lack of reserve or a lack of impartiality, but rather an appraisal of the situation and of the plaintiff, "which he was clearly entitled to express at this stage of the proceedings."

CM-8-88-8 (examination)

**Opinion expressed about the quality of evidence**

> "When acting in good faith, the judge must be able to freely express his or her opinion regarding the value of evidence and its potential weaknesses, with independence and without fear of sanction."
>
> 2003 CMQC 56, 2003 CMQC 57 (examination)

Once he had heard all the evidence and was in a position to identify its shortcomings, the judge made the following comment concerning the company (Services C.L.L.) that had assisted the plaintiff in bringing her action before the Small Claims Division: "It may be a personal opinion but this case has C.L.L. written all over it." The Conseil concluded that, under the circumstances, this remark could not be considered an ethical breach.

2003 CMQC 56, 2003 CMQC 57 (examination)

**Calling into question a witness's credibility**

> "The judge has the duty to give primary consideration to the declarations made by witnesses during the presentation of evidence."
>
> 2007 CMQC 64, par. 14 (examination)

> "The judge may [. . .] intervene during the interrogation of a witness to [. . .] give his or her assessment of pertinence of the testimony."
>
> CM-8-98-32 (examination)

> Judges must be manifestly impartial and objective. However, they are not considered to be breaching this duty simply because they appraise the evidence introduced or express doubts about it, or refer to a witness's sense of observation or lack of knowledge.
>
> CM-8-88-18 (examination)

SEE ALSO: SECTION 8, PAGE 225.

The judge's act of reminding a party that certain elements of his or her testimony are no more than hypotheses, and are not supported by any admissible evidence, does not constitute bias in favour of the opposing party.

2008 CMQC 11 (examination)

During the complainant's testimony the judge intervened: "You aren't going to try to convince me that [. . .]. Come on, come on. You're young, we've been around longer than you, and we've seen people try to fool us before. So don't start." The Conseil found that the judge had behaved impartially and was carrying out his duty to "assess the evidence" and "give primary consideration to the testimony given by the witnesses."

2007 CMQC 64 (examination)

Although the judge showed, on several occasions, that he did not give a lot of credibility to the argument defended by the plaintiff, "we cannot conclude that he breached his duty to be impartial."

2002 CMQC 55 (examination)

Upon noticing a contradiction in the plaintiff's testimony, the judge cross – examined him for a few minutes. The judge obviously did not believe him, and proceeded to argue vigorously with his attorney. Since the Conseil could not conclude that the judge had breached his duty to be impartial, it decided that the complaint was unjustified.

2001 CMQC 31 (examination)

"During the applicant's testimony, the judge [. . .] interrupted him to inform him that his version was improbable and that he did not believe him. [. . .] Although this intervention may have had the effect of disconcerting the applicant, we cannot conclude that the judge showed bias and breached his ethical duties."

CM-8-98-32 (examination)

### Comments on the weight of an argument

> "The judge may, during pleadings, inform the lawyer that an argument submitted does not carry much weight in light of the evidence submitted. This does not however indicate that the judge's mind on the outcome of the trial has been made up."
>
> 2002 CMQC 87 (examination)

### Reproaches made to an attorney

In judicial revision proceedings brought on the basis of the events reported in the complaint, the Court of Appeal concluded that the judge's remarks did not give rise to a reasonable apprehension of bias.

The Conseil considered that, even if the plaintiff's attorney had to work in a more strained atmosphere because of the interventions of the judge, who had accused him of being in bad faith, the Court definitively disposed of the plaintiff's allegations concerning the judge's unfavourable bias towards him.

2002 CMQC 21 (examination)

SEE ALSO: EXAMINATION, PAGE 51.

## 5.2.2 Conduct while exercising judicial functions

### 5.2.2.1 Breaches of duty

### Intervention in appeal proceedings involving a judge

> A justice of the peace, in acting as a neutral arbitrator between the informant and the accused, must abstain from pleading against a judgement rendered in favour of one of the parties.
>
> "This bad practice on the part of some judges to become a party in a judicial debate involving them, goes against Section 5 of the *Judicial Code of Ethics*."
>
> Procureur général du Québec v. Cochrane, [1984] CA 611

A justice of the peace appealed against a judgement rendered by the Superior Court, although he had no interest in doing so since the Attorney General had himself appealed this same judgement. The judgement in question ordered, among other things, that the case be referred to another Municipal Court judge for sentencing.

In doing so he took an action "that could lead the accused to believe that he absolutely wanted to sentence him." The Court of Appeal dismissed his appeal on the basis of this breach of Section 5 of the *Judicial Code of Ethics*.

Procureur général du Québec v. Cochrane, [1984] CA 611

### Inappropriate interventions in the presentation of evidence

> "In some cases the judge may intervene in an inappropriate manner, intervening too often or in a way that leads one of the parties to believe that it is being treated unfairly."

Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry), par. 38

> The right and duty of the judge to intervene in the presentation of evidence entail limits that vary depending on the facts and circumstances of each particular trial. Each time an abuse of this right is alleged, it "must be examined with respect to its effect on the fairness of the trial."
>
> Judges must be careful to intervene in such a way that justice is seen to be served. "It is all a question of how they go about it."

Brouillard dit Chatel v. La Reine, [1985] 1 SCR 39, quoted in – CM-8-94-17 (examination) and in Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry)

#### Judge playing the role of Crown Attorney

During the inquiry into a number of complaints, the committee observed that the judge had committed a "strong and sometimes ill-timed" transgression, and had made numerous virulent interventions. In one of the cases, he, for all intents and purposes, played the role of Crown Attorney, which is a "behaviour incompatible with the image of justice a judge must project." Because of this breach, and several others, the judge was served a reprimand.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

#### Judge usurping the position of the investigator of the Commission des droits de la personne et des droits de la jeunesse

> "The law [. . .] recognizes that [DPJ] has a legal interest in appearing before the court in all cases. Such a framework requires that judges working in the Youth Division exhibit a great deal of objectivity, not only to display impartiality before the parties but also to reassure the public through the appearance of impartiality. This requires that the judge retain a focus on the case at hand and take great care to limit remarks to those pertinent to the case at hand."
>
> The judge concerned wanted to "get involved in examining the administration of the DPJ and Centre jeunesse Huberdeau, and assess the competence and quality of all the social services staff and employees." The Court of Appeal found that "the judge had overstepped her role and usurped the role of the investigator, taking the place of the person the legislator had appointed to this end, the Commission des droits de la personne et des droits de la jeunesse et des droits de la jeunesse. The Court feels that, in her actions, statements and rulings, Justice Ruffo failed to display the impartiality the public is entitled to demand of a judge."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 376 and 377

### Interference in the proceedings

Twelve of the eighteen pages of the trial transcript are taken up with interventions by the judge who, by using colloquial language in his arguments and making his viewpoint on the case known, overstepped his role as an impartial arbitrator and gave the parties the impression he had made his decision about the case "before they had even testified."

Because of this breach of Section 5 of the *Judicial Code of Ethics,* "a reprimand [was deemed] the appropriate measure to re-establish the public's confidence in the judicial function."

Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry)

SEE ALSO: HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 201 AND REPRIMAND AND REMOVAL, PAGE 103.

### Contrasting attitude toward the parties

During the hearing, the judge spoke with the plaintiff casually and showed some indulgence towards him. On the other hand, he lacked courtesy towards the defendant, who was representing an insurance company. The judge's comment to the effect that he had found a way to help the plaintiff, which followed on the heels of "frankly inappropriate remarks about insurance companies," could raise serious doubts about his impartiality and objectivity. Consequently, the judge was served a reprimand.

Alliance, Compagnie mutuelle d'assurance-vie and Long, CM-8-84 (Small Claims Division) (inquiry)

### Trial set before a judge who made comments about the accused

The fact that the judge referred to the accused's past history before the courts and described the facts of the case as they were set out in the police report, as well as his remarks regarding the explanations provided by the accused at the stage of his appearance, justified the accused's belief that the judge was already convinced of his guilt and would not accept any of his grounds of defence.

In subsequently setting the future trial before him, the judge clearly acted in breach of Section 5 of the *Judicial Code of Ethics*. The judge was served a reprimand for this breach and several others.

Dubé and Bilodeau, CM-8-88-26 (inquiry)

### Failure to disclose a reason for recusation

> "Friendly relations may constitute a cause for recusation because they may at the very least have an impact on the perception of the public regarding the appearance of justice."
>
> Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 140

AUTHORS' NOTE:

The Court of Appeal confirms that the "judge's friendship with the expert was sufficient grounds to trigger an obligation to disclose."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 164

The judge, in justifying her decision not to disclose her friendship with an expert witness who, from the first day of the hearing, she knew was involved in the trial, stressed the fact that the legal community was already aware of their relationship. In addition to being in contradiction of the evidence presented before the committee, this justification is not valid: "[i]t is actually the parties in a trial who have an interest in the eventual outcome and who may be likely to express an opinion about the situation."

The judge thereby undermined her image of impartiality. Because of her numerous prior violations of the *Judicial Code of Ethics* and her apparent inability to improve her conduct, the committee recommended the removal of the judge.

Gilbert and Ruffo, 2001 CMQC 84 (inquiry)

SEE ALSO: SECTION 2, PAGE 132.

## Private meeting with a witness

> "A meeting between a judge and a witness, in the absence of the parties or their attorneys, undermines the image of impartiality of the judge presiding over a case."

Gilbert and Ruffo, 2001 CMQC 84 (inquiry), par. 159, upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 196

SEE ALSO: SECTION 2, PAGE 132 AND SECTION 4, PAGE 156.

## Accelerated progress of hearings

The judge constantly intervened in the progress of hearings in order to avoid "wasting the Court's time." He seemed unaware that "in acting this way, he disadvantages the accused, to whom he refuses the opportunity to be heard and perhaps provide explanations that would alter his decision." Despite his desire to be impartial, the judge destroyed all appearance of objectivity and, in some cases, of impartiality too. The judge was reprimanded for this breach and several others.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

SEE ALSO: SECTION 8, PAGE 234.

5.2.2.2 | Insufficient seriousness of allegations

**Brevity of the hearing**

The hearing was extremely short (less than 3 minutes including presenting evidence and reading the judgement). This very short amount of time, coupled with the judge's repeated and numerous comments, may have led the complainant to believe she had been treated with bias. The judge could have done a better job of explaining her conclusions. Nevertheless, the nature and importance of the complaint did not warrant an inquiry.

2009 CMQC 88 (examination)

**Unequal attention to the parties**

"From the very beginning of the hearing, the judge displayed immoderate harshness and coldness that contrasted strongly with the kind attitude he showed the plaintiff and his witnesses [. . .]," suggesting an apparent lack of impartiality.

This trial took place in a rural area where the parties involved in the judicial process usually know each other well and where the plaintiff had recently settled. The Conseil urged the judge to be doubly prudent and concluded that although the complaint was founded, its nature and importance did not justify an inquiry.

CM-8-85-6 (examination)

Compared to the opposing party, the plaintiff had far fewer occasions to make herself heard by the judge, who interrupted her several times when she *was* allowed to be heard. The informal discussions, which occurred in no logical order, primarily between the judge and the opposing party, led to a settlement that was more or less forced on the plaintiff. "Subjectively, she may have had reason to believe that the judge had not been entirely impartial towards her." However since the judge's good faith and sincerity were in no way called into question, the examiner concluded that the nature and importance of the complaint did not justify an inquiry.

CM-8-85-3 (examination)

**Adjournment granted without hearing one of the parties**

The judge granted an adjournment at the defendant's written request without consulting the plaintiff, who had the right to be heard on the matter. In doing so, the judge did not appear to be impartial and objective, even though this was not at all his intent.

Despite the fact the complaint was founded, its nature and importance did not justify an inquiry.

CM-8-89-12 (examination)

### Hearing ended by the judge

During the plaintiff's testimony, the judge abruptly intervened, albeit not aggressively, telling her that her objections were in vain and immediately rendering his judgment, then subsequently refusing to hear the plaintiff again. "The way the judge ended the plaintiff's presentation of her evidence, without informing her that he considered he had enough elements to render a judgment" may have given her the impression she had not been properly heard. The Conseil reminded the judge of "the importance of remaining vigilant towards the parties' perception" regarding the fairness of the trial, but considered that the nature and importance of the complaint were not sufficient to justify an inquiry.

2004 CMQC 42 (examination)

### Judgment delivered without the complainant present

The complainant, the accused's counsel, criticized the judge for being biased and unfair by announcing that he did not know when the judgement would be handed down, while in fact it was delivered that same evening, while the complainant was not present. The Conseil was of the opinion that it would have been desirable to avoid this situation, but that the judge did not appear to mean badly.

2010 CMQC 94 (examination)

## 5.2.2.3 Unfounded complaints

### Necessary interventions during the hearing

> "Under some circumstances, courts acknowledge the fact that the judge, who is responsible for conducting the trial, must intervene in the presentation of a party's evidence, whether or not the party is represented. The judge may ask questions and even assist the defendant on certain points of law."

Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry), par. 37, *obiter dicta*

> The judge has the right—and even the duty—to ask for clarification so as to be able to deliver an informed judgement.

CM-8-94-81 (examination)

> "First, it is clear that judges are no longer required to be as passive as they once were; to be what I call 'sphinx' judges. We now not only accept that a judge may intervene in the adversarial debate, but also believe that it is sometimes essential for him or her to do so for justice to be done. Thus a judge may—and sometimes must—ask witnesses questions, interrupt them in their testimony and if necessary call them to order."

Brouillard dit Chatel v. La Reine, [1985] 1 SCR 39, par. 17, quoted in its entirety in CM-8-94-17 (examination); quoted in part with approval in Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 43

"The judge's repeated requests to speak up and the vague answers on the part of the complainant resulted in the judge using a tone different from that used with the witnesses for the defence. The complainant saw this as bias on the part of the judge; the inquiry into the entire trial and judgement found otherwise."

2010 CMQC 7, par. 47 (examination)

The fact that a judge intervenes to bring a party back to focus on the subject at hand and clearly answer a question asked by the counsel for the opposing party is not in and of itself a sign of bias.

2009 CMQC 50, par. 10 (examination)

### Interventions with parties who are not represented

> "Judges often [have to intervene and use language full of imagery] because they have before them citizens who defend themselves without the assistance of a lawyer and who, because they are not especially familiar with the rules of the judicial process, find it difficult and sometimes hard to accept the fact that they cannot steer the debate as they please, coupled with the fact there are rules of law and procedural rules the judge must ensure they comply with."
>
> CM-8-94-3 (examination), *obiter dicta*

On several occasions the judge was forced to intervene to explain to the parties acting as their own counsel "such basic legal notions as burden of proof, relevance, the rule against leading questions," the basic procedure of examinations and the facts which must be established in proof. The Conseil found that the judge had not committed an ethical breach."

2008 CMQC 79 (examination)

The judge repeatedly informed the complainant, who was representing himself, that some of his claims were not supported by admissible evidence, and were thus no more than hypotheses. The Conseil felt that the judge "was simply explaining his decision," and "in no case showed any bias or took up the defence of the opposing party."

2008 CMQC 11 (examination)

The judge interrupted the plaintiff, who was representing himself, on several occasions to explain to him that the witness he was examining was not the appropriate witness to answer his questions. "It was the judge's duty to intervene to put an end to these questions, as the witness had affirmed twice that he was not competent to answer them."

2002 CMQC 55 (examination)

SEE ALSO:

CM-8-98-22 (examination)

"[T]he judge had to energetically intervene in order to bring the debate back within the legal framework instead of off on a tangent where the plaintiff [who was representing himself against the judge's advice] insisted on taking it."

CM-8-94-3 (examination)

### Particular attention to an accused not represented by an attorney

> "The conduct of a criminal trial where the accused is not assisted by a lawyer requires the judge's special attention and care to ensure the accused's rights are respected."
>
> CM-8-95-68 (examination)

"The judge, who had been constantly questioned by the accused, who obviously did not have a sufficient grasp of the matter, found himself obliged to intervene so as to guide the accused as best as he could in developing his arguments. [. . .] [A]t no time did he lack impartiality and objectivity."

CM-8-95-68 (examination)

### Frequent interventions to seek out the truth

> "The mere fact that a judge asks questions cannot be considered an ethical breach."
>
> CM-8-94-81 (examination)

During a motion to retract a judgement, after the judge delivered a default judgement, "the judge swiftly interrupted the complainant to force him to directly answer his questions." The accusation of bias was dismissed because the judge's statements were related to the soundness of the default judgement."

2010 CMQC 32 (examination)

The examination of the complaint showed that the judge, who has a deep booming voice, frequently intervened to ask for clarifications about the facts of the dispute, without showing impatience and using the same calm and monotone tone with all the parties.

Although his numerous questions may have appeared precipitated in the eyes of the plaintiff, "this practice is irreproachable since the judge asking them simply wanted to make sure he fully understood the dispute before rendering a decision."

2004 CMQC 22 (examination)

The judge immediately acknowledged that he regularly intervenes in debates to obtain clarifications so as to fully understand the facts, with the sincere goal of seeking out the truth. He especially acts this way when a party is representing him or herself.

The committee observed that he indeed asks a lot of questions and that he frequently interrupts all the witnesses. "Although this is not necessarily the most desirable way to proceed, it does not show that the judge was biased or lacking objectivity."

The committee did not record any breach of Section 5 of the *Judicial Code of Ethics*.

Dadji and Polak, 1999 CMQC 44 (inquiry)

The judge explained at length why and how he was going to intervene during the trial, showing great concern for impartiality towards the accused. The purpose of his frequent interventions was obviously to understand the testimonies perfectly.

Although the counsel for the defence was clearly unaccustomed to this way of proceeding, the inquiry showed that she had had all the necessary latitude to examine and cross-examine the witnesses.

He "went to great lengths and was very active in the debates, without showing any bias per se."

The committee nevertheless took the occasion to point out that "the sole purpose of the judge's questions and comments to the lawyer should be to help the latter in explaining more clearly his or her point of view."

Gagnon *et al.* and Drouin, CM-8-94-17 (inquiry), quoting *Conseil canadien de la magistrature, Propos sur la conduite des juges,* Cowansville, Éditions Yvon Blais, 1991

The judge frequently interrupted the attorneys and witnesses, especially during the accused's examination, to ask many questions himself. In doing so, according to the Supreme Court, which ordered a new trial, "he gave the impression of assisting the Crown attorney" and of acting in a biased manner.

The committee members took into account that:

- it was a particularly difficult trial, especially for this newly appointed judge who was a Crown attorney before;
- the judge was motivated solely by the desire to seek the truth; and
- according to the Supreme Court, the plaintiff was able to present his evidence and his defence all the same, and that the verdict handed down was not unreasonable.

The Conseil concluded that the judge's actions "were not contrary to the honour, dignity or integrity of the judiciary."

Chatel and St-Germain, CM-8-66 (Court of the Sessions of the Peace) (inquiry) (ruling rendered under Section 263 (c) of the *Courts of Justice Act,* since repealed)

AUTHORS' NOTE

Regarding Section 263 (c) of the *Courts of Justice Act,* see also: In the case of Judge Brière, CM-8-79-3, CM-8-13 (Provincial Court) (inquiry)

CM-8-79-3, CM-8-13 (examination)

### Interruptions justified by the irrelevance of the evidence

> "The judge's responsibilities include managing the trial and curtailing evidence if it concerns a point that has already been established or is not relevant."

2010 CMQC 96, par. 29 (examination)

> It is up to the judge to call the witnesses back to order so as to keep their testimonies relevant.

CM-8-91-63 (examination)

The judge refused to hear the complainant's witnesses because they were not cognizant of the dispute, and disallowed the introduction of photographs deemed irrelevant. It is part of the judge's responsibility to manage the trial, and the Conseil cannot comment on how the judge applies his or her discretion. The Conseil dismissed the complaint of bias against the judge.

2010 CMQC 95 (examination)

As the plaintiff was answering the judge's question, the judge interrupted him and immediately rendered his decision regarding a motion for declinatory exception. He "was obviously not satisfied with the witness's answer and was entitled to interrupt him." This "aspect of the complaint does not constitute an ethical breach."

CM-8-93-39 (examination)

In response to the plaintiff's allegations to the effect that the judge had kept him from expressing himself freely by constantly interrupting him and refusing to hear his witness, the judge said that his actions were necessary because of the irrelevance of the evidence presented.

Since there was no audio recording that would have allowed the committee to assess the frequency, nature and tone of the interruptions, and considering that it is up to the trial judge to appraise the relevance of the evidence, the committee concluded that the judge's intervention did not constitute a form of denial of justice.

Bernard and Long, CM-8-76 (Small Claims Division) (inquiry)

### Presiding judge despite an ethics complaint

> According to the circumstances of each case, the presence of an ethics complaint against a judge may raise a reasonable apprehension of bias.

However, the sole presence of such a complaint "does not suffice in itself to justify his or her recusation."

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), quoting Louis-Paul Cullen, "La récusation d'un juge saisi d'un litige civil," in *Développements récents en déontologie, droit professionnel and disciplinaire,* Service de la formation permanente, Barreau du Québec, Cowansville, Éditions Yvon Blais, 2001, p. 238, and Judge Guy Gagnon, *Recusal,* seminar on trial proceedings, November 2002, p. 21 of the online version

SEE ALSO: SECTION 10, PAGE 256.

## 5.2.3 Remarks made in public

### 5.2.3.1 Breaches of duty

#### Judicial activities and public funds

A part-time municipal judge made false tax returns in order to claim credits he was not entitled to. When municipal officials refused to approve the returns, he contacted them and complained about the fact that once he had reached the remuneration threshold, he continued to preside over additional hearings without pay, and claimed in a letter that he had secured significant settlements for the city by ruling against citizens appearing before him.

These statements "undermine the principle of the appearance of impartiality that judges must uphold, to be perceived as a neutral arbiter. In this case, the judge confused his roles: the judge is positioning himself as a municipal employee and boasting of saving the city substantial sums." The committee found the judge had breached Section 5 of the *Judicial Code of Ethics*."

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

#### Opinion about a pending case expressed in public

**In the media**

> "That a judge should publicly comment on a case he or she sits in judgment of, and give an opinion before hearing evidence, is a serious breach because [. . .] impartiality is intimately linked to a quality justice system."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 293

The judge, who was referring to a case she had to hear anew, expressed to a journalist her dismay over a little boy's situation. Yet some of the testimonies, which had already been heard at that time and that were subsequently repeated, contradicted the facts she was already considering as established in this case that was "singular and easily identifiable by those in the know."

Upon reading the article written by the journalist, these persons (social service and medical professionals, parents, etc.) would necessarily have concluded that the judge "had already decided their case." Since she breached her appearance of impartiality, the judge was served a reprimand by the Conseil, following the recommendation made by the majority of the inquiry committee members.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

**During a talk open to the public**

On the occasion of a public talk, the judge wanted to illustrate "society's passivity in the face of the suffering of children" and expressed her belief that a child had been beaten and sexually abused in front of witnesses for two and a half hours. The judge made the declaration before she had heard all the parties in this case she was seized of.

Since the persons familiar with the case could have believed that she had already concluded that the abuse took place, the judge breached her duty to be manifestly impartial and objective. The majority of the inquiry committee members recommended a reprimand.

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 8, PAGE 216.

## 5.2.4 Conduct in public

### 5.2.4.1 Breaches of duty

**Public appearance accompanied by a party**

> "A lawyer who also carries out the duties of municipal judge [. . .] must use his or her good judgement so as to rapidly appraise the conduct he or she must adopt to avoid being reproached for an appearance of bias, especially with regard to colleagues of the Barreau or witnesses with whom he or she has professional or personal relations.
>
> The rule of caution must be applied even more rigorously when the municipal judge does not carry out his or her judicial functions on a permanent basis [. . .]"
>
> Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry), par. 40–41

In a packed restaurant, the judge spontaneously accepted an invitation to lunch from the attorney of one of the parties involved in a case receiving a lot of media attention and of which the judge had been seized that very morning. He agreed to join the attorney at his table, which was in full view of the public, on condition that

the matters of the case before the Court not be discussed. The judge, who had twenty years' experience, should have borne in mind the concern for his appearance of impartiality, even though he had made the decision to declare himself incompetent in this case, a decision of which only he was aware at that time.

"His conduct [. . .] was such that a reasonable and sufficiently informed person could have doubts about his obligation to act in a completely impartial and objective fashion and to be seen to be impartial and objective." The judge was reprimanded for his breach of Section 5 of the *Judicial Code of Ethics*.

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry)

SEE ALSO: SECTION 8, PAGE 219 AND SECTION 10, PAGE 255.

### 5.2.4.2 Unfounded complaints

**Accepting a substantial gift**

The judge accepted and cashed a $1,500 cheque she was given in acknowledgment of a lecture she gave. The cheque was meant to cover the expenses she incurred on this occasion as well as on the occasion of her volunteer participation in a number of other events. The fact the judge accepted this "gift of an amount largely exceeding what is generally considered as a customary gift," even though it did not immediately jeopardize her impartiality, could potentially have made her liable to the person who gave it to her and alter a well-informed person's perception of her impartiality.

The associate chief judge, acting as "a guardian of the judicial ethics," convened her to a meeting to discuss this matter. He listened to the judge's explanations without making any recommendation regarding the cashing of the cheque she then had in her possession.

Two of the four committee members considered that this meeting had contributed to her mistaken belief that she was not infringing any of her ethical duties in accepting this gift. She could not therefore be reproached for feeling she was authorized to cash the cheque, the cashing being the moment at which this hand-to-hand gift was actually made. As a result they dismissed the complaint.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

AUTHORS' NOTE:

See the two other members' opinions under Section 7, Breaches

SEE ALSO: SECTION 7, PAGE 207.

## 5.3 DUTY TO BE OBJECTIVE

### 5.3.1 Remarks made while exercising judicial functions

#### 5.3.1.1 Unfounded complaints

**Remarks that cannot be considered racist**

Merely making a reference to a system of dictatorship and police repression, in an effort to make an accused (Canadian by birth and of Haitian origin) understand that his rebellion against authority was unacceptable according to the rule of law, does not suggest racism on the part of the judge.

"The respondent wanted, as was his duty, to explain to the plaintiff the reasons for the social reprobation he was about to pronounce through sentencing his illegal behaviour, and manifestly wanted to prevent any subsequent offence on his part."

CM-8-91-12 (examination)

**Reference to a "particular cultural context"**

In a case of sexual assault involving persons of Haitian origin, the judge said when she was passing the sentence: "[. . .] it seems to me that the lack of regret on the part of the two accuseds is more indicative of a particular cultural context of relations with women than of a real problem of a sexual nature."

The members of the Conseil agreed that the expression "cultural context" was ambiguous at the very least, and likely to be interpreted in different ways, which the judge admitted herself. She denied, however, that her remarks were racist and directed at the Haitian community, a statement that was confirmed by the reading of the 600+ page transcript of the trial.

Considering these explanations and the regrets expressed by the judge, the Conseil deemed that her comments did not constitute an ethical breach.

CM-8-97-56 (examination)

**Question about a party's nationality**

The judge asked the plaintiff whether he was Canadian and since what date, in order to explain to him that he should consequently be familiar with the Canadian legal system since he was asserting his rights in a Canadian court. "[T]he judge's intonation, the manner in which he asked the question and the rest of the discussion between the judge and Mr. B. in no way suggest that these remarks were discriminatory or incorrect."

1999 CMQC 8 (examination)

### Question concerning the complainant's dress

The judge asked the complainant why he was wearing a head covering. The complainant, a Sikh, said that he wore it for religious reasons. The judge then asked what religion he was and whether the Sikh religion "required that all Sikhs wear a head covering at all times." The complainant answered in the affirmative. The complainant was then asked to sit back down.

The Conseil found that "the information requested by the justice of the peace did not constitute an ethical breach."

2006 CMQC 68 (examination)

### Generalizations about a party's social condition

The judge was annoyed by the plaintiff's insistence on denying her responsibility despite the fact that she had been previously convicted twenty-four times. He declared that if she told him she was not lying, she would be doubly a liar. He went on, using terms with a negative connotation and tersely stating "Welfare people do anything they please [. . .] and then they say: 'We don't have any money, don't put us in jail,' that's it."

These "unfortunate" comments were said in the context of the judge's appraisal of evidence and his observations regarding the sentence. The Conseil concluded, however, that they did not show any discrimination based on the plaintiff's social condition, rather that the judge was trying to determine the appropriate sentence so as to sanction the conduct of a person "whose ability for self-criticism showed serious shortcomings" and ""whose economic condition should not be a pretext or an excuse to avoid imprisonment."

CM-8-97-18 (examination)

## 5.3.2 Conduct while exercising judicial functions

### 5.3.2.1 Breaches of duty

### Negotiation of a guilty plea with the accused

> A judge should not get involved in negotiating a guilty plea, with or without the prosecutor's agreement, especially in raising the possibility of a lighter sentence. "Not only does the judge risk unduly influencing the accused, but he or she will have to immediately declare him or herself incompetent if the offer is refused. This kind of negotiation should only take place between the lawyers and parties."
>
> Talbot and Bilodeau, CM-8-87-10 (inquiry), *obiter dicta*

### Racism

Racism is "the state of mind of a person who systematically shows contempt toward a race or an ethnic group. As far as the exercise of judicial power is concerned, racism manifests itself in a judge's breach of his or her duty to be impartial and objective towards a litigant belonging to a specific race or ethnic group."

CM-8-91-12 (examination), *obiter dicta*

### Non-rigourous legal analysis

> The discretion the law gives to the Court must be exercised according to the rules of law, something a judicial reasoning established in order to reach a conclusion must prove. The Court cannot use affective or intuitive considerations or other subjective criteria such as public opinion to rule on a dispute.
>
> Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire*, Montréal, Wilson & Lafleur, 2000, p. 137 and 138

The Court of Appeal quashed the judgement, reproaching the trial judge for the lack of substance in his reasons, the near total absence of analysis of the evidence and the lack of intellectual rigour that led to the appellants' conviction. The Court noted that it was impossible, upon reading the judgement, to understand "how the judge could have dismissed the existence of a reasonable doubt regarding [their] guilt."

The plaintiffs accused him of being biased which, according to them, was due to his sexism towards men. Although the judge denied any sexist wrongdoing, his attorney presented to the committee an argument based solely on the sanction. The inquiry committee therefore concluded that the judge was admitting his breach of Section 5 of the *Judicial Code of Ethics* and recommended that he be served a reprimand.

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry)

## 5.3.2.2 Unfounded complaints

### Justified refusal to grant a postponement to an attorney who had just given birth

The judge refused to grant a postponement to a lawyer who had given birth twenty-one days earlier. However evidence showed that he had been objective in appraising the arguments brought by the two lawyers. The reason for his decision was that it was her second application for a postponement and that another lawyer from the same firm, who had already pleaded in this case, could have been present in her stead that day.

CM-8-91-1 (examination)

### Omission to declare himself incompetent *ex officio*

> It shall not be a breach of Section 5 of the *Judicial Code of Ethics* when a judge does not declare him or herself incompetent *ex officio*, if the two conditions stated in Section 236 C.C.P. are not met: the judge must be aware of the ground of recusation against him or her, and this ground must be valid in the eyes of a reasonable person.
>
> CM-8-94-14 (examination)

The evidence presented during the examination did not allow the committee to conclude that the judge knew he had already given advice to the plaintiff about the dispute he had to judge, nor even that he had given any advice at all about this matter. As a result, the complaint was "dismissed as unfounded."

CM-8-94-14 (examination)

### Refusal to declare himself incompetent when faced with a former plaintiff

> "The Conseil does not see [. . .] why, once the first complaint is settled, the honourable judge could not hear a new case involving the plaintiff. Otherwise, any person who does not want to appear before a particular judge could simply lodge a complaint against him or her, then subsequently ask that the judge declare him or herself incompetent in every other case that he or she may be seized of."
>
> CM-8-93-63 (examination)

While the Conseil was seized of a first complaint, the judge refused to hear another case involving the plaintiff. He did not declare himself incompetent when the latter came before him again later on, after the Conseil had rendered its decision concluding that the complaint was unfounded. The accusation of lack of objectivity is "pure speculation" on the part of the plaintiff.

CM-8-93-63 (examination)

## 5.4 DUTY TO BE SEEN TO BE OBJECTIVE

### 5.4.1 Remarks made while exercising judicial functions

#### 5.4.1.1 Insufficient seriousness of allegations

### Apparent bias toward a particular group

The judge did not deny having used words similar to those described by the plaintiff, who is in the military (e.g., references to "Rambo" and the Lortie affair, mention of alcohol being sold cheaply on military bases), but he categorically denied having said

them with the intent of discrediting the Canadian Forces or showing negative feelings towards them.

Depending on the context in which they were said, these remarks could create an impression of bias towards soldiers. However since there was no audible tape recording of the trial, and since the plaintiff was unable to recall the judge's exact words, the nature and importance of the complaint did not justify an inquiry.

CM-8-87-24 (examination)

## 5.4.2 Conduct while exercising judicial functions

### 5.4.2.1 Breaches of duty

**Accelerated progress of hearings**

The judge constantly intervened during hearings in order to avoid "wasting the Court's time." He seemed unaware that "in acting this way, he was disadvantaging the accused, to whom he refused the opportunity to be heard and perhaps provide explanations that would alter his decision." Despite his desire to be impartial, the judge destroyed all appearance of objectivity and, in some cases, of impartiality too. The judge was reprimanded for this breach and several others.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

SEE ALSO: SECTION 8, PAGE 239.

### 5.4.2.2 Insufficient seriousness of allegations

**Hearing ended by the judge**

During the plaintiff's testimony, the judge abruptly intervened, albeit not aggressively, telling her that her objections were in vain and immediately rendering his judgement, then subsequently refusing to hear the plaintiff again.

"The way the judge ended the plaintiff's presentation of her evidence, without informing her that he considered he had enough elements to render a judgement" may have given her the impression she had not been properly heard. The Conseil reminded the judge of "the importance of remaining vigilant towards the parties' perception" regarding the fairness of the trial, but considered that the nature and importance of the complaint were not sufficient to justify an inquiry.

2004 CMQC 42 (examination)

CODE OF ETHICS

# 6 The judge should perform the duties of his office diligently and devote himself entirely to the exercise of his judicial functions

GENERAL PRINCIPLES

> Section 6 consists of "a double obligation whose terms complement and balance one another."

Guillemette and Verreault, CM-8-93-40 (inquiry)

## 6.1 THE DUTY TO FAITHFULLY CARRY OUT JUDICIAL FUNCTIONS

GENERAL PRINCIPLES

To faithfully carry out judicial functions means carrying them out in a way that is profitable, salutary and beneficial to society.

Guillemette and Verreault, CM-8-93-40 (inquiry)

### 6.1.1 Breach of duty

#### Inadequate understanding of a language

> "A complaint about the understanding of English is admissible since the incapacity to follow the debate could keep a judge from performing the judicial duties contrary to the prescriptions of section [6] of the *Judicial Code of Ethics*."

CM-8-88-1 (examination), *obiter dicta*

#### Dozing off during the trial

> A judge who alleged to have fallen asleep on a few occasions during the trial might have breached the duties required by sections 2, 6 and 8 of the *Judicial Code of Ethics*.

CM-8-89-21 (examination), *obiter dicta*

### 6.1.2 Unfounded complaints

#### Lack of firmness

> The judge's role includes the obligation to lead the debate with a firm hand.

CM-8-88-20 (examination), *obiter dicta*

AUTHORS' NOTE:

Section 6 of the *Judicial Code of Ethics* must be interpreted jointly with Section 8, which imposes the duties of reserve, courtesy and serenity.

SEE ALSO: SECTION 8, PAGE 245.

The Conseil noted that during the three hearings under examination, the judge allowed the attorneys to discuss openly and vociferously question the attitude of the Court. The Conseil stressed that, while there was no doubt that some of the more heated exchanges could have been avoided if the judge had exercised firmer control over the proceedings—which had not been easy—it did not however consider the complaint founded.

CM-8-56, CM-8-83-2 (examination)

#### Practice resulting in increased legal administration costs

The City where the judge exercised his municipal jurisdiction accused him of adding to its financial burden by working overtime and forcing the City's employees to do likewise.

The City blamed him in particular for having asked the clerk not to overload the roll for hearing. "The job of drawing up the roll for hearing belongs to the judiciary and this reproach is certainly not justified." The City also accused him of refusing, in one particular case, to listen to the recording of the hearing and to ask for the transcript instead. "[T]he Conseil considers that the judge cannot be blamed for asking for the transcript he needed to analyze the testimonies."

As for the reproach of having deliberately acted in such a way as to increase his fees, the Conseil concluded that "it could not be inferred that this was his objective, unless one presumes he had a malicious intent."

CM-8-97-3, CM-8-97-41 (examination)

## 6.2 DUTY TO ACT WITH DILIGENCE

GENERAL PRINCIPLES

> Performing one's duties diligently means to carry them out carefully, willingly and without delay.

Guillemette and Verreault, CM-8-93-40 (inquiry)

SCOPE OF APPLICATION

> "The duty of diligence means judges must take measures to fulfil their functions with reasonable promptness, and also that they must maintain and develop the knowledge, skills and personal qualities they need to carry out their judicial functions."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 52, inspired by *Ethical Principles for Judges,* Canadian Judicial Council, Ottawa, 1998.

## 6.2.1 Delays

> "[I]n a Court of justice, there is never a direct relation between the nature of a case and the time that must be allotted to it."

CM-8-94-82 (examination)

### 6.2.1.1 Breaches of duty

**Delay of over six months to render a written judgement**

> "[T]aking over six months to render a written judgement shows a lack of diligence."

CM-8-88-37 (examination)

**Prolonged and unjustified delay before rendering a judgement**

> "It is not out of the question that a judge may breach the *Judicial Code of Ethics* by misusing the discretion the law gives him or her in determining the time during which the hearing must take place and the judgement rendered in any case within his or her jurisdiction."

CM-8-97-3, CM-8-97-41 (examination), *obiter dicta*

**Advisements lasting more than four years**

The judge took two cases under advisement for 4 years and 11 months, and another for 4 years and 6 months. He acknowledged that he did not perform his judicial duties diligently in these cases. "This conduct infringes Section 6 of the *Code of Ethics for Municipal Judges*."

The inquiry committee recommended that the Conseil issue a reprimand against this judge.

Conseil municipal de Ville Mont-Royal and Smyth, CM-8-96-65 (inquiry)

### Advisements of more than 17 months for an urgent matter

The judge took about 17 and a half months to render a judgement exonerating the plaintiff from an allegation of sexual abuse of his son. This case was serious and many of the Youth Court judges considered it urgent. After the third month of advisement, a DPJ representative and the father's attorneys actually informed the judge of the harm this delay was causing the child and his father.

"While, on the one hand, the complexity of the case required some time to reflect, the human drama the child and the father went through and the principles of law in matters of youth protection in particular demanded, on the other hand, that this case be treated with the necessary diligence so as to ensure the protection of the child, considering that a child's notion of time is different from an adult's, and considering also the irreversibility of the separation."

Since no explanation was provided to the committee in order to justify such a delay, the committee recommended that the Conseil serve a reprimand to the judge, who had not adequately carried out his obligation to perform his duties with diligence.

G.R. and Lafond, CM-8-95-74 (inquiry) April 9, 1999

## 6.2.1.2 Insufficient seriousness of allegations

### Over four months to deliver a judgment in Small Claims

The judgement was delivered 6 months after the hearing, and the judge had not asked permission to go beyond the applicable 4 month limit. The delay was due to the judge's handling of his caseload: the case was heard in the first months of his judgeship and the judge didn't have enough time between hearings to draft his judgements.

The judge discussed the matter with his coordinating judge and changes were made. The Conseil feels that, while there was a breach of Section 6, given the explanations provided, the nature and importance of the complaint did not justify an inquiry.

2008 CMQC 62 (examination)

SEE ALSO: 2012 CMQC 29 (EXAMINATION)

### Written judgement rendered with a delay of more than six months, pronounced at hearing

Given the fact that the *Youth Protection Act* does not provide any time limits and since the chief judge did not say anything about this matter, the judge rendered his written judgements between 7 and 22 months after he had delivered his oral judgement. The only inconvenience of this delay was that the time limits to appeal were prolonged accordingly. However, none of the parties waited for the written judgements before appealing, and the courts heard the appeals on the basis of the transcript of the oral judgements.

It was decided, "considering the fact that such a lack of diligence did not have serious consequences, [that] the nature and importance of the complaint did not justify an inquiry."

CM-8-88-37 (examination)

### 6.2.1.3 Unfounded complaints

> "Speed, although is it important, is not the only quality the justice system should have. Justice should also be rendered in a calm and serene manner, after all the facts have been collected [. . .]; the parties' arguments have been heard, analyzed and appraised; the judge has had time to reflect; and his or her decision has been made in a firm and irrevocable fashion."
>
> Guillemette and Verreault, CM-8-93-40 (inquiry)

#### Discretionary postponement of a case

> "A distinction must be made between judicious exercise of judicial discretion and refusal of such exercise."
>
> CM-8-81-4 (examination)

The judge's decision to postpone the case, even though the plaintiff said he was ready to proceed, was motivated by his very legitimate concern about proceeding before he was certain of the petitioner's capacity, which was the qualifying condition of his jurisdiction. The evidence showed that the judge had carefully examined the case before reaching this conclusion. Consequently, the complaint was dismissed.

Rosen and Fournier, CM-8-48 (Small Claims Division) (inquiry)

#### A delay of less than six months to render a judgement

"[S]ection 465 of the *Code of Civil Procedure* requires that the judgement must be rendered within 6 months." Therefore a complaint in relation to a delay of 5 months between the hearing and the judgement is inadmissible.

CM-8-87-15 (examination)

#### Successive periods of advisement

The judge prolonged several hearings and granted a number of postponements so as to allow himself periods of advisement. The City court clerk, who is also the treasurer, accused him of acting in this way in order to increase his pay.

The analysis of the facts submitted to the Conseil did not support the conclusion of malicious intent on the part of the judge. "These extensions and postponements allowed him to render judgements, after these periods of advisement, within an acceptable time limit. The judge cannot be blamed for having taken the time needed to study a case in order to render justice. He and he alone, is entitled to make this decision."

CM-8-97-3, CM-8-97-41 (examination)

## 6.2.2 Refusal and omissions

### 6.2.2.1 Breaches of duty

**Refusal to analyze an overly long petition**

The justice of peace with unlimited jurisdiction, who was asked to analyze a 38-page application to issue a telewarrant outside opening hours, initially demanded that the Sûreté du Québec police officer shorten the statement of the reasons supporting his request. A few minutes later, the police officer and Attorney General's prosecutor explained that they could not submit to his request without adversely affecting the scope of these reasons, but the judge reiterated his request.

After examining the law applicable in such a situation, the committee concluded "that the justice of the peace, in order to act judicially, must be personally convinced of the reasons supporting the application. He must therefore read all the facts instead of relying only on the detectives or on the summary they may have made."

His refusal "to consider the available evidence in its entirety" was deemed a breach of Section 6 of the *Judicial Code of Ethics,* and the judge was served a reprimand.

Simard and Pigeon, 2004 CMQC 27 (Justice of the Peace) (inquiry)

### 6.2.2.2 Insufficient seriousness of allegations

**Refusal to act in an emergency**

The judge could not invoke the fact that the application to extend an emergency measure for a child was submitted late to refuse to hear the motion, because under the law he was "the only person qualified to order protection measures for the child."

The Conseil pointed out that "the judge's actions must always be carried out with diligence and guided by the child's best interest and respect for the child's rights." The Conseil found that while the judge should have heard the application, "the nature and importance of the complaint [. . .] did not justify an inquiry."

2006 CMQC 61 (examination)

6.2.2.3 Unfounded complaints

**Unintentional omission**

The judge, who was on call for urgent matters (applications for psychiatric examinations), did not call back the security officer who had tried to reach him all evening by calling his pager number. The plaintiff's sister committed suicide later that night. The examination revealed that the judge, who was using the device for the first time, had forgotten it in a pocket of his coat without activating it.

The contact system used was deemed inadequate because there was no alternative way to reach the judge in the event of an emergency. This situation has been corrected since the complaint was lodged and the administration now has the home phone numbers of the judge on call as well as those of the other judges.

As for the judge's unintentional omission, which was not committed in bad faith, it was not deemed an ethical breach.

CM-8-97, CM-8-86-17 (examination)

**Refusal to issue a search warrant**

The plaintiff accused the justice of the peace of refusing to issue a search warrant, which would have allowed him to recover his stolen objects immediately. The examination showed that all justices of the peace follow a policy not to grant a search warrant in a situation where there is no emergency, especially when the application is made many hours after the robbery or the next day, which was the case in this instance. The judge, who acted to the best of his knowledge, did not infringe Section 6 of the *Judicial Code of Ethics*.

CM-8-88-15 (examination)

**Failure to pronounce a sentence before leaving her office**

It is not unusual that a judge who has brought in a verdict is unable to act afterwards. This situation generally does not cause any harm to the litigants, since the law entitles another judge to pronounce the sentence after examining the evidence presented before his or her colleague.

When the chief associate judge learned that the judge would be shortly leaving her office for another court of justice, he invited her to hear pleas in the interim, instead of pronouncing sentences.

"For this reason alone," four out of five committee members reached the conclusion that the judge "in no way lacked diligence in carrying out her judicial duties."

Guillemette and Verreault, CM-8-93-40 (inquiry)

### Failure to bring in a verdict before leaving his office

> The legal option available to parties to bring the date of judgement forward and to appear before the judge before he or she changes jurisdiction "does not place on the judge an obligation to contact all the lawyers acting in all the cases that will be listed on the roll after his or her departure or, if the parties are not represented by an attorney, to contact all the prosecutors and accused, regardless of the stage of the proceedings."
>
> Guillemette and Verreault, CM-8-93-40 (inquiry)

The judge, who was unnerved by the media coverage criticizing a sentence she had pronounced a few days before leaving her position, no longer had the necessary serenity to render a judgement in her remaining files, as her confidence in her abilities had been seriously shaken. "Under the circumstances, her duty was to refrain from rendering judgements."

Moreover, she could not be blamed for the various postponements in these cases as they were due either to the limited availability of counsels for the defence or a real need for more time to deliberate.

Four out of five committee members concluded that the judge's actions demonstrated a real concern to bring her files to a conclusion and to render the best judgements. According to them, the evidence "perhaps suggested that the system needed to be corrected and reformed" as it annuls the judge's penal jurisdiction as soon as he or she moves to another jurisdiction. However they concluded that "in the way she handled her files, [the judge] did not breach the duties provided in Section 6 of the *Judicial Code of Ethics*."

Guillemette and Verreault, CM-8-93-40 (inquiry)

### Judgement delivered rapidly

> "It cannot [. . .] be inferred from the sole fact that a judgement was rendered rapidly that the judge [. . .] lacked diligence because he allegedly did not analyze all the aspects of the case."
>
> CM-8-95-38 (examination)

SEE ALSO: SECTION 3, PAGE 149.

## 6.3 DUTY TO DEVOTE HIM OR HERSELF ENTIRELY TO THE EXERCISE OF HIS OR HER JUDICIAL FUNCTIONS

### 6.3.1 Unfounded complaints

**Presentation of numerous public lectures**

None of the evidence collected by the inquiry committee allowed it to conclude that the judge, who had given many lectures during the year, neglected her functions and the duties of her office as a result.

The committee members unanimously concluded that she did not infringe Section 6 of the *Judicial Code of Ethics*.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

SEE ALSO: SECTION 7, PAGE 210

CODE OF ETHICS

# 7 The judge should refrain from any activity which is not compatible with his judicial office

GENERAL PRINCIPLES

> Section 7 of the *Judicial Code of Ethics* is written in a general manner, which has the advantage of leaving it to the judges to decide whether they may or may not exercise certain functions or activities.
>
> Viau and Ruffo, CM-8-94-43(3) (inquiry), opinion of a single member

SCOPE OF APPLICATION

> "Without seeking to create an excessive culture of prudence that would be out of touch with reality, the judicial function requires a constant reflex to act with caution and discernment when choosing extrajudicial activities so as not to draw any potential reproach or risk raising doubts about one's impartiality and independence."
>
> Each particular case must be examined in two different lights: on the one hand, the evolution of the judge's function that must adapt to contemporary reality, and on the other hand, the public's increasing scrutiny of the conduct of judges.
>
> Viau and Ruffo, CM-8-94-43(3) (inquiry), opinion of a single member

## 7.1 BREACHES OF DUTY

### Substantial amounts for giving lectures

> "It must be clear to all judges that, when they are invited to give a conference, accepting money or a gift in return, unless it is modest, constitutes an ethical breach."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 346

While two out of four members of the inquiry committee considered the $1,500 cheque as a gift received for the lecture given by the judge, another member felt it was a fee as this was how the public would perceive it.

This committee member would have recommended that a reprimand be served to the judge, because in agreeing to deliver a lecture and to receive a substantial retribution in return, she took part "in an activity incompatible with her judicial functions."

Another committee member, who agreed with this recommendation, mentioned that the incompatible activity, rather, lay in the fact that the judge allowed that the prestige linked to her function be used in the framework of a commercial activity and that she accepted an important sum of money that had been agreed upon in advance. This committee member also recommended that the judge be served a reprimand.

Viau and Ruffo, CM-8-94-43(3) (inquiry)

AUTHORS' NOTE:

For the opinion of the two other members, see Section 5 under Unfounded complaints.)

SEE ALSO: SECTION 5, PAGE 191.

AUTHORS' NOTE:

The judge's conduct in this affair was also examined in light of the *Courts of Justice Act*.

One of the committee members suggested that by accepting payment for a conference, "Justice Ruffo had breached Section 129, subsection 1 of the *Courts of Justice Act* which states that "the office of judge shall be exclusive."

Pursuant to Section 129, subsection 2 of the *Courts of Justice Act* the committee concluded that giving a lecture on the occasion of a commercial event does not necessarily associate the speaker with the commercial nature of the event, when there is no evidence proving participation in the risks or in the commercial venture itself.

The committee also concluded that a lecture did not constitute a pedagogical activity requiring the chief judge's written consent, as required under Section 134 of the *Courts of Justice Act*.

## Judicial prestige used for commercial purposes

> "The Court sided with the inquiry committee in the view that a judge must not lend his or her name or title to a commercial activity or to promoting a business or product. This is a recognized, accepted principle of the judiciary, and society requires it to remain so. [. . .] In short, the judge's prestige must be at the service of the judiciary, and not any financial or economic interest."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 395

SEE ALSO:

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), quoting Luc Huppé, *Le régime juridique du pouvoir judiciaire,* Montréal, Wilson & Lafleur, 2000, p. 206

> A judge's participation in an advertisement is, depending on the circumstances, an activity incompatible with the exercise of judicial power.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), upheld in the Court of Appeal in Ruffo (Re), [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 395

> A judge may not allow his or her title of judge to be used to promote a business he or she frequents regularly.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

Even though she did not receive any remuneration or whatever financial advantage, the judge's participation in an advertising message speaking highly of the quality of the new trains, set in an artificial staging, and without her having had the occasion to experiment the comfort of these trains, infringed section 7 of the *Judicial Code of Ethics*.

The judge was reprimanded because she "accepted that Via Rail used her name, her title of judge and the name of the Court where she sits, for purely commercial purposes."

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

## 7.2 UNFOUNDED COMPLAINTS

### Attempts to be appointed chief judge

While the process for naming a new chief judge was under way, a judge approached someone with close ties to the government to express interest in the position. In the absence of a more formal candidacy process, the judge's behaviour, "though it cannot be described as prudent, does not constitute an ethical breach." It has not been demonstrated that the judge did anything beyond expressing interest. It would thus be difficult for the Conseil to conclude that the judge could have exerted any influence on his subsequent nomination to the position of chief judge.

2010 CMQC 55 (examination)

### Exercising the profession of lawyer

> Under sections 37 and 45.1 of the la *Municipal Courts Act,* "exercising the profession of lawyer is not incompatible with the office of a municipal judge who is paid by the session and a member of the court not working under a judge president. This compatibility is, however, subject to the observance of certain legislative protections set out [in section 45] to lessen the risk of the appearance of incompatibility for a reasonable and well-informed person."
>
> The Conseil concluded that "a reasonable person well-informed of the facts in this case could not find any incompatibility between the office of judge and profession of lawyer in this case."
>
> Saba and Alary, 2008 CMQC 43 (inquiry), par. 31–32

### Informing the public about law

> "There is nothing reprehensible or contrary to the *Judicial Code of Ethics* in the fact that a judge informs the public about law outside his judicial functions."
>
> CM-8-88-19 (examination)

### Public lectures

> "[T]he fact that a judge accepts to give one or many lectures does not constitute in itself an activity that is incompatible with the exercise of judicial power."
>
> Viau et Ruffo, CM-8-94-43(3) (inquiry), majority

### Kind of audience

> "[T]he judge cannot be blamed for the choice of her audience [. . .]."
>
> Viau et Ruffo, CM-8-94-43(3) (inquiry)

CODE OF ETHICS

# 8 In public, the judge should act in a reserved, serene and courteous manner

## 8.1 DUTY TO ACT IN A RESERVED MANNER

### GENERAL PRINCIPLES

> The judge's duty to act in a reserved manner must be manifest in his or her work in Court as well as in his or her life in society. In fact, "because of the functions they hold, [judges] are not regular citizens."

Ministre de la justice du Quebec and Pelletier, CM-8-91-8 (inquiry)

### SCOPE OF APPLICATION

> "The scope of a judge's duty of reserve, given the freedom of expression enshrined in our charters, requires that the interaction between the regulation of judges' discourse and society's value system be held up to particular scrutiny.
>
> Safeguarding the integrity of the judiciary could, in certain cases, justify placing certain restrictions on a judge's right to free expression in the exercise of their office."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 55 and 58

> The duty of judges to act in a reserved manner is a fundamental principle that has been enshrined at the international level. "It is in itself an additional guarantee of judicial independence and impartiality, and is aimed at ensuring that the perception of the parties to proceedings in this respect is not affected."

Ruffo v. Conseil de la magistrature du Québec, CM-8-90-30, [1995] 4 SCR 267, repeated in Gobeil and Ruffo, CM-8-90-30 (inquiry)

### 8.1.1 Remarks made while exercising judicial functions

> "[T]he courtroom is not the place for delivering messages." Judges must resist the temptation to express themselves outside the law and must exercise extreme caution. Moreover, comments that do not bring anything to the debate can also

harm the image of justice and undermine the public's trust in the judicial system, while raising doubts about the essential objectivity everyone is entitled to expect from judges.

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO: SIMULTANEOUS BREACHES OF SECTIONS 2 AND 8, HUMOUR, THREATS DISCRIMINATION AND DISRESPECT, PAGE 269.

### 8.1.1.1 Breaches of duty

**Comments of a political nature**

> The judge must consider the political nature of his or her remarks to avoid them being misinterpreted.

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO: SIMULTANEOUS BREACHES OF SECTIONS 2 AND 8, HUMOUR, THREATS DISCRIMINATION AND DISRESPECT, PAGE 269.

The judge launched into a long diatribe against Québec's trade unions that was justified neither by the proven facts before him nor the nature of the case being heard. His motivations and the merit of his legal career do not justify such actions. He was served a reprimand for his breach of Section 8 of the *Judicial Code of Ethics*.

FTQ and Dionne, CM-8-89-2 (inquiry)

SEE ALSO: SECTION 10, PAGE 252.

### 8.1.1.2 Unfounded complaints

**Remarks regarding the difficulties of the judicial administrative system**

> "[C]itizens must suffer as little as possible from the administrative difficulties of the judicial system."

CM-8-95-38 (examination), *obiter dicta*

The comments made by a judge sitting in the Small Claims Division regarding the difficulty of settling a dispute related to property law within the allotted timeframe should have been avoided. However, since the comments were made in a peaceful and courteous general atmosphere and the judge showed patience and solicitude towards the parties, they cannot reasonably constitute an ethical breach.

CM-8-95-38 (examination)

The judge complained about the extra work caused by the succession of voluminous cases entered on the roll, including one he said was like a "brick falling on his head." These remarks reflected his anxiety and nervousness regarding an important decision he had to render concerning the placement of a teenager who presented severe psychiatric problems. Even though they could have been avoided, these remarks did not constitute an ethical breach. The judge's decision to postpone the case so as to calmly proceed with the hearing of all the witnesses showed his desire to render an enlightened decision and to avoid rushing things considering the complexity of the case.

CM-8-95-43 (examination)

### Comments deploring a concerned individual's mistake

During a discussion a teenager's attorney began in the courtroom, outside the proceedings, the judge deplored a third party's apparent misunderstanding because, contrary to her order, she had taken the young girl to a reception centre.

"Under the circumstances, Madam Justice [. . .] was entitled to think that [the person] had not understood what had happened during the hearing and what the order itself meant [. . .] and she was entitled to express her opinion."

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

### Remarks on a party's civil liability during a criminal trial

> "It is neither rare nor unusual for a judge to illustrate his or reasoning with a comparison between different legal principles acknowledged in other fields of Canadian or international law. This practice does not infringe at all the judge's duty to act in a reserved, courteous and serene manner, nor does it breach the rule according to which he or she should perform the duties of his or her office with integrity, dignity and honour, in an impartial and objective fashion and within the framework of the law. In acting this way, the judge [. . .] simply allows all the persons involved in a particular dispute, including the person at the origin of the information, to understand his or her explanations and the full scope of his or her conclusions."
>
> 2003 CMQC 34 (examination)

The plaintiff blamed the judge for commenting on his "so-called civil liability" without being seized of this issue. The evidence showed that the attorneys had themselves insisted on the matter of legal principles regarding the burden of proof on the prosecution. "Therefore it was advisable that Madam Justice [. . .] mention the issue of the burden of proof in her judgement."

Moreover "the media's subsequent comments and interpretation of the evidence and judgement are of course the entire and sole responsibility of those who expressed them."

The complaint was deemed unfounded.

2003 CMQC 34 (examination)

## 8.1.2 Conduct while exercising judicial functions

### 8.1.2.1 Breaches of duty

#### Inopportune interventions

"The judge intervened on several occasions during the examination and cross-examination of the complainant, who was accused of criminal harassment of his former spouse. He asked him a series of questions designed to make the complainant contradict himself, and made ironic remarks about several explanations. The inquiry committee found that the judge had "abandoned the reserve required of him as the person in charge of conducting the trial," undermining the public trust and "suggesting that the person appearing before him was unable to properly defend himself." The committee found that Section 8 of the *Judicial Code of Ethics* had been breached.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (Criminal Division) (inquiry)

#### Inducement to appeal judgement of the Court

> "While it is normal for judges to hope that decisions they believe in, and in which they see an innovative aspect likely to bring about legal progress, be analysed by the appeal courts, it is neither desirable nor advisable that they personally take steps to make such hopes known. Judges must express their opinions and formulate comments they consider appropriate, according to the nature of the dispute before them, in their judgements."
>
> Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry)

### 8.1.2.2 Insufficient seriousness of allegations

#### Inducement to appeal judgement of the Court

The judge telephoned the attorney of the CSD (Centrale des syndicats démocratiques) to encourage her to appeal a judgement of the Superior Court that quashed his own judgement, which was favourable to this party. This intervention is contrary to his duty to act in a reserved manner.

However, due to the "particular culture" specific to the Labour Tribunal that encourages relaxed relationships and regular contact with people working in this field, the majority of the committee members dismissed the complaint.

A minority of the members, however, felt that the habits and customs of the Labour Tribunal at the time of the alleged facts allowed only that the judge inquire about the follow up to be given to his judgement, without any attempt to influence. They concluded that the complaint was justified and that the judge had breached his duty to act in a reserved manner, as well as "his obligation to uphold the integrity of the judicial system, because his actions could give the public cause to question its confidence in this institution."

The committee was unanimous in strongly recommending that, in order to avoid being misinterpreted, all interventions with a party on the part of a judge to inquire about said party's intent to appeal a decision be banned.

Racicot and Plante, CM-8-95-81 (Labour Tribunal) (inquiry)

### 8.1.3 Remarks made in public

> "Generally speaking, any public declaration made outside the hearing must be examined using several criteria: the way it was made, the intensity of remarks made, their timeliness, the forum where they are expressed and the degree of visibility. In matters of freedom of expression, degree is everything, and judges must always exhibit a great deal of restraint."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 62

> "The judge's function today is quite different from what it was in the past. Nowadays judges must avoid isolating themselves and must strive to be more and more accessible to the public, within the limits of their duty to act in a reserved manner."

The Chief Justice of Québec encourages the judiciary to play a role in informing and educating the public about the judicial system.

Viau and Ruffo, CM-8-94-43(3) (inquiry), opinion of a single member

> Section 8 does not condemn judges to silence; rather it is their duty to stay in contact with their social environment.

"However, judges' freedom of expression is circumscribed by the duties of reserve and impartiality, the obligation to avoid conflicts of interest and situations that prevent them from effectively fulfilling their functions and the rights of citizens to an impartial tribunal.

"Judges may, from time to time, publicly express their opinions, but they must do so with caution and moderation, in keeping with their duty to act in a reserved manner and with the *Judicial Code of Ethics*."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

### 8.1.3.1 Breaches of duty

**Publication of articles of a political nature**

> The judge's duty to act in a reserved manner is all the more important as regards politics since its very foundation hinges on judicial independence and the objectivity he or she must show to ensure that justice is done and appears to be done. Consequently, judges must avoid any activity, public stand or expression of partisan political opinions "and refrain from criticizing the government, except when it is a matter of defending the prestige and independence of the judiciary."
>
> In the case of Judge Brière, CM-8-79-3, CM-8-13 (Provincial Court) (inquiry) (ruling rendered under Section 263 (c) of the *Courts of Justice Act,* since repealed)

The publication of an article signed by a judge, with the acknowledged intent to influence the Québec referendum debate of 1980, caused a public controversy that he chose to respond to by publishing a second article. In doing so he embarrassed the judiciary and placed himself "in a position where litigants necessarily questioned his objectivity as a judge."

The fact that the author of these articles erroneously believed that judges have the right to express their political opinions is not a legitimate excuse. In response to the question he had himself submitted to the Conseil, the judge was reprimanded.

In the case of Judge Brière, CM-8-79-3, CM-8-13 (Provincial Court) (inquiry) (ruling rendered under Section 263 (c) of the *Courts of Justice Act,* since repealed)

AUTHORS' NOTE:

On Section 263 (c) of the *Courts of Justice Act,* see also: Chatel and St-Germain, CM-8-66 (Court of the Sessions of the Peace) (inquiry), CM-8-79-3, CM-8-13 (examination)

SEE ALSO: SECTION 10, PAGE 259.

**Insufficient protection of a child's identity**

> "In order to help explain the situations they deal with, judges may, in theory, cite in their lectures or interviews certain cases they have been seized of, but in cases involving children, they must make sure the child's identity is protected, at least to the same extent required by Section 83 of the *Youth Protection Act*."
>
> Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 5, PAGE 189.

**Interventions on contentious matters**

> Repeated public interventions on the part of judges about contentious matters serve neither the public good nor the image of the justice system and the judiciary. It is much more appropriate to have the chief judge or the Conférence des juges du Québec address the executive power.
>
> Lapointe and Ruffo, CM-8-88-37 (inquiry)

### 8.1.3.2 Insufficient seriousness of allegations

**Criticism levelled against the government**

During a radio programme, the judge criticized the practices of the Direction de la protection de la jeunesse. After answering the host's questions about a recently released book, she expressed her opinion about the supervision that should be given to juvenile offenders, using examples. The Conseil considered that, despite the fact that she should have refrained from making these remarks, they did not, however, justify an inquiry.

2002 CMQC 15 (examination)

### 8.1.3.3 Unfounded complaints

**Remarks on government shortcomings**

> "The fact that a judge publicly remarks on what he or she deems to be shortcomings on the part of government does not in itself constitute a breach of the *Judicial Code of Ethics,* particularly when the government apparatus is essential to the proper functioning of the Court and the execution of its orders."
>
> Lapointe and Ruffo, CM-8-88-37 (inquiry)

The judge's equivocal declaration that "[. . .] everyone is protecting their own territory and budget, and too bad for the children," which was reported in a magazine article, is open to two interpretations, one of which attributes "to the director of youth protection and other professionals in the field a lack of concern for children."

However, the undisputed evidence established that these declarations were not the expression of a prejudice but rather an observation of a state of affairs, i.e., that the administrative situation prevents children from getting the services required to

enforce Court orders. The rest of the judge's declarations are simply a reflection of the regret she feels about this situation.

These remarks about "the functioning of the child protection system, of which the Court is an essential element, do not infringe Section 8 of the *Judicial Code of Ethics*."

Lapointe and Ruffo, CM-8-88-37 (inquiry)

SEE ALSO: SECTION 4, PAGE 144.

### Repeated public interventions

> "Despite what the inquiry committee suggests, the Court is of the opinion that, taken in isolation, the number of lectures given cannot be grounds for disciplinary action when the message delivered is above reproach from an ethical standpoint."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 318, overturning Gobeil and Ruffo, CM-8-90-30 (inquiry)

## 8.1.4 Conduct in public

> "The judges' conduct [. . .] will certainly be subject to public scrutiny and criticism. Judges must therefore accept some restrictions on their activities—even those that would not give rise to any criticism if they were carried out by other members of the community."

St-Louis and Gagnon, 2003 CMQC 35 (inquiry), par. 92, quoting Conseil canadien de la magistrature, *Principes de déontologie judiciaire,* Ottawa, Conseil canadien de la magistrature, 1998, p. 10

SEE ALSO: SIMULTANEOUS BREACHES OF SECTIONS 2 AND 8, PAGE 228.

### 8.1.4.1 Breaches of duty

### Impaired driving offence

> The offence of operating a motor vehicle with a blood alcohol level over the legal limit constitutes a breach of the duty to act in a reserved manner.

Québec Minister of Justice and Pelletier, CM-8-91-8 (Court of Québec) (inquiry)

SEE ALSO:

Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)
Section 4, page 145 and Section 10, page 220

### Public appearance with a party to proceedings

In accepting an invitation to lunch from the attorney of one of the parties involved in a case receiving a lot of media attention and of which he had been seized that very morning, the judge breached his duty to act in a reserved manner. He was reprimanded for this breach of Section 8 of the *Judicial Code of Ethics*.

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry)

SEE ALSO: SECTION 5, PAGE 190 AND SECTION 10, PAGE 255.

### Public reaction to criticism or a complaint

> "The duty to act in a reserved manner prevents us from being able to respond to criticism made against us by the media and members of the public [. . .]. We must learn to keep our spontaneous reactions in check in such circumstances."
>
> Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), par. 57

SEE ALSO: SECTION 10, PAGE 256 ET HUMOUR, MENACE, DISCRIMINATION ET MÉPRIS, PAGE 265.

## 8.1.4.2 Insufficient seriousness of allegations

### Disclosure of a confidential decision by the Conseil in order to re-establish his reputation

> ". . . [T]he duty to act in a reserved, courteous and serene manner stipulated in Section 8 of the *Judicial Code of Ethics* may, under some circumstances, imply a duty to respect confidentiality."
>
> CM-8-83-4, CM-8-59 (examination), *obiter dicta*

A judge publicly revealed a decision by the Conseil de la magistrature about him, believing wrongly but in good faith, that his reputation was in danger.

The committee acknowledged that the judge had apologized in writing and admitted his mistake, which could have been avoided by a more thorough inquiry, and concluded that the nature and importance of the facts did not justify an inquiry.

CM-8-83-4, CM-8-59 (examination)

8.1.4.3 | Unfounded complaints

### Tribute to the leader of a political party

The presentation of a painting to the premier of Québec, which was a gesture of friendship made by a judge in his capacity as a guest at a "commemorative party with no political connotation," does not constitute a breach of his ethical duties.

CM-8-79-3, CM-8-13 (examination) (ruling rendered under Section 263 (c) of the *Courts of Justice Act*, since repealed)

AUTHORS' NOTE:

Regarding Section 263 (c) of the *Courts of Justice Act,* see also: Chatel and St-Germain, CM-8-66 (Court of the Sessions of the Peace) (inquiry) In the case of Judge Brière, CM-8-79-3, CM-8-13 (Provincial Court) (inquiry)

### Use of Court letterhead for personal business

> Judges must avoid using their official letterhead when the subject matter involves their duty to act in a reserved manner or includes aspects that could result in their becoming a party before the judicial system.
>
> Cressaty and Alary, CM-8-93-3 (inquiry), *obiter dicta*

By using their official Court of Québec letterhead for writing personal letters with regard to which there is no threat of legal proceedings, judges are not in violation of their duty to act in a reserved manner.

CM-8-92-45 (examination)

### Legitimate dispute of the disciplinary process

> "A judge who is the subject of an ethics complaint has the fundamental right to dispute its merits and to legally put forward any and all claims he or she deems valid to justify its dismissal."
>
> Gobeil and Ruffo, CM-8-90-30 (inquiry)

SEE ALSO: PRINCIPLES AND FOUNDATIONS, PAGE 24.

The preponderance of evidence established before the committee showed that Justice Ruffo acted in good faith when she chose, on her attorney's advice, to hold a press conference. In doing so she was attempting to meet, as coherently as possible, the media's insistent demands following the Conseil's decision to serve her a reprimand.

Therefore her reaction was in keeping with her general right to dispute the disciplinary interpretation of which she was the object.

Gobeil and Ruffo, CM-8-90-30 (inquiry)

## 8.2 DUTY TO ACT IN A COURTEOUS MANNER

GENERAL PRINCIPLES

> "By 'courtesy' we tend to think primarily of respect and refined politeness, as opposed to rudeness, impoliteness and ribaldry."
>
> Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 62, dissidence

SCOPE OF APPLICATION

> Although the judge has the duty to act expeditiously and to see the debates through, he or she must have the courtesy "to deal with each case with the same care," no matter which tribunal he or she presides over.
>
> "There is no case, however small, in which a litigant is not entitled to be heard with courtesy by the judge."
>
> Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 64, dissidence

### 8.2.1 Remarks made while exercising judicial functions

#### 8.2.1.1 Breaches of duty

**Criticism of an attorney**

The complainant was counsel for a person accused of the sexual assault of a minor. The judge criticized the complainant's behaviour in several passages of his written decision, which he read out loud when pronouncing the verdict: "repeated, aggressive assaults," "essentially, a battered child," "undermining, basically destroying the child." He added that he had to intervene to keep the lawyer from "yelling at the child." These criticisms were picked up in the media and had significant repercussions on the complainant's reputation.

The judge's criticism "sent a negative message to the defence attorneys. This constituted "abuse of office on the part of the judge, whether or not he meant well" and had the effect of "showing the justice system in a bad light." The Conseil concluded that Section 5 of the *Judicial Code of Ethics* had been breached and reprimanded the judge."

Corriveau and Dionne, 2007 CMQC 7 (6-18-2008) (inquiry)

**Offensive remarks**

The judge made disparaging remarks with reference to the pronunciation and posture of one of the parties: "You know those muscles next to your mouth? They're called cheeks. You need to work them a bit. [. . .] Do you have a problem with your

spine? [. . .] A lot of people do: it says a lot about them." "That's basic French, Madam. If we have to start teaching French in the courtroom, we're in real trouble! [. . .] Dammit! Excuse me, we're speaking French here!"

He added: "Unfortunately, some people need to work on their reasoning skills. What I'm saying, Madam, is that you're completely disorganized [. . .] You're asking me to make a judgement. That's exactly what I'm doing."

The committee found that these remarks breached the duty of courtesy, and recommended a reprimand."

Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

During the hearing and in his written judgment, the judge described the complainant as "badly raised," "a boor," "a rude individual," and "a troublemaker." The inquiry committee found that "these expressions belong more on the street than in the courtroom." The committee found that Section 8 of the *Judicial Code of Ethics* had been breached, and delivered a reprimand."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (inquiry)

### Aggressive remarks

The judge interrupted the accused in "a furious, thundering" tone and said, "Shut up. I'm the one talking now." The judge's angry and "needlessly aggressive" tone led the committee to conclude that the judge was lacking in "the most basic courtesy toward a person unfamiliar with the rules of court who had made an unfortunate statement at an inopportune time." His behaviour was viewed as contrary to the ethical rules set out in Section 8 of the *Judicial Code of Ethics*.

In view of this breach as well as the judge's other actions during the same 40 minute trial, the Conseil felt a reprimand was necessary."

Beaudry and L'Écuyer, CM-8-97-14 (inquiry)

SEE ALSO: HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 263 AND 8, P. 277.

## 8.2.1.2 Insufficient seriousness of allegations

### Disparaging comments

The judge criticized the complainant for sending "an old doctor's note" every time a case was scheduled to be heard before him.

The Conseil described the judge's comments as "surprising, and even inappropriate" but concluded that "while we would expect the judge to be more serene and courteous [. . .], the nature and importance of the complaint did not justify an inquiry."

2006 CMQC 44 (examination)

The judge, in explaining to the accused that he gave no credence to his argument, referred to his social status as a pensioner to conclude that he "had plenty of time for fantasizing." This remark "is offensive and unacceptable." The Conseil concluded however that the nature and importance of the complaint did not justify an inquiry.

2002 CMQC 55 (examination)

The word "crazy" used by the judge in relation to a person who was not present in the courtroom was potentially hurtful and should not have been used. However the judge was trying "to clarify the issue of the offender's inaptitude by using simple and familiar words."

He subsequently expressed doubts about the existence of the physician who signed the psychiatric evaluation certificate. This remark, which was inappropriate and irrelevant, was brought on by circumstances that were external to the case and that were causing him considerable concern.

On the whole, the judge behaved fairly and with irreproachable patience. When placed in context, his remarks were deemed regrettable, but insufficiently serious to constitute an ethical breach.

Lamoureux and L'Écuyer, CM-8-95-83 (inquiry)

SEE ALSO: INQUIRY, PAGE 69.

### Sarcastic comments

At the beginning of the hearing the judge asked the complainant if there were any witnesses. He answered: "Just my wife [. . .]." The judge interrupted him with the following remarks: "When someone says that, 'just my wife'. . .You're lucky she's still talking to you. Just my wife, no big deal!"

The Conseil found that these statements, which upset the complainant, to be inappropriate. However, they were not intended to be hurtful. The importance of the remarks did not justify an inquiry."

2010 CMQC 68 (examination)

The judge made statements about the complainant's theatrical style of pleading when the complainant was not present. The committee affirmed that "she should have refrained from making comments to a third party about the complainant's behaviour

in court, but as the judge did no more than describe the situation as it appeared to her, these remarks could not be considered either disparaging or offensive."

2008 CMQC 19 (examination)

### 8.2.1.3 Unfounded complaints

#### Cutting remarks

At a motion for recusation hearing, the complainant expressed his opinion on a previous decision made by the judge. The judge replied: "I don't care whether it's Monsieur's opinion that the decision was not made in the child's best interest."

The Conseil found that the judge had not breached the politeness requirement, and that the situation did not justify an inquiry."

2010 CMQC 62 (examination)

#### Remarks during an examination

While the complainant was cross-examining a witness the judge commented that "that's the third time he's said it." As this remark was found to be both justified and true, the committee concluded that it was consistent with the judge's duty to conduct proceedings."

2009 CMQC 38, par. 7 (examination)

#### Offensive comments

During a motion to relax the conditions governing meetings between a mother and her daughter, there was discussion on the mother's refusal to accept her daughter's developing a meaningful relationship with her foster family. The judge made the following remarks: "Does that hurt you? [. . .] Why, because you're not mature enough to understand that she has forged relationships? [. . .] It has everything to do with your pseudo-maturity, that's the problem here, it's that your daughter is more mature than you"

The Conseil found that the judge's remarks had to be taken in context, noting that in his decision the judge pointed out that the mother enjoys special standing, and is owed special respect by her daughter. The complaint was deemed unfounded."

2011 CMQC 5 (examination)

SEE ALSO:

2011 CMQC 90 (examination)
2012 CMQC 27 (examination)

### Reference to the parties' names

"In the written judgement the judge used the complainants first and last names in the first paragraph, and subsequently used the last name only. [. . .]." This writing style is not disrespectful, and is commonly used to shorten the text.

2010 CMQC 95 (examination)

The fact that, during the hearing, the judge called the complainant by his last name instead of "Mr. A." does not constitute an ethical breach as, aside from this, the proceedings were carried out respectfully and courteously."

2009 CMQC 76 (examination)

### Sarcastic comments

The complainant was sentenced to intermittent imprisonment (weekends). As part of a motion to modify the conditions, he asked whether he could come home to sleep at night because he had back pains. The judge responded sarcastically. The committee concluded that the judge's tone was not inappropriate, and merely betrayed his astonishment at the nature of the motion and the reasons put forward by the complainant, whose sentence was already lenient.

2008 CMQC 8 (examination)

### Correction of a witness's use of language

> "It is not unusual for a judge to correct a witness who uses the wrong expression, without being arrogant."
>
> Talbot and Bilodeau, CM-8-87-10 (inquiry)

The judge was entitled to insist she be called "Madam." Her reprimands directed at the persons who addressed her using the expression "Mister Justice" would only have suggested a lack of courtesy if she had used an unpleasant tone.

CM-8-87-15 (examination)

### Statement regarding the credibility of a witness

> "[W]hen a judge does not believe a witness, he or she has the right to let the witness know, while showing courtesy and performing his or her role with dignity and honour."
>
> CM-8-97-27 (examination)

> "It is certainly not easy to be told that one is not telling the truth and it is perhaps understandable that the person on the receiving end believes the judge lacked courtesy, but this is not the case, since judges are responsible for saying who they believe and who they don't. When it is said with a loud voice [. . .], the person may be taken aback and even intimidated, but this is not a reason to complain about the judge's behaviour."
>
> CM-8-94-60 (examination)

"When the complainant introduced evidence on her loss of income, she claimed that, were it not for the alleged assault, she would have had a two-year contract as a secretary with the government, which would have been renewed. She did not provide proof of the government's hiring policy.

The judge replied as follows: "Madam, you are not credible. There's no such thing as a two-year contract." The Conseil felt that the judge should have been less cutting, but was within his rights to draw his own conclusions on the credibility of the complainant's statements.

2009 CMQC 43 (examination)

After the complainant's refusal to acknowledge she was aware of the court order barring her from leaving the city during her visits with her children, the judge spoke to her sternly, reminding her that she was under oath, that she had been present when the order was handed down and that she was, therefore, aware of it. She added: "Don't lie to my face, it puts me in a bad mood." The committee found that the judge's remark had been meant merely to ensure that the complainant understood the seriousness of the obligation, and concluded that the complaint was unfounded."

2008 CMQC 61 (examination)

During the complainant's testimony the judge intervened: "You aren't going to try to convince me that [. . .]. Come on, come on. You're young, we've been around longer than you, and we've seen people try to fool us before. So don't start." The complainant felt that these comments were disparaging, but the Conseil dismissed the complaint on the grounds that the judge was merely carrying out his duty to assess the witness's testimony.

2007 CMQC 64 (examination)

The plaintiff felt offended by the fact that his testimony was disallowed in these terms: "I am compelled to disallow the accused's testimony because it is unbelievable and revoltingly false." The complaint was deemed unfounded, since "Mister Justice was only doing his job as a judge in appraising the witnesses' credibility."

CM-8-90-12 (examination)

When placed in their context, the judge's references to a witness's limited sense of observation and lack of knowledge expressed his appraisal of the evidence presented

and his doubts about its probative value. The committee deemed this did not constitute a lack of courtesy.

CM-8-88-18 (examination)

SEE ALSO: SECTION 5, PAGE 178.

### Describing a party's behaviour or attitude

In his decision the judge described the complainant's behaviour as "in bad faith, vexatious and carping." These terms "stem from his assessment of the interpretation of the events under the applicable law." Though the terms may seem harsh, the Conseil decided that it could not intervene and "impose its choice of words" since that would go against the principle of the independence of the judiciary."

2011 CMQC 25 (examination), par.12–13

Faced with an application for a revocation of judgement, the judge used the notions of serious grounds and a reasonable person to explain to the complainant that "objectively speaking, a lot of things could be done" and that "in situations like this, people need to be responsible." He claimed that the complainant was behaving in a frivolous manner. While the complainant may have felt humiliated, the Conseil concluded that the judge had done no more than assess the situation using applicable legislative criteria.

The notion of a reasonable person cannot be understood as humiliating and degrading, as the judge took care to "inform the complainant that he was not calling him "unreasonable."

2011 CMQC 3 (6-15-2011) (examination)

While reviewing the conditions of visits between the complainant and his daughter, the judge painted an unflattering portrait of the complainant's personality and attitude. The nature of the case impelled the judge to analyze whether the complainant could maintain a healthy relationship with his daughter. The case had a specific context: the complainant was on conditional release after a conviction for sexual touching of a minor, and had decided to completely remove himself from his daughter's life. The complaint was dismissed. The committee found that the judge had not attempted to mock the complainant.

2010 CMQC 62 (examination)

During an uncontested motion for child protection, with loss of parental custody, the judge expressed astonishment at the ease with which the parents abandoned their parental privileges. The complainant considered the judge's statements hurtful and critical. The committee found that the judge had done no more than broach a subject that was a necessary part of his judgement."

2007 CMQC 82 (examination)

The judge characterized the behaviour of a party as being "in bad faith and dishonest." The Conseil acknowledged that these comments may be "disagreeable" but found them to be "within the judge's jurisdiction and legally necessary," and thus found that the complaint was unfounded."

2006 CMQC 77 (examination)

### Questions about a civil party's criminal record

> The judge is legally justified to question a civil party on his or her criminal record in order to verify its relevance within the framework of the proceedings under way.
>
> CM-8-97-44 (examination)

### Remarks of no value to the legal debate

> "It is imprudent for a judge to make comments, in the courtroom, that contribute nothing to the case at hand."
>
> 2010 CMQC 68 (examination)

After reading an application for a postponement citing a reason that proved to be false, the judge said: "It sounds more like a guy who doesn't feel like coming to Court." Although the judge's remark was not useful to the administration of justice, it did not constitute a breach of his duty to act in a courteous manner toward a citizen in his Court.

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry)

"[The judge deplored the fact] that the members of a family were squabbling over the sharing of certain small objects from the succession, but these comments were respectful towards the persons involved."

CM-8-98-58 (examination)

During the trial, the judge used the word "incredible" at least twice when referring to the fact that the plaintiff and her expert had brought along only one photo to prove the value of a piece of porcelain. He was referring to the case itself, not to the persons involved.

"We acknowledge that these words were unnecessary, contributed in no way to the debate and could lead to confusion."

However, since the offensive comment was not aimed at the plaintiff, per se, it did not constitute an ethical breach.

CM-8-93-31 (examination)

The judge deplored the lack of authority in the actions taken by the social service workers in the case of a teenager. While his words served no purpose in resolving the case at hand, they did not, however, show a lack of reserve or courtesy.

CM-8-56, CM-8-83-2 (examination)

### Explanations on the law of evidence

The judge, who tends to speak with a rather loud voice, was very insistent in explaining to the plaintiff, who was an applicant before the Small Claims Division, the legal requirements regarding the presentation of evidence. Although the latter felt humiliated, after listening to the recording, the Conseil concluded that it did not show that the judge had acted so as to intimidate him.

1999 CMQC 74 (examination)

SEE ALSO:

2011 CMQC 71

2011 CMQC 69

### Warning to an accused

#### Commitment to keep the peace

The judge explained to the plaintiff the legal consequences of failing to sign a commitment to keep the peace under certain clearly determined conditions. "The option of imprisonment was a legal reality the judge was obliged to explain to the plaintiff, not a threat."

CM-8-88-4 (examination)

#### Conditions for release

Warning the accused about and explaining to him the consequences of violating the conditions of his release do not amount to threats, rather they are necessary warnings on the part of the judge.

CM-8-95, CM-8-87-1 (examination)

SEE ALSO:

CM-8-94-3 (examination)

#### Potential repeat offence

The Conseil did not perceive any threat on the part of the judge when he warned the plaintiff against the potential consequences of any new similar charges.

2004 CMQC 20 (examination)

**Remarks devoid of malicious intent**

Although the judge told the witness that "he must not see well since he wore glasses," this does not constitute a reason for blaming or reprimanding him, as no malicious intent was shown.

CM-8-53, CM-8-82-3 (examination)

**Humorous comments to relax the atmosphere**

> Even when it does not reflect a lack of reserve or courtesy, "humour, even 'gentle humour,' has no place in the courtroom," because of the different perceptions people may have of it.
>
> The judge made a few witty remarks to try and relax the atmosphere. Although the evidence did not support her claims, the plaintiff perceived his comments as mocking and insulting. The complaint was deemed unfounded.
>
> Stof and Bélanger, CM-8-87-3 (Small Claims Division) (inquiry) repeated in 2012 CMQC 5 (examination), par. 17

**Humorous tone**

The judge answered the witness with a wisecrack, stating that he was "not here to answer questions." The Conseil found that the remark was in no way inappropriate and was made with humourous intent. The complaint was deemed unfounded.

2006 CMQC 64 (examination)

The fact that the judge replied to the witness, in a spontaneous and amused tone, that she would not live in a certain neighbourhood if she owned a Cadillac, which sparked a burst of laughter from all sides, including from the witness, does not suggest his remarks could be reasonably interpreted as a lack of respect toward the residents of the neighbourhood in question nor a sign of contempt toward the witness.

CM-8-95-38 (examination)

**Cutting remarks**

At a motion for recusation hearing, the complainant expressed his opinion on a previous decision made by the judge. The judge replied: "I don't care whether it's Monsieur's opinion that the decision was not made in the child's best interest."

The Conseil found that the judge had not breached the politeness requirement, and that the situation did not justify an inquiry."

2010 CMQC 62 (examination)

**Reaction to a reference to legislation**

During a small claims hearing during which the complainant had read out certain sections of the *Civil Code* the judge "intervened to say that he would take care of the law, and the complainant should stick to the facts." The committee acknowledged that the complainant may well have found these comments disagreeable, "but the judge acted within the framework of the law and his responsibilities." These comments were not considered discourteous.

2010 CMQC 26 (examination)

**Reminders that remarks must remain relevant**

It appears that what the plaintiff interpreted as being inappropriate behaviour were actually reminders from the judge to keep his comments relevant. The purpose of the judge's "entirely correct remarks" was to inform the plaintiff, who was representing himself, about certain legal principles.

2000 CMQC 43 (examination)

SEE ALSO: SECTION 5, PAGE 166.

**Unpleasant qualification of the facts**

In his judgement rendered from the bench, the judge described the water gun game the plaintiff and another witness had played as "a silly thing to do." Despite his choice of words, the Conseil concluded that the judge had behaved with courtesy throughout the proceedings.

2003 CMQC 13 (examination)

## 8.2.2 Conduct while exercising judicial functions

### 8.2.2.1 Breaches of duty

**Nonchalance**

> "A nonchalant attitude may potentially constitute a lack of courtesy."

CM-8-87-20 (examination), *obiter dicta*

**Priority given to cases defended by certain lawyers**

> Giving preference to cases defended by a lawyer could potentially constitute a privilege and a lack of courtesy toward litigants who are not represented.

CM-8-88-18 (examination), *obiter dicta*

### 8.2.2.2 Insufficient seriousness of allegations

#### Judgement rendered promptly without looking at the parties

The judge delivered his judgement speedily without looking at the plaintiff. "While this way of rendering a judgement could potentially constitute a lack of courtesy, [. . .] the nature and importance of this part of the complaint does not justify an inquiry."

CM-8-87-19 (examination)

#### Systematic tardiness in court hearings

The hearings usually start late at the Municipal Court of . . ., with the aim of encouraging parties to reach a settlement and shortening the duration of the hearings. This practice causes an unexplained and unjustified wait for litigants and constitutes a lack of courtesy. However, the nature and importance of the complaint did not justify an inquiry.

CM-8-88-18 (examination)

### 8.2.2.3 Unfounded complaints

#### Priority given to brief cases

The judge wanted to hear a motion to claim fees first so the notary involved wouldn't waste too much time. This privilege could potentially constitute an infringement of his duty to act in a courteous manner. On the other hand, it is common practice for judges to hear not only professionals but also all parties whose cases are brief first. This practice merely shows a certain courtesy toward these parties while penalizing only very slightly parties whose cases are longer. Section 8 was not infringed.

CM-8-87-15 (examination)

#### Ejection from the courtroom for lack of discipline

> "It is certainly not a breach of judicial ethics to eject someone from the courtroom because they are undisciplined."
>
> CM-8-91-4 (examination)

"While the judge was delivering his ruling the complainant, according to the judge, interrupted him twice and started smiling in a mocking way. He had the complainant removed from the courtroom to avoid further inappropriate actions and be able to deliver his ruling in a serene atmosphere. No ethical breach was deemed to have been committed by the judge.

2007 CMQC 91 (examination)

The plaintiff created the conditions that led to his ejection from the courtroom himself, by failing to comply with the judge's decision.

CM-8-93-34 (examination)

### Expulsion of attorneys to facilitate the conduct of the proceedings

The judge firmly yet courteously expelled the lawyers who were disputing his decision to hear only those lawyers involved in the greatest number of cases. He was entitled to manage the pre-hearing conference of nearly 250 related charges efficiently and in compliance with everyone's rights.

"While it may have appeared a drastic move, given the specific circumstances of the case, his decision to expel the lawyers did not infringe the *Judicial Code of Ethics*."

2003 CMQC 12 (examination)

### Temporary removal of certain defendants from the courtroom

The judge, who was presiding over the pre-hearing conference of nearly 250 cases, excluded from the courtroom, which comprises about 20 seats, the defendants who were not represented, so as to fix the hearing dates with the lawyers present first. The defendants who were not represented were called at the end of the day. The Conseil felt it would have been better if the judge had explained the reasons for his decision, in order to reassure the defendants and spare them "the frustration of a long wait outside the courtroom without any explanation."

It concluded however that there was no ethical breach, since the judge's decision "did not jeopardize the defendants' rights" and "did not have the effect of threatening the integrity of the judicial process."

2003 CMQC 12 (examination)

SEE ALSO: INQUIRY, PAGE 69 AND SECTION 1, PAGE 124.

## 8.3 DUTY OF SERENITY

#### GENERAL PRINCIPLES

> The word "serenity" is defined "as the character of a calm person who is in control of his or her actions, thoughts and words."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 68, split decision

#### SCOPE OF APPLICATION

> In the courtroom, the judge must project an image of level-headedness and serenity.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

## 8.3.1 Remarks made while exercising judicial functions

### 8.3.1.1 Breaches of duty

#### Aggressive tone

The mention of the fact that the accused "was drinking away his welfare and tax money" could have been admissible if the judge had said it with serenity, without turning his comments into a diatribe and getting personally involved. However, the aggressiveness he openly showed constitutes a breach of Section 8 of the *Judicial Code of Ethics*. The judge was served a reprimand for this, and various other, breaches.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

#### Angry remarks

The judge directed angry remarks on a number of occasions to a group of social service workers (for example: "They'd never come to tell us that. They come in here grovelling [. . .]. It's so much easier to abuse children.")

These comments brought nothing to the case and "are simply not allowed." "Declaring the children's rights does not mean denying the rights of others, including social service professionals, to be treated with respect and justice." The Conseil served the judge a reprimand for her breach of Section 8 of the *Judicial Code of Ethics*.

Lapointe and Ruffo, CM-8-97-45(5), CM-8-97-47(6), CM-8-97-48(7), CM-8-97-50(8), CM-8-97-51(9), CM-8-97-54(11) (inquiry)

SEE ALSO: SECTION 5, PAGE 149.

#### Expression of frustration

Upon requesting from a lawyer the unabridged version of the cases the latter was citing, the judge lost patience, raised his voice and expressed his personal frustrations regarding his "status" as a judge of the Court of Québec: "the judges of the Court of Québec, we get small salaries"; "me, as just a little judge of the Court of Québec." The judge was reprimanded for his lack of serenity, among other things.

St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

#### Deliberate reprimand of a witness

> "At the Youth Division, the judge's role is larger than in any other court. This does not however diminish the judge's obligations of courtesy, respect and serenity."
>
> Dunn and Fauteux, CM-8-67 (Youth Division) (inquiry)

The judge deliberately used a tactic that consisted of berating the witness in an abrupt and harsh tone, describing his refusal as "murderous," so as to provoke a reaction that might bring him to give his consent for an operation on his son. By acting the way he did, the judge lacked "the most common courtesy," compromising "the serenity required for the conduct of a trial." The committee members, who were divided, recommended that the judge be served a reprimand by the Conseil de la magistrature.

Dunn and Fauteux, CM-8-67 (Youth Division) (inquiry)

#### 8.3.1.2 Insufficient seriousness of allegations

**Aggressive tone**

The judge used an often aggressive tone in talking with the parties. This led a minority of the inquiry committee members to the conclusion that he infringed Section 8 of the *Judicial Code of Ethics*.

The judge admitted that he had not behaved properly. After being made aware of the complaint, he sent the plaintiffs a letter of apology mentioning that his wife was on her deathbed at the time of the alleged facts, and that he promised to attend an intensive course on trial conduct offered by the Conseil de la magistrature du Québec.

Considering these particular circumstances, as well as the plaintiffs' request that their complaint be withdrawn, a majority of the committee members concluded that, despite the fact that the judge's conduct had been "open to criticism," the complaint was not founded.

Gallup *et al.* and Duchesne, CM-8-95-80 (Small Claims Division) (inquiry)

A judge who was interrupted while reading out his ruling made the following statement: "Sir, I'm the one speaking here, I'm not going to be interrupted, not by you, not by anyone. Ma'am, please call security or there's going to be a problem this evening. You're going to shut up when the judge is talking to you."

While "the judge's aggressive tone, and the fact that he called security in a circumstance that did not warrant it, showed a momentary loss of serenity," the nature and importance of the complaint were found not to justify an inquiry.

2012 CMQC 1 (examination), par. 7 and 12

8.3.1.3 Unfounded complaints

**Obvious firmness and authority**

> A calm demeanour, which is desirable on the part of a judge, "does not exclude firmness."
>
> 2002 CMQC 21 (examination), *obiter dicta,* quoting Procureur général du Québec v. B., 2004, a judgement in which the Court of Appeal analyzed statements by the inquiry judge

> "Expressing oneself with firmness or employing an authoritarian tone does not constitute, in itself, a behaviour indicating an absence of reserve, serenity, integrity or impartiality on the part of the judge."
>
> 2001 CMQC 76 (examination)

In a case where tempers were flaring between the parties and their respective counsel, the judge warned them that their behaviour was unacceptable and that they were not "in kindergarten." The judge had to act with a firm hand and establish his authority but "it is not contrary to judicial ethics to make justified remarks in a polite tone of voice."

2010 CMQC 35 (examination)

The judge's remarks to the effect that, in his view, the trial was going in circles, and it was unreasonable for the parties to fail to come to an agreement over the very small amounts of money at issue, were made in a firm but calm tone of voice.

2010 CMQC 6, par. 16 (examination)

On several occasions the judge interrupted the complainant to ask him to speak up, as he was wearing a hearing aid. The judge's tone may at times have betrayed a certain impatience, but never a lack of serenity or loss of control.

2010 CMQC 7 (examination)

**Desire to proceed immediately**

The complainant felt intimidated when the judge said, during the hearing, "Let's get this moving, I don't want to be here until six." The pleadings show that the complainant had ample opportunity to express herself on all the subjects she wished to discuss. The Conseil found the judge's tone, while firm, was not aggressive. The complaint was dismissed.

2008 CMQC 51 (examination)

**Opinion on a document submitted as evidence**

During his decision, the judge described a legal opinion submitted as evidence to establish the good faith of the accused as "an incentive to criminality." The lawyer

who had drafted this opinion alleged that the judge insinuated that he had "committed a criminal act."

The Conseil deemed that the judge had passed judgement on the document and on the way it had been used, but not on its author. He added that, despite this, the judge "could have chosen [. . .] to phrase his remarks in a different manner, less open to interpretation," while finding that the complaint was unfounded."

2004 CMQC 62 (examination)

### Calls to order

The judge made repeated comments on the complainant's behaviour (in a charge of criminal harassment). The complainant smiled and laughed during the alleged victim's testimony. The judge spoke sternly, ordering the complainant to change his attitude. "He seems to find it funny. I don't think he'll find it funny for long."

According to the Conseil "It is the judge's responsibility to maintain order throughout the adversarial proceedings," and that the judge's remarks had "created a vengeful atmosphere." The Conseil nevertheless concluded that the judge was performing the duties of his office in bringing the complainant to order.

Couvrette and Provost, 2007 CMQC 96 (2-4-2009) (inquiry)

### Enforcing rules of decorum

> "It is the judge's duty to ensure that certain minimum standards of dress are upheld in the courtroom, while considering the basic rights of citizens."
>
> 2009 CMQC 87, par. 20 (examination)

The judge refused to proceed in the case of the complainant, who was wearing a cap, after being instructed several times to remove it.

Faced with a party who was raising his voice, becoming arrogant, behaving impolitely and addressing him with the informal "*tu*," the judge ordered the party to leave the courtroom, after several warnings. The Conseil felt that the judge was justified in using a firm tone of voice to maintain decorum in the courtroom.

2007 CMQC 88 (examination)

The judge asked the complainant not to eat in the courtroom. The complainant claimed the judge's "haughty, authoritarian tone" prevented her from answering that she was simply putting a cough drop in her mouth.

After listening to a recording of the proceedings the Conseil ruled that the judge's tone was "calm" and that he had "always behaved with impartiality and objectivity toward the parties," noting that "the judge is ultimately responsible for keeping order

and decorum in the courtroom" and that "there is nothing abnormal about asking people not to eat in the courtroom." The Conseil deemed the complaint unfounded.

2005 CMQC 54 (examination)

### Clear denunciation of a defendant

> "When faced with certain situations like persons who are not telling the truth or who have committed inadmissible offences [. . .] judges may show reactions of disapproval. Judges are not made of stone, after all. We cannot expect judges to remain impassive and smiling at all times. They may, and often must, adopt a denunciatory attitude when they observe things they cannot allow."

CM-8-94-81 (examination)

> "[A] judge is certainly entitled to comment on an accused's attitude at the time he committed the offence he is being charged with."

Talbot and Bilodeau, CM-8-87-10 (inquiry)

> "While it may not be pleasant to be reminded by a judge that one has a criminal record, this cannot be considered as an insult."

CM-8-95, CM-8-87-1 (examination)

Based on the conclusions he drew from the evidence, the judge defined the defendant's personality as "controlling and manipulative." He consequently considered the factors relevant to fixing the sentence, showing "calm, level-headedness and clarity." The complaint was deemed unfounded.

2003 CMQC 10 (examination)

## 8.3.2 Conduct while exercising judicial functions

### 8.3.2.1 Breaches of duty

### Marked gestures of impatience

> The judge must always avoid exhibiting gestures of impatience.

Bernard and Long, CM-8-76 (Small Claims Division) (inquiry), *obiter dicta*

On several occasions at the beginning of the hearing, the judge showed impatience, raising his voice and accusing the plaintiff's attorney of being in bad faith. This attorney had subsequently to work in a more strained atmosphere because of the judge's interventions.

Given this lack of serenity, the Conseil was of the opinion that the judge should have altered the tone of his interventions. However, considering the fact that the rest of the debate went off in a very calm atmosphere, since the judge then "showed greater reserve in his interventions," it concluded that the nature and importance of the complaint did not justify an inquiry.

2002 CMQC 21 (examination)

SEE ALSO: SECTION 5, PAGE 179.

The plaintiff reproached the judge for his impatient attitude, including his cavalier and vulgar tone and his rough manners. Some of his remarks, which the examiner qualified as "astonishing," led the latter to recommend an inquiry (for example: "it is very clear for intelligent people"; "it takes you a lot of time to say one sentence"). However by then (1988), the inquiry committee could not decide on the ethical nature of the judge's conduct because he had since retired.

CM-8-87-14 (examination)

AUTHORS' NOTE:

On the situation of judges retiring while facing a complaint, see Appendix 5 of this document, Pierre Noreau's *Jurisdiction in Judicial Ethics. Actions available to the Conseil de la magistrature when a judge against whom a complaint is pending retires, resigns or dies. Working document submitted to the Conseil de la magistrature du Québec, April 20, 2008.*

Given the high volume of files the judge was dealing with, it is understandable that he should have moments of impatience. However, whether he was motivated by a legitimate desire or by the feeling of having to promptly execute work entrusted to him by the court, a desire to be efficient is not a valid excuse for a demonstrable lack of serenity. According to the inquiry committee, in his own interest and in the interest of justice, he should have informed his superiors of the situation in the courtroom. For failing to do so, along with other breaches, the judge was reprimanded.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### Abrupt or sharp tone

> "In some cases, raising the voice may also reveal a lack of serenity, a sign of impatience or the loss of control of a situation."

Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 71, split decision

A person cannot be blamed for having a loud voice or vigorous intonation. However the contrast between the judge's abrupt tone heard on the recording of the hearing referred to in the complaint and the tone used during his testimony before the

committee was flagrant, leading it to conclude he had shown a lack of serenity. The judge was served a reprimand for this, and a number of other, breaches.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### 8.3.2.2 Insufficient seriousness of allegations

#### Tolerance towards an exuberant party

The fact that the judge did not intervene with one of the parties, whose behaviour was totally lacking in seriousness and decorum, created an atmosphere that was obviously lacking serenity. This trial occurred in a rural area where, by force of circumstance, judicial cases are often dealt with in a less formal manner. The examination report emphasized the need in such situations to be doubly prudent, to avoid any laxity. Despite the fact that it was founded, the nature and importance of the complaint did not justify an inquiry.

CM-8-85-6 (examination)

#### Reactions of impatience triggered by the plaintiff's attitude

> "Faced with certain situations, judges may show reactions of impatience.
>
> "Judges are not made of stone. We cannot expect judges to remain impassive, silent and smiling at all times."
>
> 2000 CMQC 41 (examination)

The judge expressed his impatience on several occasions during the trial. Considering the plaintiff's attempts to evade the Attorney General's questions, and the irrelevant nature of the explanations he provided, the Conseil concluded that the nature and importance of the complaint did not justify an inquiry.

2002 CMQC 11 (examination)

Given the insistent and irrelevant way the applicant was behaving, the judge was "fully justified to intervene, even with severity." Although the judge used certain inappropriate words, the Conseil considered that the nature and importance of the complaint did not justify an inquiry.

2000 CMQC 41 (examination)

SEE ALSO: SECTION 2, PAGE 140.

**Disorganized atmosphere owing to the parties**

While the testimony of the attorneys of the various parties may have been at odds on many points, it was possible to determine that the proceedings were "disorganized and poorly managed" and the atmosphere "heated." The judge apparently instructed the attorney of the third party to shut up, and said that "you are familiar with the *audi alteram partem* rule, and if you aren't happy go ahead and appeal." The complainants felt the judge's tone "was in keeping with his words."

The Conseil concluded that "it was possible [. . .] that the judge had, in a climate that had deteriorated owing to the behaviour of the parties, including the complainant, neglected to fullfil the duty of serenity as befits a magistrate," but found nevertheless that the nature and importance of the complaint did not justify an inquiry."

2005 CMQC 72 (examination)

### 8.3.2.3 Unfounded complaints

**Obvious firmness and authority**

> The fact that the judge raised his voice is not a breach of judicial ethics as long as the judge does not overstep "the limits of exercising the authority necessary to manage the courtroom and obtain precise, satisfactory statements from the witnesses."

2010 CMQC 6, par. 19 (examination)

> "Expressing oneself with firmness or using an authoritarian tone does not constitute, in itself, a behaviour indicating an absence of reserve, serenity, integrity or impartiality on the part of the judge."

2001 CMQC 76 (examination)

> A judge's firmness is often misunderstood, since the parties are likely to interpret it as an expression of impatience or arrogance.

CM-8-93-61 (examination)

SEE ALSO:

CM-8-98-61 (examination)

> The duty to act in a reserved, courteous and serene manner as stipulated in Section 8 of the *Judicial Code of Ethics* must be interpreted in relation with Section 6 of the *Judicial Code of Ethics,* which requires judges to perform the duties of their office diligently.
>
> Therefore the judge must preside over judicial debates with firmness. He or she does not have to tolerate futile discussions that needlessly delay the Court's work.

CM-8-88-20 (examination)

SEE ALSO: SECTION 6, PAGE 198.

The judge was accused of asking specific questions of the complainant and then replying abruptly that her answers were not important. When the complainant tried to explain why the copy of her bill was illegible, the judge cut her off: "You are not letting me finish my question before you start answering, and then you give me a whole bunch of information I never asked for."

The Conseil acknowledged that by giving the witness leave to speak, and then retracting it, the judge may have appeared to be acting too firmly, to be impatient, and to be lacking in listening skills or courtesy, all of which could be perceived badly. The study of the case, however, did not reveal any breach of judicial ethics. The conduct of the trial is the judge's responsibility, and in this case the judge merely kept control of the proceedings.

2010 CMQC 4 (examination)

"[D]uring the hearing, using his deep voice, the judge adopted a firm and sometimes bossy tone. He did so sporadically, with both the prosecution and the defence. At no point, however, was he disrespectful to the parties."

2010 CMQC 7, par. 17 (examination)

The complainant accused the judge of being impolite and aggressive when the judge intervened firmly, on several occasions, to remind him that the evidence he was bringing forward could not be considered by the court. "The tone of the judge was at times direct and firm" but "his words did not demonstrate a lack of serenity or loss of control."

2010 CMQC 71 (examination)

During the call of the roll, the judge addressed the plaintiff in an authoritarian tone that may have seemed off-putting. "While it would have been preferable that Mister Justice [. . .] adjust the tone of his voice when speaking to the plaintiff, who was not familiar with the process, this does not constitute an ethical breach per se."

2002 CMQC 54 (examination)

In keeping with his character, the tone the judge used was incisive and insistent but neither angry nor aggressive.

CM-8-95-51 (examination)

Despite the reproaches regarding the judge's curtness, aggressiveness and lack of respect, the evidence showed that he simply spoke firmly, using the same authoritarian tone with all the witnesses.

CM-8-95-58 (examination)

When it is the judge's natural demeanour, a firm and sometimes curt tone does not constitute a breach of Section 8 of the Judicial Code of Ethics.

CM-8-87-14 (examination)

### Uncooperative party

The fact that the judge raised his voice after having to repeat the same instruction several times is not reason to find an ethical breach, since the judge was patient and respectful throughout the proceedings.

2008 CMQC 79 (examination)

Given the plaintiff's insistence on ignoring the judge's orders, his tone and the firmness of his remarks were justified and necessary.

CM-8-96-3 (examination)

The evidence showed that the judge's remarks, which he had to repeat many times, merely expressed his observation of the plaintiff's unreasonable persistence in introducing elements that were irrelevant to his case.

CM-8-88-20 (examination)

The judge addressed the plaintiff in a firm yet polite tone. He often used the term "procedural wrangling" in relation to the plaintiff in an attempt to make him understand that it would be in the interest of his children to cease his proceedings. In this highly emotional case, the judge interpreted his role in the Youth Court as being the protector of children whose parents aren't necessarily acting in their best interest. He cannot be blamed for his attitude.

CM-8-88-3 (examination)

### Managing the proceedings and calls to order

> "Just because a judge becomes more authoritative in the way he intervenes does not necessarily mean he or she is rushed, impolite or impatient."
>
> 2010 CMQC 96, par. 25 (examination)

"The complainant had no experience of the rules of court, and the judge brought her back to order, not yelling but using a firm tone of voice. She seemed to neither understand nor appreciate this." Though she felt humiliated no ethical breach was found.

2011 CMQC 6 (examination)

"After being interrupted more than five times while delivering her judgement, the judge finally raised her voice and warned the complainant that she might have to resort to calling in an officer of the peace." The Conseil found that the judge had not committed an ethical breach.

2009 CMQC 10, par. 13 (examination)

The complainant claimed the judge was aggressive toward her. The audio recording of the proceedings revealed that the judge did no more than inform her, in a firm but polite tone, of the rules that govern witness testimony in court, when she attempted to interrupt her husband's testimony. The Conseil found that no ethical breach had been committed.

2008 CMQC 64 (examination)

The complainants alleged that the judge had been impolite toward them on several occasions. The audio recording revealed that the judge had to explain to the complainants that for the court to run smoothly everyone had to be given the opportunity to speak without being constantly interrupted. In this context, the judge said to one of the complainants that he was going to"tape your mouth shut."

The Conseil found that the judge had not been impolite and had "conducted the proceedings with objectivity and serenity." The complaint was not deemed founded.

2006 CMQC 78 (examination)

Although the Conseil found "somewhat cavalier" the manner in which the judge told the plaintiff that the case was over and that he had to leave the courtroom, it concluded that this was not "akin to a breach of the *Judicial Code of Ethics*."

CM-8-98-28 (examination)

"It is true [. . .] that the judge intervened with firmness when the parties were arguing with each other instead of speaking to him. Still, he told them calmly but in a firm tone not to proceed in this direction, that he would ask the questions himself and that the parties should address him instead. His tone remained calm and acceptable." No breach was deemed to have been committed.

2001 CMQC 82 (examination)

The judge "certainly presided over the debates with authority, but it is his role and that is what the law requires him to do."

CM-8-90-54 (examination)

### Loss of control of the hearing

> "The fact that a judge loses control of a trial does not constitute an ethical breach in itself."
>
> Bettan and Dumais, 2000 CMQC 55 (Small Claims Division) (inquiry), par. 53

CODE OF ETHICS

# 9 The judge should submit to the administrative directives of his chief judge, within the performance of his duties

> "[I]n the absence of specific instructions, a judge cannot be blamed for failing to comply with his or her chief judge's directives."
>
> CM-8-88-37 (examination)

## 9.1 UNFOUNDED COMPLAINTS

### Case management and work organization

Speaking to the Conseil, a judge alleged that he was overloaded with work after a new procedure for managing cases was implemented. He complained about "judges (A) and (B), who were in a management position [. . .]." We have to remember that "the new procedure had been endorsed by the Service de la recherche of the Court of Québec and these judges were acting in good faith to fullfil their responsibilities."

The Conseil stressed that the complainant's colleagues seemed to be able to handle their work, and took advantage of the occasion to remind the judge that the function of managing judges is to "take any means necessary to make the best use of the resources of the judiciary in the interest of all citizens using the justice system," while ensuring "a fair distribution of work among colleagues."

The Conseil found that there was no ethical breach.

2005 CMQC 12 (examination)

SEE ALSO: SECTION 10, PAGE 257 AND ABSENCE OF ETHICAL BREACH, PAGE 291.

### Directives and judge discretion

Since the chief judge's directives grant discretion to the judge on duty, it is inconceivable that the latter may infringe them in using his or her discretion.

Bernheim and Pigeon, CM-8-80 (inquiry)

### Judicial and administrative orders

Following the order for recusation of the respondent judge issued by the Honourable Chief Judge, the judge refused to decline his jurisdiction over the case before the time limit for appeal was expired. This order of a judicial nature was indeed open to appeal and did not constitute an administrative directive according to Section 9 of the *Judicial Code of Ethics*.

CM-8-89-28 (examination)

CODE OF ETHICS

# 10 The judge should uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society

## 10.1 INTEGRITY OF THE JUDICIARY

### GENERAL PRINCIPLES

> "For judges, then, ensuring the freedom of expression to which every citizen is entitled requires that they make concessions to and weigh this right against the constitutional protections of the independence of the judiciary and the institutional protection of the judiciary as a whole. This hinges on the fact that the integrity of the judiciary comprises these two values, which may occasionally come into conflict."

Ruffo (Re), 2001 CMQC 84, 2005 QCCA 1197, par. 56, referring to the Supreme Court in Moreau-Bérubé v. Nouveau Brunswick/New Brunswick (Conseil de la magistrature), 2002 CSC 11 v. New-Brunswick (Conseil de la magistrature), 2002, par. 46, 58 and 59

### SCOPE OF APPLICATION

> "A judge who exerts pressure on the government jeopardizes the integrity of the judiciary, because in so doing he or she crosses the line between the judicial and political spheres."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 321

### 10.1.1 Remarks made while exercising judicial functions

#### 10.1.1.1 Breaches of duty

**Tarnishing the image of the judiciary**

The complainant is counsel for a person accused of the sexual assault of a minor. The judge criticized the complainant's behaviour in several passages of his written decision, which he read out loud when pronouncing the verdict: "repeated, aggressive assaults," "essentially, a battered child," "undermining, basically destroying the child." He added that he had to intervene to keep the lawyer from "yelling at the child." These criticisms were picked up in the media and had significant repercussions on the complainant's reputation.

The Conseil found that the judge's behaviour had the effect of "showing the justice system in a bad light": the judge's comments were not justified or supported by the facts. They sent a negative message to the defence attorneys and created confusion with the public as to the true reasons why the defendant had been found guilty by the judge. For these reasons, the judge was reprimanded.

Corriveau and Dionne, 2007 CMQC 7 (6-18-2008) (inquiry)

### Disparaging comments towards another judge

The committee considered "improper and inadmissible" the judge's comment in which he "accused one of his colleagues of being incompetent. Even if this remark had been said with humour, which was not the case, it would have been uncalled-for at the very least."

In another case, the judge also made a "disgraceful and improper remark about a judge in another jurisdiction. These flagrant breaches of the most rudimentary ethics have the potential to considerably undermine the image of justice."

He was served a reprimand.

Poupart and Chaloux, CM-8-61 (Court of the Sessions of the Peace) (inquiry)

### Expression of indifference to the problem of conjugal violence

The judge's remarks upon releasing an accused ("[. . .] if Mr. X ever murders Ms. X, I won't lose any sleep over it [. . .]") "discredited the judiciary and the judicial system as a whole." The judge subsequently expressed his "deepest" regrets to his colleagues of the judiciary for having "embarrassed them and put them in an awkward situation." He was served a reprimand for his breach of Section 10 of the *Judicial Code of Ethics*.

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO: SECTION 3, PAGE 150 AND HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 269.

### Sexist remarks followed by a public apology

The judge's remark to the effect that "rules, like women, are made to be violated," was "likely to tarnish the image of justice and to lead litigants to believe that some judges have prejudices that could taint the impartiality of their decisions."

Despite the public apologies made by the judge, he was served a serious reprimand.

Québec Minister of Justice and Dionne, CM-8-89-35 (inquiry)

SEE ALSO: SIMULTANEOUS BREACHES OF SECTIONS 2 AND 8, PAGE 231, AND SANCTIONS, PAGE 95.

### Remarks suggesting sexist prejudices

In a number of cases where men were in court following complaints lodged by women, the judge made sarcastic and derisive remarks towards the accuseds, ridiculing them in his judgements and condemning them even in cases where, according to the Court of Appeal, "a judge acting judicially when appraising the evidence would have concluded that there was a reasonable doubt regarding [their] guilt."

The judge acknowledged his wrongdoing and regretted that his remarks may "have been interpreted by some as reflecting a discriminatory prejudice on his part towards men," but he denied having such a prejudice. The committee concluded that the complaint was founded under Section 10 of the *Judicial Code of Ethics,* among others, and recommended that the judge be served a reprimand.

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry)

SEE ALSO: REPRIMAND AND REMOVAL, PAGE 98, SECTION 5, PAGE 175 AND SECTION 5, PAGE 194.

## 10.1.1.2 Insufficient seriousness of allegations

### Remarks suggesting a professional prejudice

Commenting on the work of a notary which he considered incomplete, the judge made the following comments: "Notaries like to boast, 'We help people come to an agreement. We're not like lawyers who like to make people disagree. We like to help people find a middle ground, help them solve their problems.'" While the Conseil found it imprudent for the judge to make such "disparaging and inappropriate" comments, the nature and importance of the complaint were deemed insufficient to justify an inquiry.

2010 CMQC 44 (examination)

### Threat of reprisals in a situation of recusation

The judge gave the attorney to understand that "in the old days," an application for his recusation could have resulted in reprisals on the part of the other judges. Since this remark could have been interpreted as a threat, it infringed Section 10 by casting doubt on the integrity of the judiciary.

Although various aspects of the complaint were deemed founded, the Conseil considered however that its nature and importance did not justify an inquiry, mainly because the judge's tone was calm and non-aggressive.

CM-8-89-28 (examination)

SEE ALSO: HUMOUR, THREATS, DISCRIMINATION AND DISRESPECT, PAGE 266.

#### 10.1.1.3 Unfounded complaints

**Slanderous remarks**

The slanderous remarks made by the judge about Québec's trade unions, which infringed Section 8 of the *Judicial Code of Ethics,* constitute a personal opinion. They in no way bind the judiciary, and "cannot be interpreted as being representative of the judiciary's opinion regarding unions."

Therefore these remarks do not throw into doubt the integrity and independence of the judiciary.

FTQ and Dionne, CM-8-89-2 (inquiry)

SEE ALSO: SECTION 8, PAGE 212.

### 10.1.2 Conduct while exercising judicial functions

#### 10.1.2.1 Breaches of duty

**Tax fraud and complaints about judges' working conditions**

A part-time municipal judge "filled his tax return with false information in order to claim credits he was not entitled to," claiming expenses that he did not, in fact, incur. When municipal officials refused to approve the returns, he contacted them and complained about the fact that once he had reached the remuneration threshold, he continued to preside over additional hearings without pay, while securing significant settlements for the City.

The Conseil felt the judge "brushed the matter off" and behaved "shamelessly" and "complacently," and that his statements "cast the judge's function in a sordid light." The Conseil felt his conduct called into question "the very integrity of the judge and, through him, the judiciary as a whole" and was liable to produce "a loss of trust toward this judge or [. . .] the entire judiciary." In addition, "if the judge had not already retired [. . .] the committee would have recommended to the Conseil that it begin the removal process."

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

**Advice given to a party while the microphones were off**

After he had ordered that the recording be stopped, and in the absence of the accused, the judge, who was convinced the accused would not present a defence, referred the Crown attorney to a judgement dealing with the sentence.

The committee considered that "although it is understandable that the judge may have been exasperated by the accused's behaviour, he could not be convinced that the latter would not present any defence." In fact the accused had intended to inform the judge of his intentions in the afternoon.

The committee concluded that in acting the way he did, the judge had breached "his duty to uphold the integrity of the judiciary, which could potentially undermine public trust in the judicial function and institution." It unanimously recommended the Conseil serve the judge a reprimand to sanction his conduct.

Bégin and Garneau, 2001 CMQC 23, 2001 CMQC 15, 2001 CMQC 18 (inquiry)

SEE ALSO: REPRIMAND AND DISCRIMINATION, PAGE 103 AND SECTION 5, PAGE 167.

### Modification of conclusions in the minutes

Two months after leading the persons present at the hearing to believe that he had rendered a judgement on the bench, the judge changed the conclusions recorded in the minutes by the court clerk.

The committee considered that this conduct had cast a serious doubt on the integrity of the judicial system and unanimously recommended that the judge be served a severe reprimand for his breach of sections 1, 2 and 10 of the *Judicial Code of Ethics*.

Bergeron and Pagé, 2000 CMQC 48 (Small Claims Division) (inquiry)

SEE ALSO: INQUIRY, PAGE 63, SECTION 1, PAGE 119 AND SECTION 2, PAGE 132.

## 10.1.2.2 | Unfounded complaints

### Failure to recuse

> A judge who has previously served as counsel for one of the parties may recuse him or herself as required by Section 234 (3) of the *Code of Civil Procedure*.
>
> However, although "the recusal procedure is designed to protect the integrity of the administration of justice," it is not automatic. The precise circumstances of each situation must be taken into account.
>
> 2006 CMQC 15 (examination)
>
> AUTHORS' NOTE:
>
> In this case the Conseil did make express reference to integrity, but in doing so its decision was informed primarily by Section 5 of the *Judicial Code of Ethics,* and specifically the duty of impartiality.

SEE ALSO: SECTION 5, PAGE 168.

## 10.1.3 Remarks made in public

### 10.1.3.1 Breaches of duty

**Avowed intent to continue handing down rulings regardless of their legality**

> "Justice Ruffo also damaged the integrity of the judiciary and breached her duty of impartiality when she repeatedly and unabashedly commented publicly, while the inquiry committee was making its decision [. . .] on her intention to continue handing down the only rulings she deemed acceptable, without regard for their legality, because in her words she refused "any compromise" because "you don't negotiate with children's rights."
>
> Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 322

SEE ALSO: SECTION 4, PAGE 156.

## 10.1.4 Conduct in public

### 10.1.4.1 Breaches of duty

**Misconduct prior to appointment**

> "The past misconduct of a person prior to their appointment to the bench may have an effect on their independence as a judge as well as on the integrity of the judicial system."
>
> Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

Justice Therrien knowingly failed to disclose his past record during his interview with the selection committee on the basis that he had received a pardon. The majority of the inquiry committee members concluded that neither this pardon nor the protections against discrimination entitled him to hide his past record.

"It was [. . .] of the utmost importance that the candidate act with the greatest transparency and answer in the affirmative to the questions asked about this matter in order to properly enlighten the selection committee and to provide it with the information essential to helping it make a decision with full knowledge of the facts."

His conduct undermined the public's trust in him and, by extension, in the whole of our judicial system, which is based on the truth and credibility of testimonies. Because of the seriousness and continuity of his offence, the majority of the committee members recommended his removal.

Québec Minister of Justice and Therrien, CM-8-96-39 (inquiry)

SEE ALSO:

Therrien (Re), CM-8-96-39, [1998] RJQ 2956 (CA)
Disciplinary jurisdiction of the Conseil, page 28 and Sanction, page 101

### Impaired driving offence

> In addition to constituting a lack of reserve, the offence of operating a motor vehicle with a blood alcohol level exceeding the limit permitted by law undermines the integrity of the judiciary.

Descôteaux and Duguay, CM-8-97-30, CM-8-97-34 (inquiry)

SEE ALSO: SECTION 4, PAGE 158 AND SECTION 8, PAGE 218.

### Public appearance accompanied by one of the parties

In accepting an invitation to lunch from the attorney of one of the parties involved in a case receiving a lot of media attention and of which he had been seized that very morning, the judge "breached [. . .] his duty to uphold the integrity of the judiciary and undermined the public's trust in this institution."

The judge was reprimanded.

Doucet and Sauvé, 2000 CMQC 40 (Municipal Court, part time) (inquiry)

SEE ALSO: SECTION 5, PAGE 191 AND SECTION 8, PAGE 219.

### Non-credible testimony of an accused judge

> Judges who testify in court "must, there as well, uphold the integrity and defend the independence of the judiciary in the best interest of justice and society."

Paré and Fortin, 1999 CMQC 56 (inquiry), par. 68

When it was inquiring into the fact that the judge had been found guilty of the impaired driving offence, the committee noticed that the judgement made six separate references to the judge's lack of credibility in his explanations. The committee also noted that the judge was still refusing his conviction, despite the fact that it had been upheld by the Court of Appeal.

Faced with this situation, the committee concluded "that the judge had breached his ethical duties, and more specifically his duty to uphold the integrity and defend the independence of the judiciary in the best interest of justice and society."

It recommended that the Conseil take the necessary steps to remove the judge from his office.

Paré and Fortin, 1999 CMQC 56 (inquiry)

SEE ALSO: REPRIMAND AND DISCRIMINATION, PAGE 91 AND SECTION 2, PAGE 147.

10.1.4.2 | Unfounded complaints

**Using the status of judge**

The judge named in the complaint is both a part-time judge and a practicing lawyer. The judge communicated with the complainant, the opposing party in a case on which he was working as a lawyer, using the Court's phone line. The committee deemed this an exceptional circumstance: there was an urgent deadline to be met and the judge had forgotten his cellphone in the car. The complainant's confusion was caused involuntarily and accidentally, by an isolated incident. What is more, the judge clarified the situation during their next communication.

Saba and Alary, 2008 CMQC 43 (inquiry)

## 10.2 INDEPENDENCE OF THE JUDICIARY

### GENERAL PRINCIPLES

> Judicial independence, which is "indispensable to the exercise of an impartial justice," provides the tribunals with protection against any outside interventions in the exercise of judicial power and upholds their freedom to act.

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), quoting *Ethical Principles for Judges*. Ottawa, ON: Canadian Judicial Council, 1998, p. 60

SEE ALSO:

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 52

> "The principle of the independence of judicial power is not a privilege granted to judges but a right that entitles litigants to be judged by an impartial tribunal."

G.R. and Lafond, CM-8-95-74 (inquiry)

SEE ALSO:

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry)

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry), quoting *Ethical Principles for Judges*. Ottawa, ON: Canadian Judicial Council, 1998, p. 8

CM-8-97-3, CM-8-97-41 (examination), quoting Québec Chief Judge P. A. Michaud, *L'administration de la justice and les tribunaux: quelques réflexions sur la perception du public, Institut canadien d'administration de la justice,* Montréal, Éditions Thémis, 1995, p. 32

Section 5, page 161 and Humour, threats, discrimination and disrespect, page 262

### SCOPE OF APPLICATION

> "In this sense, the main principles of the independence of the judiciary require that judges observe high standards of conduct and remain at a remove from any outside influence. The independence of the judiciary is not a free pass granting

judges the immunity to do or say as they please without discernment or moderation. The concept of the independence of the judiciary is the basis of judicial impartiality and a constitutional right of all citizens. It is not, then, a right that belongs, properly speaking, to judges. Only by observing very high standards of conduct can judges be in a position to maintain their own independence and earn the public's trust, a trust based on respect for judges' decisions."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 52, inspired by *Ethical Principles for Judges.* Ottawa, ON: Canadian Judicial Council, 1998

> "Judges' freedom of expression in their functions is an essential part of the independence of the judiciary. Judges must be free to render decisions without pressure or outside influences of any kind, and must also be perceived to do so."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 57

> The imperatives of administration as defined by the managing judges do not, in and of themselves, constitute a limit to the independence of the judiciary.

2005 CMQC 12 (examination)

SEE ALSO: SECTION 9, PAGE 247, AND ABSENCE OF ETHICAL BREACH, PAGE 291.

> The judge cannot behave as if the title of judge belongs exclusively to him or her.

He or she must be aware that the way they use it may have repercussions on judicial independence.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry)

## 10.2.1 Remarks made while exercising judicial functions

### 10.2.1.1 Unfounded complaints

#### Latitude of judges' remarks

> The judge's words "reflect his or her assessment of the facts and the evidence, an area in which there is a great deal of latitude. One cannot [. . .] impose a choice of words as that would undermine the principle of the independence of the judiciary. The Conseil cannot intervene in such a case.

2011 CMQC 25 (examination), par. 13

> "It is important to note that the judge, in his or her ruling or decision—commonly known as the judicial discourse—benefits from considerable latitude in the name of judicial independence. [. . .]
>
> A discourse or choice of wording cannot be imposed on a judge as this could be considered the basis of a uniform discourse that runs counter to the principle of judicial independence."
>
> 2004 CMQC 62 (examination)

## 10.2.2 Conduct while exercising judicial functions

### 10.2.2.1 Breaches of duty

#### Tax fraud and comments on the status of part-time municipal judge

A part-time municipal judge "filled his tax return with false information in order to claim credits he was not entitled to," claiming expenses that he did not, in fact, incur. He also compared himself to "a municipal employee and boasted of saving the City substantial sums." The Conseil felt these statements amounted to "brushing off" the matter and behaving "shamelessly" and "complacently" and "casting the judge's function in a sordid light."

The Conseil felt that "any well-informed member of the community could not help taking away a negative perception and a loss of trust toward this judge or [. . .] the entire judiciary."

Charest v. Alary, 2008 CMQC 87 (3-24-2010) (inquiry)

#### Real or apparent conflict of interest

> The fact that a judge places him or herself in a position of real, potential or apparent conflict of interest goes against the best interest of justice and society.
>
> R. v. Cloutier, [1999] RJQ 1533 (CQ)

The municipal judge, who wanted to defend a client in a case where charges were laid following a police investigation in the town over which he had penal and civil jurisdictions, opposed the motion for a declaration of incompetence against him for conflict of interest.

"In the eye of an informed observer, the dualistic situation of the judge involved would certainly affect, at least in appearance, this observer's confidence in criminal justice."

In persisting in his efforts, the judge infringed "the ethical rule municipal judges must comply with that says they must uphold the integrity and defend the independence of the judiciary, in the best interest of justice and society."

R. v. Cloutier, [1999] R.J.Q. 1533 (C.Q., Ch. Cr.)

SEE ALSO: SECTION 4, PAGE 154.

### 10.2.3 Remarks made in public

> "Protecting the institution of the judiciary and ensuring there are proper protections of judiciary independence does not require judges to forsake all sympathy or opinions. It rather means that the judge's discourse must not undermine public trust in the impartiality of the courts by instilling a reasonable fear that the judge will not be receptive to or able to make use of new points of view, by maintaining an open mind."

Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 59, referring to the Supreme Court in R. v. R.D.S., [1997] 3 SCR 484, par. 35

#### 10.2.3.1 Breaches of duty

**Publication of articles of a political nature**

The publication of an article signed by a judge, with the acknowledged intent of influencing the Québec referendum debate of 1980, caused a public controversy he chose to reply to by publishing a second article. He was reprimanded for compromising the judiciary's independence.

In the case of Judge Brière, CM-8-79-3, CM-8-13 (Provincial Court) (inquiry) (ruling rendered under Section 263 (c) of the *Courts of Justice Act*, since repealed)

AUTHORS' NOTE:

Regarding Section 263 (c) of the *Courts of Justice Act,* see also:

Chatel and St-Germain, CM-8-66 (Court of the Sessions of the Peace) (inquiry) CM-8 – 79-3, CM-8-13 (examination)

Section 8, page 212 and Section 8, page 216

## 10.2.4 Conduct in public

### 10.2.4.1 Breaches of duty

**Participation in an advertising message**

Without consulting with the chief judge or any other colleague first, the judge agreed to attest to the quality of Via Rail's train service and the comfort of its new trains in an advertising message. She was clearly identified as being a judge in the ad, and she did not make any attempt to protect the use of her image and statements during editing and broadcasting, relying entirely on Via Rail and TVA personnel.

The judge failed to consider the consequences her decision could have on the credibility of the judicial system, especially on the part of litigants who could be involved in proceedings against this company. "The fact that she refused the remuneration Via Rail offered her [. . .] is not a mitigating factor. She gains from her appearance, at the very least, a personal advantage since she was seen on television on several occasions, which is an important media that could enhance her reputation."

The judge was reprimanded for infringing Section 10 of the *Judicial Code of Ethics*.

Bouchard and Ruffo, 2001 CMQC 45 (inquiry), upheld in the Court of Appeal in Ruffo (Re), 2001 CMQC 84, [2006] RJQ 26 (CA), 2005 QCCA 1197, par. 395

SEE ALSO: SECTION 7, PAGE 209.

### 10.2.4.2 Unfounded complaints

**Attempting to secure an appointment as chief judge**

When a successor to the position of chief judge was being sought, a judge contacted a friend with political connections to express his interest in the position. In the absence of a more formal candidacy process, the judge's behaviour, "while it cannot be described as prudent, does not constitute an ethical breach." It has not been demonstrated that he did anything beyond express his interest. It is thus hard for the Conseil to conclude that this action could have had any influence in his subsequent appointment as associate chief judge."

2010 CMQC 55 (examination)

CODE OF ETHICS

# 11 Humour, threats, discrimination and disrespect

AUTHORS' NOTE:

A systematic study of the Conseil's decisions shows that certain behaviours are simultaneous breaches of the duties set out in sections 2 and/or 8 of the *Judicial Code of Ethics*. These situations involve humour, threats, discrimination or disrespect, and are discussed below.

The objective is to highlight behaviours considered breaches justifying a reprimand or other comment from the Conseil. We have therefore not included complaints deemed unfounded.

## 11.1 HUMOUR

### 11.1.1 Remarks made while exercising judicial functions

#### 11.1.1.1 Breaches of duty

**Remarks ridiculing a party**

The judge stated that his intent was not to ridicule the plaintiffs but he acknowledged that the following remarks he made to the nineteen-year-old man, who was contesting a ticket, were inappropriate:

"Ah! It's because we still have to hold your hand when you take a walk. Do you still wear diapers? You don't wear diapers anymore?"

The plaintiffs (the young man and his mother) felt humiliated by these remarks and the laughter they prompted in the courtroom. The judge stated that he had reacted like a "family man." "By adopting this attitude, he strayed from his mandate as a judge."

The moralizing nature of his remarks, coupled with the fact that he invoked his status as a father to lecture the defendant, increased the seriousness of the breach of

his duty to act in a serene manner provided for in Section 8 of the *Judicial Code of Ethics*. The judge was reprimanded.

Désaulnier *et al.* and Crête, 2002 CMQC 34 (inquiry)

SEE ALSO: SANCTION, PAGE 97 AND SECTION 5, PAGE 162.

**Sarcastic remarks**

In a case of a sexual assault charge, the Court of Appeal commented on certain excerpts from the judgement targeted by the complaint lodged with the Conseil, in which the judge referred to "seventh heaven," "Peru," "eternal orgasm" and "state of permanent euphoria." The Court noted that these remarks were regrettable because they gave "the impression that he was ridiculing the appellants' testimonies." The judge admitted that the words he chose to sum up the evidence "were not the best."

In another case, the judge made some sarcastic remarks during the testimony of an accused. In his verdict he even went as far as to say that this testimony had been given "in an idiotic way [. . .]." With these comments, he overstepped the boundaries of his appraisal of the witness' credibility.

The judge was reprimanded for these breaches of the *Judicial Code of Ethics*.

Association Lien Pères Enfants and Cartier, 2002 CMQC 68 (inquiry)

SEE ALSO: SANCTION. PAGE 98 AND SECTION, 5, PAGE 175.

### 11.1.1.2 Insufficient seriousness of allegations

**Sarcastic remarks**

At the beginning of the hearing the judge asked the complainant if there were any witnesses. He answered: "Just my wife [. . .]." The judge interrupted him with the following remarks: "When someone says that, 'just my wife'. . .You're lucky she's still talking to you. Just my wife, no big deal!"

The Conseil found these statements, which upset the complainant, to be inappropriate. However, they were not intended to be hurtful. The importance of the remarks did not justify an inquiry.

2010 CMQC 68 (examination)

**Inopportune jokes**

During an exchange with the complainant, who was asking whether it was acceptable to drink during the hearing, the judge answered that he "was not a fireman." Referring to the fact that the complainant would be leaving Quebec to go

to Nova Scotia, the judge intimated that this state of affairs didn't mean the complainant could do whatever he wanted in Quebec, and that his statement could be enough to have him imprisoned: the judge said "I'm going to have [you] put in chains in a few seconds."

The purport of the judge's joke, though not badly intended, "was taken very badly by the complainant, who felt humiliated" by the judge's remarks and general attitude. The Conseil described these remarks as inopportune, but did not feel their importance justified an inquiry.

CM-8-97-22 (examination)

## 11.1.2 Conduct while exercising judicial functions

### 11.1.2.1 Breaches of duty

#### Offensive gestures

The judge made offensive gestures towards the accused, including a hand movement around his ear, which is generally recognized as meaning that a person is mentally deficient. This behaviour, combined with the various remarks he made to the accused, showed a lack of dignity on the part of the judge, as well as a lack of reserve and courtesy towards the accused and his wife. The judge was reprimanded for this, and several other, breaches.

Dubé and Bilodeau, CM-8-88-26 (inquiry)

#### Uncalled-for humour

> "Each judge must decide whether he or she should venture into the risky area of judicial humour." While there is "no doubt that these kinds of remarks may, in some instances, help lighten the atmosphere," "the fact remains that such occasions are extremely rare."
>
> Beaudry and L'Écuyer, CM-8-97-14 (inquiry), obiter, quoting the Canadian Judicial Council, *Propos sur la conduite des juges,* Cowansville, Éditions Yvon Blais, 1991, pp. 86 and 87

The evidence showed that the judge was tying to make a joke, which fell somewhat flat. Referring to the scars on the accused's breasts, the judge said "I won't ask you to show them." He overstepped the boundaries of good taste with his joke. The numerous remarks he was accused of making, while seemingly banal and without consequence when considered in isolation, constitute a behaviour incompatible with the requirements of the judicial function.

When considered as a whole, the reproaches examined by the committee led it to the conclusion that the judge's conduct infringed the ethical rules provided for in sections 2 and 8 of the *Judicial Code of Ethics*.

Since then, the judge has improved his conduct. Though the committee concluded that the complaint was founded and that the judge had undermined the public's trust in him and the integrity, dignity and honour of the judiciary, it did not recommend any sanction because it believed that the judge's commitment was sincere and it was "reasonably convinced that there would not be any repeat offence." The Conseil decided however to reprimand the judge.

Beaudry and L'Écuyer, CM-8-97-14 (inquiry)

SEE ALSO INQUIRY, PAGE 59.

## 11.1.3 Conduct in public

### 11.1.3.1 Breaches of duty

#### Ribald parody of a morality trial

> Although "[t]he mere fact of a judge taking part in or playing a role in a parody is not necessarily reprehensible in itself," the judge must "at the very least make sure that his clothing, attitude, general behaviour and words remain within acceptable limits, beyond any possible criticism and controversy."
>
> St-Louis and Gagnon, 2003 CMQC 35 (inquiry), par. 87 and 95

SEE ALSO: SECTION 8, PAGE 218.

With the laudable aim of bringing the various professionals within the judicial system closer together, the judge agreed to play the role of a judge on the occasion of a party he had been invited to. The judge's performance, attitude and behaviour in this ribald parody of a "morality trial," as well as his words, qualified as "disgraceful" and "coarse" by the committee, were deemed inappropriate as regards the ethical duties provided for in sections 2 and 8 of the *Judicial Code of Ethics*.

The Conseil served him a reprimand for his conduct, which he himself acknowledged as being in bad taste.

St-Louis and Gagnon, 2003 CMQC 35 (inquiry)

## 11.2 THREATS

### 11.2.1 Remarks made while exercising judicial functions

#### 11.2.1.1 Breaches of duty

**Threats of detention**

During a hearing on assault charges the complainant answered sarcastically when the judge stated he did not believe the complainant's version of events. The judge made the following remarks: "You, you are either going to shut up or go to jail" [. . .] Your little sarcastic remarks. . . Get it?" The complainant answered in the negative. The judge replied as follows: "No. Go! To your cell! I don't let people like you talk to me that way." The exchange lasted 30 seconds. The speed of the judge's reaction (whereas he could have asked the complainant to leave the courtroom or found him in contempt of court), the informal tone, the seriousness of the consequences of his decision and the disproportion between the judge's conduct and the incident were found to constitute a breach of Section 2.

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267)

**Threats of legal proceedings made during the hearing**

The judge stated that he wanted to declare himself incompetent *ex officio* and that he was keeping "[h]is personal causes of action for violation of his integrity and the personal trouble" caused by an ethical complaint lodged against him.

The sole mention of the complaint—dismissed by the Conseil—the accused had lodged against him would not have justified an inquiry. But his threat, which was unjustified and of no importance to his decision, was also "inappropriate towards a litigant who was entitled to exercise her right."

The committee recommended the Conseil serve the judge a reprimand to sanction this breach of his duty to act in a reserved manner.

Couture *et al.* and Houle, 2002 CMQC 26 (inquiry)

SEE ALSO: SECTION 8, PAGE 219.

#### 11.2.1.2 Insufficient seriousness of allegations

**Threats of reprisal**

The judge likened the appeal, recusation and evocation proceedings initiated by a lawyer to attacks "behind his back," which would never be tolerated against a referee in sports. In acting this way, the judge failed to carry out his functions with dignity and honour and breached his duty to act in a reserved, courteous and serene manner.

The judge then gave the attorney to understand that "in the old days," an application for his recusation could have led to reprisals on the part of the other judges. Since this remark could have been interpreted as a threat, it infringed Section 2 (dignity and honour) and Section 8 (reserve, courtesy and serenity) of the *Judicial Code of Ethics*.

Although the complaint is founded under several sections of the Code, the Conseil considered however that its nature and importance did not justify an inquiry, mainly because the judge's tone was calm and non-aggressive.

CM-8-89-28 (examination)

SEE ALSO: SECTION 10, PAGE 251.

## 11.3 DISCRIMINATION

### 11.3.1 Remarks made while exercising judicial functions

#### 11.3.1.1 Breaches of duty

**Sexist remarks**

The judge's remark to the effect that "rules, like women, are made to be violated," in the exercise of his judicial functions in order to demonstrate the irrationality of an argument and express his impatience towards the attorney's insistence was unacceptable. The judge infringed his duty to perform the duties of his office with dignity and honour provided for in Section 2 of the *Judicial Code of Ethics,* as well as his duty to act in a reserved, courteous and serene manner provided for in Section 8 of the Code. The judge was served a severe reprimand.

Ministère de la Justice du Québec and Dionne, CM-8-89-35 (inquiry)

SEE ALSO: SANCTION, PAGE 100 AND SECTION 10, PAGE 251.

**Racist remarks**

The complainant appeared in court wearing shorts and a polo shirt. The judge made the following remarks: "No, but listen, this is too much. Believe me, I don't know what country you come from, but if I showed up in front of a judge in your country, how would I be received? [. . .] Would I be received at all or would I be thrown in jail? Who knows? [. . .] Anyway, I can tell you it's unacceptable, but I don't want to punish [. . .] penalize these two people here because you don't know how to act, so I'll hear you anyway."

The Conseil felt that "the language used by the judge was offensive, inappropriate and a breach of the decorum citizens appearing in court are entitled to expect. [. . .] In fact, these statements had an undercurrent of intolerance [. . .]."

The Conseil found that sections 2 and 8 of the *Judicial Code of Ethics* had been breached and reprimanded the judge.

El Masnaoui and Roy, 2011 CMQC 33 (inquiry), par. 5, 28 and 32

The judge's remarks unduly associating the crime of fraud, to which the accused pleaded guilty, and his foreign origins and status as a new Quebecer constitute a breach of sections 2 and 8 of the *Judicial Code of Ethics*. Although it is often difficult for a judge to endure the stress of a busy roll, the frequency and habitual nature of this situation do not excuse his demeaning and racist remarks. He was subsequently reprimanded.

Hadjem and Giroux, CM-8-95-27 (Justice of the Peace) (inquiry)

### 11.3.1.2 Insufficient seriousness of allegations

**Remarks on the legal skills of one of the parties**

Several times during the testimony of a complainant who had legal training in another country, the judge made remarks in an authoritarian tone: "If you have legal training, you should know that I cannot accept [hearsay]"; "I am astounded that you, a lawyer, would present things in this manner." These remarks, while "open to criticism," were not considered of a nature or importance to justify an inquiry.

2009 CMQC 38 (examination)

**Remarks implying a sexist attitude**

The Conseil "condemns these unacceptable remarks on the part of the judge whose principal mandate is to ensure the enforcement of laws in order to maintain social peace and the security of individuals," and which it feels imply a sexist attitude: "Anyway, Saturday morning, I had three appearances and all three were men accused

of having beaten women, so when there's a woman who gives her boyfriend a thrashing, it makes a nice change, it provides some comfort. Most of the time, it's men who beat up women."

The judge admitted that his remarks were inappropriate and insisted that they did not represent his thinking and that his intention was not in any way to condone violent behaviour. The plaintiff accepted his apologies. Although the complaint was founded, the Conseil considered that its nature and importance were mitigated by the judge's explanations and the plaintiff's reactions. Consequently no inquiry was opened.

2000 CMQC 10 (examination)

### 11.3.2 Conduct while exercising judicial functions

#### 11.3.2.1 Insufficient seriousness of allegations

**Seemingly reasonable accommodation**

The judge ordered in a firm and unequivocal manner that the plaintiff sit down during the hearing, despite her request to stand because of a physical handicap that made sitting painful for her. The evidence showed that

- this decision was taken after having inquired and assessed the plaintiff's condition and credibility;
- the judge attempted to "find an accommodation that seemed reasonable to her," by recessing the hearing to allow the personnel to find the plaintiff a suitable chair, even though she had told the judge that no chair was adapted to her needs, and by offering her a pillow that was in the judge's office.

Although the judge did not show much sensitivity to this person, the nature and importance of the complaint were not deemed sufficient to justify an inquiry.

2002 CMQC 59 (examination)

## 11.4 DISRESPECT

### 11.4.1 Remarks made while exercising judicial functions

#### 11.4.1.1 Breaches of duty

**Disparaging comments**

The judge, displeased that a party was representing herself and refusing mediation in a child protection case, showed bias by repeatedly interrupting the complainant and

showing frequent signs of impatience, creating a tense atmosphere in the courtroom. The Conseil noted that "The last 30 minutes of the hearing are filled with inappropriate remarks made by the judge at the complainant's expense, including some highly inappropriate jokes."

The judge's "signs of impatience, way of intervening in the debate, inappropriate and often sharp and needlessly hurtful remarks to the complainant" led the Conseil to conclude that there was an ethical breach of the duties of dignity, courtesy and serenity. A reprimand was served.

Ms. A. and Turgeon, 2011 CMQC 37 (inquiry), par. 54 and 55

The judge made disparaging remarks with reference to the pronunciation, proficiency in French and posture of one of the parties: "You know those muscles next to your mouth? They're called cheeks. You need to work them a bit. [. . .] Do you have a problem with your spine? [. . .] A lot of people do: it says a lot about them. [. . .] "That's basic French, Madam. If we have to start teaching French in the courtroom, we're in real trouble! [. . .] Dammit! Excuse me, we're speaking French here!"

The inquiry committee felt these comments breached the duties of integrity, dignity, honor, courtesy and serenity. It recommended a reprimand.

Michaud and De Michele, 2007 CMQC 97 (4-29-2009) (inquiry)

### Indifference to the problem of conjugal violence

After having released an accused, the judge explained to the people in the courtroom: "I'm making a point of telling everybody here that if Mr. X ever murders Ms. X, I won't lose any sleep over it, and don't worry, it won't kill me [. . .]. It's not my responsibility [. . .]."

Although his intent was to deliver a message regarding the responsibility of the Court, which "sometimes has the duty to acquit people who, in fact, are perhaps guilty and even potentially dangerous," the "deplorable manner" he used to try to explain this fact constituted a serious ethical breach. He was served a severe reprimand.

Québec Minister of Justice and Crochetière, CM-8-93-37 (inquiry)

SEE ALSO: SECTION 3, PAGE 150, SECTION 8, PAGE 212 AND SECTION 10, PAGE 249.

CODE OF ETHICS

# 12 Absence of ethical breach–situations related to the exercise of judicial power

## 12.1 CASE MANAGEMENT

> "The conduct of the hearing is the judge's prerogative."

2012 CMQC 21 (examination), par. 21

> "The judge is responsible for the conduct of the trial. He or she oversees the proceedings and intervenes when necessary to ensure everything runs smoothly."

2010 CMQC 4 (examination), par. 16

SEE ALSO: 2008 CMQC 62 (EXAMINATION)

> "The way the judge proceeded, ensuring time was used sensibly given the diligence with which the decision must be rendered and the nature of the matter under dispute, did not constitute an ethical breach."

2010 CMQC 62 (examination), par. 22

> "The judge is in charge of the proceedings, [. . .] and even if he had committed a legal error [. . .] it would not have been the Conseil's prerogative to intervene, as it has no higher jurisdiction in this matter."

2006 CMQC 31 (examination)

SEE ALSO:

CM-8-90-34 (examination)

"On this particular matter of the conduct of proceedings, judges exercise absolute power, and if they deem the evidence complete and satisfactory they can use their judicial discretion to decide to render a decision [. . .]. The Conseil cannot intervene in the exercise of this discretion."

2010 CMQC 26 (examination), par. 25

"Rejecting or accepting an application for revocation of judgement is at the judge's discretion, and cannot constitute an ethical breach."

2010 CMQC 32 (examination), par. 6

"The judge exercises the authority under the law to assess alleged motives and decide whether or not to issue a search warrant. [. . .] The Conseil cannot interfere with the exercise of the judge's discretion on such matters."

2009 CMQC 36, par. 12 (examination)

## 12.2 CONDUCT OF THE HEARING

> The judge is "the sole master in maintaining order in his or her court."

CM-8-91-17 (examination)

> "The judge must not be wary of taking measures to manage the proceedings. He or she must feel free to express an opinion, even a harsh one, when rendering a decision on a dispute.
>
> The judge's remarks during a trial are at his or her discretion. If a judge oversteps this discretion, his or her decisions can be overturned by higher courts, which have structures in place to limit the discretionary powers of judges."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 60–61 (inquiry)

> "The judge [. . .] has the inherent power to take the necessary measures to ensure that the proceedings unfold in an orderly manner."

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 68

### Reasonable accommodation and wearing a veil

> It is the judges' duty to provide a reasonable accommodation when a standard practice offends a litigant's religious beliefs. However they are entitled to assess the seriousness of this religious belief and the impact the accommodation will have on the order and activity of the Court. This notion of reasonable accommodation is understood as a flexible way (relaxing, arrangements or adaptations) to apply standard practices so as to allow this person to take part in legal proceedings in a harmonious fashion.

Québec Minister of Justice and Alary, CM-8-93-36 (inquiry)

The evidence showed that the plaintiff had previously appeared in Court to answer similar charges without wearing a veil. The images of the plaintiff recorded by the cameras in the store where she was charged with shoplifting also showed her unveiled. Under these circumstances the judge was entitled to enforce the rule of practice forbidding the wearing of a head covering in Court.

Québec Minister of Justice and Alary, CM-8-93-36 (inquiry)

### Threats to expel someone from Court as a way to maintain order

> A threat of ordering someone be expelled from the courtroom does not constitute an ethical breach in itself.
>
> The circumstances in which the incident occurred must demonstrate an abuse of power on the part of the judge.
>
> CM-8-85-4 (examination)

> Under sections 14, 15 and 46 of the *Code of Civil Procedure,* "[t]he judge presiding over a tribunal is vested with certain powers that enable him or her to maintain order and dignity in the Court."
>
> CM-8-83-5 (examination)

The complaint in relation to a threat of ordering the plaintiff to be removed from the courtroom was dismissed, since the evidence showed that the plaintiff behaved in such a way that the judge was not only justified in summoning him to keep quiet failing which he would be removed from Court, he could have even cited him for contempt of court.

CM-8-83-5 (examination)

### Threat of imprisonment for contempt of court

"At the end of the hearing, the judge informed the plaintiff, who kept on repeating that the trial was a parody of justice, that if he kept up his attitude, he would be cited for contempt of court. The judge also warned him that he would be detained if he crossed the bar." These warnings were given in a calm and respectful manner and do not reveal any ethical breach.

2000 CMQC 9 (examination)

The judge threatened to imprison the plaintiff as she was forcefully protesting the judgement rendered and crying. "[A] judge is entitled to use the contempt of court procedure when a party disturbs the order in his or her court."

Talbot and Bilodeau, CM-8-87-10 (inquiry)

SEE ALSO:

CM-8-94-81 (examination)
CM-8-93-34 (examination)
CM-8-85-6 (examination)

## 12.3 PROCEDURE

> "The judge can cut the proceedings short when he or she feels that all the necessary elements to make a decision are present. [. . .] It must be remembered that the judge is the master of procedures related to the conduct of the trial."

2009 CMQC 7 (examination)

> "The *Code of Civil Procedure* (specifically sections 973 and 976), gives the judge considerable latitude regarding the procedure he or she deems most appropriate. The committee does not have the jurisdiction to review this aspect of the issue."

CM-8-60, CM-8-84-1 (examination)

### Reminder of the rule of proportionality

It is not unethical to point out to the parties that a case is growing out of proportion to the matter under dispute, and that it would have been preferable to settle out of court.

2010 CMQC 6, par. 20 (examination)

### Correcting a judgement

The complainants contended that the judge was unfit to exercise his functions since he had corrected his judgement after delivering it. The Conseil deemed the complaint unfounded, as the *Code of Civil Procedure* provides for the correction of judgements.

2008 CMQC 30 (examination)

### Choice of the language of the trial and need for an interpreter

> The judge's decision regarding the intervention of a translator or an interpreter during the hearings of a trial "is a decision of a judicial nature that is not subject to the ethical jurisdiction of the Conseil de la magistrature."

CM-8-90-55 (examination)

SEE ALSO:

2001 CMQC 87 (examination)
CM-8-83-5 (examination)
1999 CMQC 1 (examination)

The plaintiffs reproached the judge for conducting part of the hearing in English, despite their lack of proficiency in this language, which the judge was aware of. Beyond the fact that our judicial system allows parties to use either French or English to express themselves in Court, the examination showed that the judge had made sure that no allegations that could be potentially prejudicial to a party remain unanswered.

2002 CMQC 22 (examination)

SEE ALSO:

CM-8-87-5 (examination)

## Preliminary decisions

### Appointment of a counsel for a child

The judge refused to allow an attorney to be appointed to represent the child. The examination showed that the judge exercised discretion regarding this request, which had been made after the main evidence had been declared closed, taking into full consideration the interest of the child.

CM-8-88-12 (examination)

### Transfer to another district

> The transfer of a case to another judicial district "falls under [the judge's] jurisdiction and his or her judicial discretion."

1999 CMQC 66 (examination)

### Prolongation of a case

The judge declared that the case could not be examined on the merits that morning, since she could not find in it the answers to the questions she had asked. The application was prolonged according to Section 79 of the *Youth Protection Act*. The Conseil "cannot and should not intervene in the exercise of this judicial discretion."

2001 CMQC 8 (examination)

### Recusation

> "An application for recusation implies that the case is validly constituted and ready to be heard by a judge who is being recused for one of the reasons provided for in the *Code of Civil Procedure*."
>
> In questioning the existence of a case, which is a relevant question that precedes any other, the judge "simply presides over the trial using his or her judicial discretion and power to establish the law."

2001 CMQC 64 (examination)

### Joinder of causes of action

During the pre-hearing conference of nearly 250 related charges, the judge decided to join a limited number of cases for the trial. "[T]his is a judicial decision whose aim is to manage the trials efficiently and to allow a fast and fair trial. The Conseil has no power to judge this decision."

2003 CMQC 12 (examination)

### Decision to grant standing to a party

> "In the case at hand, Justice DuBois was under the belief that the Commission was a party to the proceedings, and treated it as such. [. . .] This opinion cannot be subject to a judicial ethics inquiry. The decision is Justice DuBois's alone, and cannot under any circumstances be reviewed by the inquiry committee. [. . .]
>
> It is in no way a matter of judicial ethics but rather one of legal interpretation and judgement. A judge may commit an error in these matters while still acting within their jurisdiction, and such an error cannot be reviewed by a judicial ethics body."
>
> DuBois v. Conseil de la magistrature du Québec, [2007] RJQ 2750, 2007 QCCS 4761, par. 61, 62 and 63

### The *audi alteram partem* rule

> "The same pertains to the question of whether the *audi alteram partem* rule has been breached. This is a "legal" criticism. It is not up to the inquiry committee to determine whether a judge may have erred on such a matter: this is a matter for the courts of appeal or review tribunals. The inquiry the committee would be making in such a case is not under its jurisdiction; it is under the jurisdiction of the courts of law."
>
> DuBois v. Conseil de la magistrature du Québec, [2007] RJQ 2750, 2007 QCCS 4761, par. 63

### Decisions during proceedings

#### Withdrawal from a case

Because of a public declaration the applicant supposedly made, the judge decided to withdraw from a case "out of his concern for equity and impartiality."

"This decision belongs to the judge only, and the Conseil shall not intervene in this matter."

1999 CMQC 10 (examination)

#### Postponement

> The judge is responsible for conducting the trial. His or her decision regarding postponement is based on evidence management in the circumstances at hand.
>
> 2003 CMQC 45 (examination)

> A judge may use his or her judicial discretion to decide whether to grant or refuse an application for postponement. The Conseil de la magistrature does not have the jurisdiction to intervene.
>
> 1999 CMQC 45 (examination)

The judge, who was aware of the reasons for the application for postponement, exercised his judicial discretion and, after thoroughly examining the reasons, refused to grant it, explaining his conclusions in a detailed judgement. He in no way breached his ethical duties.

CM-8-89-26 (examination)

SEE ALSO:

1999 CMQC 66 (examination)
CM-8-96-44 (examination) (application for adjournment)
CM-8-88-13 (examination)

**Appointing new counsel**

The judge refused an application to allow the complainant to appoint new counsel to represent him. "With regard to the actions of the judge pertaining specifically to ethics," the Conseil found no breach of the *Judicial Code of Ethics*.

2001 CMQC 55 (examination)

**Issuing a warrant**

It is not the Conseil's role to judge the lawfulness of a judge's decision to issue a warrant for an absent defendant, nor is it to judge the value of his or her opinion regarding the possibility for a lawyer to represent said defendant. This is a judicial decision whose appraisal does not fall under the jurisdiction of the Conseil de la magistrature.

2003 CMQC 12 (examination)

**Pre-trial custody**

When an arrest warrant has been issued, it is up to the judge to order the detention of the accused until a decision can be made concerning their release, even if the accused has appeared before the Court of his or her own volition. This is not a matter that falls under the Conseil's jurisdiction.

2008 CMQC 3 (examination)

**Tolerance with regard to the court usher's interventions**

The judge "could and perhaps should have" asked the court usher to refrain from commenting on the conduct of the proceedings and to stay in the background, but this is a prerogative that belongs to the judge alone.

CM-8-91-17 (examination)

## 12.4 RECEIPT OF EVIDENCE

> "It's not up to the Conseil to determine whether the judge should or should not admit different types of evidence. [. . .] The judge acts at his or her own discretion and wholly independently during the receipt of evidence."
>
> 2010 CMQC 71 (examination), par. 17–18

> "Matters touching on the receipt of evidence [. . .] are within the judge's prerogative."
>
> 2009 CMQC 34, par. 8 (examination)

### Authorizations granted during the hearing of evidence

#### Right to cross-examine

The decision allowing a cross-examination is at the judge's judicial discretion. It is not up to the Conseil to judge whether it resulted in what the witness describes as a "verbal and psychological aggression".

CM-8-56, CM-8-83-2 (examination)

#### Receipt of written testimony

The judge apparently accepted a witness's written version instead of hearing his testimony, without the plaintiffs' consent. Even though the complaint was founded, it is not the Conseil's role to review the judge's decision.

CM-8-95-80 (examination)

#### Limits on presenting evidence

> "The judge is responsible for conducting the hearing and he or she may exercise their judicial discretion, if the evidence presented is deemed complete and sufficient, to decide to render a decision using the evidence presented so far, and in doing so remain within the framework of the law. The Conseil has no jurisdiction to intervene in the judge's exercise of this discretion."
>
> 2010 CMQC 95 (examination), par. 20

> "The judge can cut the proceedings short when he or she feels that all the necessary elements to make a decision are present. [. . .] It must be remembered that the judge is the master of procedures related to the conduct of the trial."
>
> 2009 CMQC 7 (examination)

**Refusal to hear a witness**

> The judge's decision whether or not to hear a testimony falls under his or her exclusive jurisdiction.
>
> 2002 CMQC 25 (examination)

> "The judge's decision allowing or refusing a testimony constitutes a judicial act that cannot give rise to an ethics complaint."
>
> CM-8-83-6 (examination)

**Refusal to hear an expert witness**

> "The judge seems to believe that the expert's report [. . .] is not necessary to reach a decision on the dispute. In so doing he is acting within the parameters of his mission to rule on the dispute before him."
>
> 2004 CMQC 63 (examination)

**Refusal of documents as evidence**

> The fact that a judge thought it advisable to refuse a document as evidence cannot be considered an ethical breach, since this decision stems from the interpretation he or she can and must make of the admissibility of the evidence.
>
> Alliance, Compagnie mutuelle d'assurance-vie and Long, CM-8-84 (Small Claims Division) (inquiry)

In proceedings against the City to recover the legal fees paid to contest a statement of offence, the plaintiff wanted to introduce as evidence a proposed regulation he considered was aimed at him.

The judge refused the document because it was not relevant to the dispute. "The judge acted within her jurisdiction, which was to decide whether the evidence was relevant or not."

2003 CMQC 59 (examination)

SEE ALSO:

CM-8-97-24 (examination), 2001 CMQC 87 (examination), 2002 CMQC 66 (examination) 2002 CMQC 59 (examination) (expert report bound by client-lawyer privilege).

2004 CMQC 43 (examination)

The judge did not allow the defendant to testify with the help of a document she admitted as evidence afterwards. "The judge's decision taken during the trial is one of management of evidence." Moreover the examination showed that the judge's decision did not cause any harm to the defendant.

2002 CMQC 87 (examination)

In cases before the Small Claims Division, since the parties are not represented by a lawyer, it is not always easy for litigants to know what is relevant to their case. Therefore the judge has to intervene to make sure the parties stick to the elements essential to the case. He or she has the power to exclude any irrelevant evidence and the Conseil does not have the jurisdiction to examine the judge's decisions in this matter.

CM-8-94-67 (examination)

**Limiting the time allotted to witnesses**

> Limiting the time allotted to a party's testimony does not constitute an ethical breach.
>
> CM-8-93-46 (examination)

**Refusal to authorize an examination**

The judge intervened with both the plaintiff and the defendant to forbid the examination and cross-examination of the witnesses called before the Court.

"[T]his practice is entirely in accordance with Section 977 of the *Code of Civil Procedure,* which provides that in Small Claims Division, it is up to the judge to conduct the examinations."

2003 CMQC 55 (examination)

Refusing to allow the opposing party to examine a lawyer who is asking for a postponement is not against the principles of justice.

The judge's decision to accept the reasons put forward by the lawyer in asking for this postponement is "entirely in accordance with the policy to the effect that what a lawyer says, without being under oath, must be believed since his or her declarations are made under their oath of office."

CM-8-93-34 (examination)

The matter of law raised during the inquiry regarding the possibility of allowing questions to be asked of a radar operator regarding the functioning of his device, does not fall under the jurisdiction of the Conseil de la magistrature.

CM-8-93-35 (examination)

**Interference with the presentation of evidence**

During the trial, the judge ordered a witness's attorney to let him continue his account because, according to the judge, it was likely to help him determine the witness's credibility. It is not the Conseil's role to act on this matter.

CM-8-94-81 (examination)

The judge asked the Crown to get and bring him back certain pieces of evidence to help him make an informed decision. It is perhaps an "undesirable intervention in an adversarial system" that could constitute a grounds for appeal, but it is not an ethical breach.

CM-8-87-11 (examination)

**Repeated interventions during the presentation of evidence**

> The judge repeatedly interrupted the presentation of the evidence, including to "explain the law and comment on certain situations presented before him." The Conseil recognized that while the "judge's style" may displease the complainant, "it did not constitute an ethical breach."

On several occasions the judge was forced to intervene to explain to the parties acting as their own counsel "such basic legal notions as burden of proof, relevance, the rule against leading questions, the distinction between regular and expert witnesses, how certain evidence must be presented, etc." The Conseil found that the judge had not committed an ethical breach.

2006 CMQC 31 (examination)

## 12.5 APPRAISAL OF THE EVIDENCE

> Reproaches regarding the judge's appraisal of evidence or the conclusions of his or her judgement are of the nature of an appeal and cannot be considered because they do not constitute an ethical breach.

CM-8-89-21 (examination)

> The Conseil does not have any appellate jurisdiction on the appraisal of evidence, its probative value or the credibility of witnesses.

2000 CMQC 13 (examination)

> The Conseil de la magistrature does not have any appellate jurisdiction and cannot intervene either on the merits of the dispute or on the appraisal of evidence.

2010 CMQC 13 (examination)

> "It is not for the Conseil de la magistrature to comment on whether a judge erred in interpreting the probative force of testimony."

2010 CMQC 62 (examination), par. 25

> "It is not only up to the judge's discretion, it is also his or her duty, to decide whether to admit evidence presented by the parties to a dispute. The act of refusing to admit all evidence [. . .] does not constitute an ethical breach."

2010 CMQC 75, par. 15 (examination)

> "Questions pertaining to [. . .] the appraisal of evidence presented by the two parties [. . .] is part of the judge's prerogative."

2009 CMQC 34, par. 8 (examination)

> "The judge who presides over a trial is bound to assess the conflicting evidence presented and draw conclusions enabling him or her to make a ruling in the dispute. In doing so the judge fulfills the duties of the office."

2007 CMQC 65 (examination), par. 11, 2007 CMQC 64, par. 11 (examination)

SEE ALSO:

2011 CMQC 53 (examination)
Plante and Provost, 2007 CMQC 22 (inquiry)
2010 CMQC 27 (examination)
2007 CMQC 87 (examination)

### Assessing the probative force of the evidence

> "The judge must render a decision based on the evidence presented. In doing so he or she may admit some evidence while dismissing others. In so doing, the judge is simply exercising his or her duty to make a decision on the dispute."

2006 CMQC 69 (examination)

> "The judge has the duty to assess the value of witness testimony during the presentation of evidence."

2007 CMQC 64, par. 14 (examination)

### Police officer's report

On four occasions, the judge concluded that the accuseds were guilty without having seen or heard the police officer who had written the statements of offence. This highlights the importance the judge gave to the police officer's report, which is "an issue for a court of appeal rather than for an ethics committee."

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry)

### Expert's report

> "The acceptance or refusal of evidence based on an expert opinion belongs to the Court of Appeal," regardless of the eminence of the expert in question.

CM-8-93-61 (examination)

SEE ALSO:

2004 CMQC 63 (examination)

### Appraisal of the credibility of the testimonies

> "A judge's decision on the credibility of a party, despite said party's affirmations, is not an ethical breach. The Conseil cannot overturn this type of decision."

2009 CMQC 43 (examination), par. 10

> "The judge has the duty to weigh the preponderant value of the witnesses' affirmations when evidence is presented."

2007 CMQC 64, par. 14 (examination)

> "A judge's remarks casting doubt on a witness's credibility are an intrinsic part of the office of magistrate, and not an ethical breach. An inquiry committee cannot assess the presentation of evidence in place of the judge [. . .]."

Plante and Provost, 2007 CMQC 22 (inquiry) (application for judicial review dismissed, 2009 QCCS 5116; appeal dismissed 2011 QCCA 550; APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT DISMISSED, 9-22-2011, no. 34267), par. 59

SEE ALSO:

2012 CMQC 18 (examination)

> "[I]t is up to the trial judge who hears the litigants' testimonies to appraise the credibility of each of them and to decide how much weight to give to the evidence presented by each party, as the Conseil does not sit in appeal of the judges' decisions."

2002 CMQC 71 (examination)

"On examination of the judge's decisions, there emerged a pattern of his giving little credence to the complainant's testimony. This assessment of credibility is within the judge's jurisdiction—and indeed is his or her duty—at every step in the proceedings." Even if the judge was hasty in concluding that the complainant was not credible, no ethical breach occurred.

2008 CMQC 3 (examination)

A presumed unreasonable application of the rule of reasonable doubt in penal law amounts to a "question of credibility of the witnesses determined at the judge's discretion."

CM-8-92-20 (examination)

### Appraisal of the facts of the dispute

"[The judge] reached the conclusion to acquit the defendant. This decision was within his jurisdiction, which consists of appraising evidence and rendering a decision regarding the alleged offence."

2003 CMQC 13 (examination)

SEE ALSO:

CM-8-92-2 (examination)
CM-8-88-1 (examination)

The plaintiff reproached the judge for having made "too many serious" mistakes in the analysis and handling of her case. "The Conseil de la magistrature does not have the jurisdiction to respond to this complaint."

1999 CMQC 1 (examination)

SEE ALSO:

CM-8-94-74 (examination)

"[T]he judge declared, before the oral arguments, that he was dismissing the motion because he did not have a preponderance of evidence, but this does not constitute an ethical breach."

CM-8-95-3 (examination)

## 12.6 DRAFTING THE JUDGEMENT

### Referring to the parties' names

"In his written judgement the judge used the complainant's first and last names in the first paragraph, and subsequently used the last name only. [. . .]." This writing style is not disrespectful, and is commonly used to shorten the text.

2010 CMQC 95 (examination)

### Non-written judgement

> "Nowhere is it stated in law or by virtue of established principles and traditions that a judge must render a written judgment."
>
> CM-8-85-7 (examination)

### Insufficient reasons for decision

> "It is not up to the Conseil to decide whether the judge's conclusions are adequately supported by his reasons."
>
> 2010 CMQC 62 (examination)

The plaintiff alleged a lack of understanding of the case on the part of the judge and lack of sufficient reasons as regards the sentence imposed. "[T]hese are rather grounds for appealing the sentence, on which the Conseil de la magistrature does not have jurisdiction."

2004 CMQC 20 (examination)

The plaintiff reproached the judge for not providing sufficient reason for his decision, since he did not make any references to the law in his judgement. The examination showed that the judgement is in accordance with the requirements of Section 102 of the *Act respecting the Régie du logement*. Since it is not up to the Conseil to tell judges how they should justify their judgements, the complaint was deemed inadmissible.

CM-8-87-14 (examination)

SEE ALSO:

CM-8-88-2 (examination)

The plaintiff considered that the reasons for the decision rendered were insufficient. The Conseil de la magistrature does not have jurisdiction to reverse judgements, does not have the power to give instructions to judges regarding the content of their judgements and can in no way intervene in the matter.

CM-8-87-15 (examination)

### Decision written in French

The complainant said she "couldn't understand '99%' [of the judgement written in French], though [. . .] no request had been submitted to the judge to have the judgement written in English. The judge was therefore not at fault."

2004 CMQC 66 (examination)

### *Ex officio* correction of a mistake or omission

According to Section 475 *C.C.P.*, an error in writing or calculation may be corrected *ex officio* so long as the execution of the judgement has not commenced. A complaint in relation to an *ex officio* modification of a judgement to this effect is therefore "clearly inadmissible."

CM-8-90-32 (examination)

After the plaintiff's phone call to his secretary, the judge corrected *ex officio* his omission to grant him the legal costs. This correction was made further to an omission made by obvious inadvertence, in accordance with Section 475 *C.C.P.*, and does not constitute an ethical breach.

CM-8-92-51 (examination)

### Omission in the judgement

> "Judgement is an action that falls under each judge's judicial discretion and no one may interfere with it. If, insofar as it is true, the judge inadvertently forgot to decide on a particular aspect of the dispute, this in no way concerns the Conseil."
>
> CM-8-90-54 (examination)

### Correction of a judgement

The complainants contended that the judge was unfit to exercise his functions, since he had corrected his judgement after delivering it. The Conseil deemed the complaint unfounded, as the *Code of Civil Procedure* provides for the correction of judgements.

2008 CMQC 30 (examination)

## 12.7 ERROR OF LAW

> "It is not the jurisdiction of the Conseil de la magistrature to correct any errors in a judgement."
>
> 2003 CMQC 17 (examination)

> The Conseil cannot intervene in an appeal on the issue of the law applicable to the merits of the dispute.
>
> 2000 CMQC 43 (examination)

> "The Québec judicial system rightly considers that judges may make errors when applying rules of law and that is why, in cases where it is justified, it offers appeal recourses. Also, when litigants are not satisfied with the application of the rules of law by judges, they are entitled go before the tribunals entrusted with monitoring the application of the rule of law."
>
> CM-8-93-61 (examination)

> "If a judge, by omission, by inadvertence or even out of ignorance, does not apply a provision of the law, or if he or she wrongly considers that it does not apply to the case, or if he or she misinterprets it, the way to remedy his or her decision is to have recourse to the appellate courts because in such a case, the judge's mistake would have been within his or her judicial discretion and he or she can certainly not be reproached for this before a disciplinary body."
>
> CM-8-88-2 (examination)

SEE ALSO:

Guillemette and Verreault, CM-8-93-40 (inquiry)
CM-8-88-37 (examination)

### Judgement subsequently quashed in appeal

A judge is not considered to have committed an ethical breach simply because one of his or her judgements is quashed by a higher court.

Chatel and St-Germain, CM-8-66 (Court of the Sessions of the Peace) (inquiry) (inquiry report based on Section 263 (c) of the *Courts of Justice Act*, since repealed)

### Error of procedural law

The plaintiffs alleged before the judge the absence of jurisdiction of the Small Claims Division on a vendor's claim because he had six employees. Even though this complaint was justified, "it is not up to the Conseil to sit in review of the respondent judge's decision."

CM-8-95-80 (examination)

### Error of substantive law

The plaintiff brought to the Conseil's attention the conclusions of the judgement based on the contract on which her own recourse was based but that concluded the opposite of the judgement rendered in her case.

The examination showed that the judge, who stated he had read the contract, based his decision on the absence of a provision that actually appears in it nevertheless, and which his colleague appears to have taken into account.

It is not the Conseil's role "to comment on those two judgements that are contradictory at first sight, because it is not a Court of Appeal." These reproaches are not "within the framework of the ethical duties of judges."

2003 CMQC 4 (examination)

### Administrative error

#### Omission to grant interests

The judge did not grant the interests claimed in the application. "[T]his is an omission the applicant may ask to be corrected according to Section 475 of the *Code of Civil Procedure,* but it in no way constitutes a breach of the *Judicial Code of Ethics*."

CM-8-90-14 (examination)

**Discrepancy between oral and written judgments**

"The plaintiff alleges that there was a discrepancy in the allocation of the fees between the oral and written judgements. The Conseil is not the appropriate body for correcting this situation. Administrative steps must be taken with the office of the court to make any necessary corrections."

2004 CMQC 41 (examination)

SEE ALSO:

CM-8-90-19 (examination)

## 12.8 CONCLUSION OF THE JUDGEMENT

> "It is not the role of the committee to declare what is law nor to decide whether the judge applied it correctly."

Larose Bineau and Jetté, 2000 CMQC 46 (inquiry), par. 25

> "The Conseil de la magistrature cannot sit in appeal of the decisions rendered by judges."

2003 CMQC 16 (examination)

SEE ALSO:

2012 CMQC 20 (examination)
2011 CMQC 76 (examination)
2011 CMQC 58 (examination)

> The exercise of the judge's decision-making power is not a matter of judicial ethics.

2010 CMQC 73, par. 3 (examination)

> The judge's interpretation of legal texts, and the consequences of these interpretations on the judgement, are not matters of judicial ethics.

2009 CMQC 80, par. 8 (examination)

> The judge "is entitled to the principle of judicial independence. [. . .] It is not up to the committee to review the judgement handed down by a judge, or express an opinion on the judge's legal conclusions and findings, which do not have to be justified to the committee."

Couvrette and Provost, 2007 CMQC 96 (2-4-2009), par. 64 (inquiry)

> "[T]he decision-making process that leads a judge to render a judgement is at the very heart of judicial independence itself: the decisions rendered by the judge in the exercise of his or her jurisdiction cannot be reviewed by a disciplinary body and can only be modified through the judicial control process provided for by law."

2003 CMQC 63 (examination)

> Each judge has full independence regarding the decisions he or she renders, subject to the intervention of a higher tribunal.
>
> CM-8-91-12 (examination)

"Many aspects of the complaint, such as its failure to mention the preliminary requests in the judgement, the alleged errors in the appraisal of the facts, overlooked case law and the very nature of the judgement, were matters at the judge's discretion."

2011 CMQC 2, par. 7 (examination)

"Both the nature of the final judgement and the judge's deliberations are at his or her discretion and do not constitute a breach of the *Judicial Code of Ethics*."

2010 CMQC 44 (examination), par. 9

### Interpretation of case law

> "The complainant was critical of the judge for giving the case law a reading that differed from her own interpretation. Once again, this is a matter at the judge's discretion"
>
> 2006 CMQC 31 (examination)

### "Unjustified" sentence

> "The Conseil de la magistrature cannot review nor modify a sentence, as this role belongs to the Court of Appeal."
>
> CM-8-97-56 (examination)

The judge justified his sentence by mentioning the seriousness of the offence as well as the frequency of such events. Nothing in these reasons "goes against judicial ethics, and it is up to a court of appeal, not the Conseil de la magistrature, to intervene in such cases."

CM-8-97-69 (examination)

SEE ALSO:

CM-8-98-64 (examination)

CM-8-91-12 (examination)

CM-8-90-8 (examination)

It is not up to the Conseil to decide whether the judge had sufficient reason to consider the plaintiff dangerous and therefore order his imprisonment.

CM-8-93-61 (examination)

### Failure to consider an issue submitted to the Court

The criticism of the judge's failure to address the complainant's counterclaim in the judgement is not a matter of judicial ethics.

2010 CMQC 6, par. 18 (examination)

### Refusal to take an argument into account

The plaintiff wanted the judge to dismiss the charge laid against him under the *Highway Safety Code* because there was a mistake in his notice of hearing. The judge refused to take into account this "simple administrative error." "The judge's decision was within his jurisdiction and cannot be considered an ethical breach."

2004 CMQC 34 (examination)

### "Unjust" conviction

The plaintiff stated that the judge had convicted him "by deduction" and that this is not "acceptable in law."

"The allegations against the judge are not of an ethical nature. He exercised his judicial discretion according to his duty."

2002 CMQC 55 (examination)

The plaintiff alleged that she had been unjustly convicted and that the judge had committed an error in declaring her guilty.

"Of course these [. . .] allegations concern the merits of the trial and therefore the Conseil de la magistrature does not have jurisdiction to dispose of them."

CM-8-97-35 (examination)

## 12.9 DECISIONS OF MANAGING JUDGES

A judge alleged to the Conseil that the managing judges had "planned, instituted and carried out an illegal procedure" [. . .] that constituted a threat and attack on [his] judicial independence." He also accused the managing judges of "failing to preserve the integrity and protect the independence of the judiciary, in the higher interests of justice."

The Conseil examined "all the elements of the complaint [. . .] from the standpoint of judicial independence, which enables judges to make decisions free of all outside pressure [. . .]." The Conseil found that the dispute was rather an issue of work organization and that "Justice X may have felt destabilized by the procedure put in place by the managing judges, but that it did not jeopardize his judicial independence."

In support of his claims, the complainant contended that the procedure did not fulfill the requirements established in case law; the Conseil felt this was not a matter under its jurisdiction.

2005 CMQC 12 (examination)

SEE ALSO: SECTION 9, PAGE 247 AND SECTION 10, PAGE 249.

# IV Appendix

APPENDIX 1

# Judicial Ethics Complaint Process[12]

## Complaints

Anyone may file a written complaint by mail or email or via the electronic complaint form. A person who files a complaint is called the "complainant."

The complaint must include the complainant's name and mailing address, the name of the judge and the alleged misconduct.

When it receives a complaint, the Conseil sends acknowledgement of receipt to the complainant and a copy of the complaint to the judge.

At each step of the process, the complainant is informed in writing of any and all decisions made regarding the complaint.

## Evaluation

The Conseil may only look into valid complaints. During the evaluation step, the Conseil determines whether the complaint is valid based on the information the complainant has provided.

If the complaint is not valid, the Conseil rejects the complaint and informs the complainant and judge of its decision. If it is valid, the Conseil will review it.

## Review

During the review step, the Conseil collects more information about the events leading to the complaint.

The members of the Conseil appoint one of their own to collect as much information as possible about the complaint. For instance, if a judge is accused of having been impolite during a hearing, the appointed member will obtain a copy of the audio recording of the hearing and listen to it. After collecting all the information available, the member reports back to the Conseil, which will reach one of two decisions:

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12. From the Conseil de la magistrature du Québec website: *Complaints Process – How?* [Online] <http?://www.conseildelamagistrature.qc.ca/comment_porter_plainte_conseil_magistrature_du_quebec.php>, viewed May 31, 2013.

#### Set up an inquiry committee

If the Conseil decides to set up an inquiry committee, it informs the complainant, judge and Minister of Justice of its decision in writing. If the Conseil rejects the complaint, it informs the complainant and judge of its decision in writing, citing the reasons for its decision.

#### Inquiry

The inquiry committee can be likened to a detective tasked with investigating a case. It is made up of five Conseil members. Under extenuating circumstances, a former member may serve on the committee.

Inquiry committee members are vested with all the powers needed to uncover the truth. They may obtain any and all relevant documents and order anyone to appear in person to answer their questions.

If the allegations set out in the complaint so warrant, the judge may be suspended for the duration of the inquiry. The Minister of Justice will be notified so one of his or her representatives may take part in the inquiry.

During the inquiry, the committee reviews the evidence and hears the judge's version of events, the complainant's version of events and the testimony of any witnesses. The committee may seek the assistance of counsel, but the complainant does not need to be represented by a lawyer because the Conseil's lawyer will present the complainant's version and any supporting evidence. The judge may also choose to be represented by a lawyer.

When the inquiry is complete, the inquiry committee will notify the Conseil of its decision.

### Decision

If the committee finds the complaint to be unfounded, the Conseil informs the complainant, judge and Minister of Justice, citing the reasons for its decision.

If the committee finds the complaint to be justified, the Conseil imposes one of two possible sanctions: a reprimand or recommendation of removal.

The sanction in no way affects the judge's prior rulings. The complainant and other individuals involved in those cases must abide by the rulings unless there are grounds for appeal.

A reprimand is the most common sanction. The Conseil cannot remove a judge itself. It must first recommend that the Minister of Justice ask the Court of Appeal to conduct its own inquiry. The judge is then suspended for the duration of the inquiry. After completing its inquiry, the Court of Appeal reports to the government, which has the power to remove a judge from the bench.

APPENDIX 2

# Courts of Justice Act



Québec

PART VII

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

CHAPTER I

## THE CONSEIL DE LA MAGISTRATURE

DIVISION I

### ESTABLISHMENT

**247.** A body, hereinafter called the "council", is established under the name of Conseil de la magistrature.
1978, c. 19, s. 33.

**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 four associate chief judges of the Court of Québec;
*(d)* a president judge of a municipal court;
*(d.1)* one judge chosen among the persons exercising the functions of president of the Human Rights Tribunal, or chairman of the Professions Tribunal;
*(d.2)* (paragraph repealed);
*(e)* two judges chosen among the judges of the Court of Québec and appointed upon the recommendation of the Conférence des juges du Québec;
*(f)* one judge chosen among the judges of the Municipal Courts 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; 2002, c. 21, s. 48; 2001, c. 26, s. 172.

**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.
The vice-chairman of the council is elected by the council from among its members.
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.
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.

**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.
The judges are entitled to the indemnity provided for in section 119.
1978, c. 19, s. 33; 1988, c. 21, s. 55.

**251.** Eight members of the council, including the chairman or vice-chairman, are a quorum.
1978, c. 19, s. 33; 1986, c. 48, s. 5.

**252.** The council meets as often as necessary, when convened by the chairman.
It may sit in camera and hold its sittings at any place in Québec.
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.
1978, c. 19, s. 33; 1996, c. 2, s. 985.

**253.** The council may make by-laws for its internal management or to establish committees and determine their functions.
1978, c. 19, s. 33.

**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.
1978, c. 19, s. 33.

**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.
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.

**255.1.** The secretary of the council shall exercise the functions of the secretary on an exclusive basis, under the authority of the chairman.
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.

**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.

**255.3.** The members of the personnel of the council, other than the secretary, shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).
1989, c. 45, s. 7; 1997, c. 76, s. 2; 2000, c. 8, s. 242.

DIVISION II

## FUNCTIONS OF THE COUNCIL

**256.** The functions of the council are:
*(a)* to organize, in accordance with Chapter II of this Part, refresher programs 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 PROGRAMS FOR JUDGES

**257.** The council shall establish information, training or refresher programs for judges of the courts and presiding justices of the peace under the legislative authority of Québec and appointed by the Government.
1978, c. 19, s. 33; 2004, c. 12, s. 9.

**258.** The council shall determine the needs, prepare the programs 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 association representing presiding justices of the peace, the Barreau du Québec, the law faculties and the Ministère de la Justice.
1978, c. 19, s. 33; 1987, c. 50, s. 9; 2004, c. 12, s. 10.

**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

**260.** This chapter applies to a judge appointed under this Act.
The provisions of this chapter applicable to judges also apply to the judges of the municipal courts and to presiding justices of the peace.
1978, c. 19, s. 33; 1980, c. 11, s. 98; 1995, c. 42, s. 44; 2004, c. 12, s. 11.

DIVISION II

### CODE OF ETHICS

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

**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 or 171 of this Act or section 45.1 of the Act respecting municipal courts (chapter C-72.01).
It may be stipulated in the code that certain of those provisions do not apply to judges of Municipal Courts, 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 are deemed to be special provisions of the code of ethics applicable to municipal judges. The provisions of the code of ethics applicable to municipal judges may vary according to whether they apply to judges exercising their functions on a part-time basis or to judges exercising their functions on a full-time and exclusive basis. Special provisions for presiding justices of the peace may also be stipulated in the code.
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; 2002, c. 21, s. 49; 2004, c. 12, s. 12.

DIVISION III

## EXAMINATION 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.

**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.

**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).
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.

**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.

**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.

**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 or the third paragraph of section 168.
1978, c. 19, s. 33; 1988, c. 21, s. 60; 1990, c. 44, s. 24; 2004, c. 12, s. 13.

DIVISION IV

## INQUIRY

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

**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.
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.

**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.

**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.

**269.4.** A person to whom either of sections 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.

**269.5.** When it establishes a committee to conduct an inquiry into a complaint made against a presiding justice of the peace, the council must designate at least one person who is a presiding justice of the peace to sit on the committee.
Before taking up committee functions, that person must make the oath contained in Schedule III, before the chief judge or the senior associate chief judge of the Court of Québec.
The person so designated is entitled for the time the person is a member of a committee to no indemnity other than the indemnity a council member who is a judge is entitled to receive under section 250.
2004, c. 12, s. 14.

**270.** The committee meets as often as necessary, when convened by its chairman.
1978, c. 19, s. 33.

**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 or the third paragraph of section 168.
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; 2004, c. 12, s. 15.

**272.** The committee hears the parties, their attorneys and their witnesses.
It may inquire into the relevant facts and call any person apt to testify on such facts.
The witnesses may be examined or cross-examined by the parties.
1978, c. 19, s. 33.

**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.

**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.

**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).
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.

**275.** The committee may make rules of procedure or rules of practice for the conduct of an inquiry.
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.

**276.** The council may suspend a judge for the duration of an inquiry on him.
1978, c. 19, s. 33.

**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.

**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.

**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 or section 167.
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; 2004, c. 12, s. 16.

**280.** If the Minister of Justice and Attorney General, in accordance with section 95 or section 167, 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; 2004, c. 12, s. 17.

**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

**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

**282.1.** The Minister of Justice is responsible for the administration of this Act.
1988, c. 21, s. 64.

DIVISION II

## JUDGES OF THE COURT

**93.1.** A judge suffering from permanent physical or mental disability which, in the opinion of the Government, prevents the judge from effectively performing the duties attached to judicial office shall be relieved from judicial duties. Unless the judge resumes judicial duties under the second paragraph, the judge is deemed to have ceased to hold office on the day preceding the day on which the judge satisfies any of the pension eligibility requirements set out in paragraphs 1, 2 and 3 of sections 224.3 and 228 and section 246.3, depending on the pension plan.
If the judge recovers, the Government may permit the judge to resume judicial duties at the same court, even if all the posts in that court are already filled.
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; 2001, c. 8, s. 3; 2005, c. 41, s. 1.

**168.** A presiding justice of the peace who is suffering from permanent physical or mental disability which, in the opinion of the Government, prevents the justice of the peace from effectively performing the duties of the office shall be relieved from duties. Unless the justice of the peace resumes duties under the second paragraph, the justice of the peace is deemed to have ceased to hold office on the day preceding the day on which the justice of the peace satisfies the requirements for eligibility for his or her pension.
If the justice of the peace recovers, the Government may permit him or her to resume duties.
Permanent disability is established, at the request of the Minister of Justice, after inquiry by the Conseil de la magistrature. Termination of permanent disability is established in the same manner.
R. S. 1964, c. 20, s. 178; 1992, c. 61, s. 617; 2004, c. 12, s. 1.

**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.

**167.** The Government may dismiss a presiding justice of the peace 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. 177; 1992, c. 61, s. 617; 2004, c. 12, s. 1.

**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.

**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.

**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.

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

**171.** Presiding justices of the peace shall devote their time exclusively to duties of the office. The office of presiding justice of the peace 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. 181; 1990, c. 4, s. 888; 2004, c. 12, s. 1.

APPENDIX 3

# An Act respecting municipal courts



Québec

**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.

**45.1.** Every judge exercising his or her functions in a municipal court to which a president judge has been appointed must exercise such functions on an exclusive basis.

The second paragraph of section 129 of the Courts of Justice Act (chapter T-16) applies to the exercise of such functions.

2002, c. 21, s. 14.

APPENDIX 4

# Code of Ethic

The Conseil de la magistrature adopted two *Codes of Judicial Ethics*: on is designed for full-time judges, while the other is for part-time municipal judges.

The *Codes of Judicial Ethics* determine the judges' rules of conduct and duties towards the public, parties in a dispute and attorneys. The Codes state the actions or omissions that infringe the honour, dignity or integrity of the judiciary in particular.

## Code of Ethic for 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 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.

**Code of Ethic 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.

APPENDIX 5

Pierre Noreau, Jurisdiction in Judicial Ethics. Actions available to the Conseil de la magistrature when a judge against whom a complaint is pending retires, resigns, or dies. Working document submitted to the Conseil de la magistrature du Québec, April 20, 2008.

## Introduction

This text was prepared at the request of the Conseil de la magistrature du Québec. It seeks to set out what jurisdiction the Conseil can claim in judicial ethics cases where a judge is no longer sitting. Such cases can arise when complaints are pending against judges who have died, but also against those who have resigned or retired, whether unexpectedly or not. It is an issue that the Conseil has considered frequently but on which it has yet to reach a final conclusion. Certain approaches we will be examining have, however, been defined.

This document is not a legal opinion but rather an outline of avenues to pursue in regard to this new field of judicial ethics. Its main purpose is to define the approaches the Conseil has gradually adopted over the past three decades and suggest what this means for future ethics cases.

The document looks first at the principles of judicial ethics as practised in Québec, then at other established codes of conduct and in what specific ways they differ. After comparing the two, it restates and describes the discursive and evaluative function of the test of "public confidence," lists past decisions by the Conseil on the matter of judges who have left the bench and proposes criteria that could serve as a basis for whether or not the Conseil or one of its inquiry committees decides to pursue a case with regard to a judge who is deceased or retired or who has resigned.

### 1) Objectives and chief direction of Québec judicial ethics

The issue has been the subject of much comment. There have been two legal opinions of note, a first by Louis-Philippe de Grandpré and a second by Raymond Doray. Both concluded that the Conseil had no jurisdiction over complaints about a judge who had left the bench. In both cases, the opinions paid no direct heed to recent evolution in thinking about judicial ethics, either because of how little this field of law had developed by the time the opinion was issued (1987), or because of limited access to the Conseil's successive rulings (2000).[13] They therefore offered an essentially *in abstracto* interpretation of the legislation.

The first opinion concerned a judge whose conduct was the subject of a complaint as he reached retirement age. It was based on a discursive reading of the *Courts of Justice Act* and concluded, without further reference, that the Conseil had no jurisdiction. This conclusion was founded on an understanding that judicial conduct review as defined was primarily a disciplinary act. Viewed from this perspective, the Conseil's role was essentially to sanction judges whose actions contravened the provisions of the Code. "It follows . . . that if the judge has already ceased practising on account of age, the Conseil's disciplinary jurisdiction has no further matter over which to rule."[14]

The second opinion was also founded on a disciplinary perspective. By way of analogy, it compared the *Courts of Justice Act* to the *Professional Code* and the *Act respecting police organization*. It also referred to a ruling by the Supreme Court with regard to a member of the Law Society of Saskatchewan, concluding *a contrario* about the CJA "that in the absence of any specific mention in the legislation that the Conseil de la magistrature or the inquiry committee may exercise their jurisdiction with regard to people who are no longer judges, such jurisdiction does not exist." This too is a restrictive reading of the enabling statute, an interpretation founded on logic.

The question we need to answer is, in cases where a judge has resigned, retired or died and the act does not specifically and positively state that the Conseil has

13. The Conseil's decisions have only been available online since 2005.

14. In response to the problem posed *a contrario* in the Bar association case, which the law says retains its disciplinary jurisdiction in the case of complaints against lawyers who have ceased to practise (sec. 91.3 of the *Act respecting the Barreau du Québec*), de Grandpré states that "This explicit jurisdiction in the case of the Bar is no doubt motivated by the fact that lawyers who have left the practice of law can take it up again under the conditions set out in the Act, division VII, section 68 and following. In the case of a judge who has reached retirement age, this is impossible." This deduction is, however, more valid in cases where lawyers are forced to retire on account of their age rather than in the numerous other situations with which the Conseil is faced today, such as retirement on account of failing health, etc. It therefore cannot be used today as a general rule.

jurisdiction, does this preclude its having general jurisdiction? I would respectfully submit that the question must be interpreted broadly and in keeping with all provisions of the enabling statute. This would include Parliament's objective in establishing the code of ethics as defined in the *Courts of Justice Act*, which was not so much to sanction behaviour as to protect the public, the parties and practitioners and to uphold the credibility of the judiciary.

> **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 or 171 of this Act or section 45.1of the *Act respecting municipal courts* (chapter C-72.01).

Such an interpretation founded on respect for the objectives of the legislation suggests a broader view of what judicial conduct review should entail. It extends the Conseil's jurisdiction well beyond mere imposition of sanctions, although sanctions are indeed part of the legislation. This broad and liberal construction is in keeping with the second paragraph of section 41 of the Interpretation Act, which states:

> **41.** Every provision of an Act is deemed to be enacted for the recognition of rights, the imposition of obligations or the furtherance of the exercise of rights, or for the remedying of some injustice or the securing of some benefit.
> Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit.

This perspective is also in keeping with trends in judicial ethics, which are easier to identify now that the Conseil and the courts have a corpus of rulings to their credit on the nature of ethics cases. These decisions define objectives much more broadly than we saw above and situate the code of ethics as a keeper of public order. As the Supreme Court noted in 1995 in Ruffo v. Conseil de la magistrature,

> "the [Inquiry Committee]'s mandate is to ensure compliance with judicial ethics; its role in this respect is clearly one of public order.[15]"

15. Ruffo v. Conseil de la magistrature, 1995 (S.C.C.).

This same approach regularly finds its way into Conseil decisions in various forms: "The purpose of the judicial ethics process is the public interest."[16]

This perspective itself leads by extension to a broader definition of the objectives of judicial ethics. Again in the Ruffo case, the Superior Court and then the Supreme Court successively pointed out that:

> [Ethics is primarily aimed at] "avoiding the repetition of acts or deeds that must be considered breaches of proper judicial conduct in the broadest sense."[17]
>
> ". . . in judicial ethics, third party complaints must be viewed primarily as opportunities to enunciate standards of behaviour for judges, and as opportunities to state the importance of complying in the best interest of justice, the judiciary, and society."[18]

This same perspective was often taken in successive decisions by the Conseil. It flowed from a same understanding that codes of ethics were not meant so much to prohibit specific acts as to promote standards of conduct likely to ensure that judges are "open to perfection."[19] The Conseil has largely adopted the Supreme Court's interpretation, which tends to consider codes of ethics as educational and preventive tools that can be an inspiration for the entire judiciary:

> "The Code has . . . an inspirational and educational role."[20] "The Code of Judicial Conduct plays an educational and preventative role re proper conduct for a judge."[21] "The Code of Judicial Conduct does not dictate a precise line of conduct, which is for judges themselves to determine, but articulates more simply 'a notion of what it is to be a judge'."[22]

16. Gagnon and Drouin, 1995. Significantly, in certain prior rulings the Conseil had even stated, "In deontological law, prescription as such does not apply." *Poupart and Chaloux* (Court of the Sessions of the Peace), 1985 and *St-Germain v. Le Conseil de la magistrature du Québec* (C.S.).
17. Ruffo v. Conseil de la magistrature du Québec (S.C.) and Lapointe and Ruffo, 1990.
18. Commission des droits de la personne et des droits de la jeunesse and DuBois, 2005, par. 17.
19. Ruffo v. Conseil de la magistrature, 1995 (C.S.C.)
20. Doucet and Sauvé (Municipal Court, part time), 2001, *Couture and Houle*, 2003, quoting P. GLENN, "Indépendance and déontologie judiciaire" (1995) 55 *R. du B.* 2, 295, 306–307.
21. Bergeron and Pagé (Small Claims Division), 2003.
22. Doucet and Sauvé (Municipal Court, part time), 2001, quoting P. GLENN, "Indépendance et déontologie judiciaire" (1995) 55 *R. du B.* 2, 295, 306–307.

This is also the perspective that has guided judicial censure. Codes of ethics are meant to prevent rather than punish. They set out duties rather than prohibit and punish specific acts:

> "Essentially, ethics is a general standard with educational and preventive aims rather than punitive aims. It serves as a guide to retaining the public's confidence and respect in our judicial system and its independence.[23]"

> "[T]he Code of Conduct is not a list of set rules, nor a list of limits on a judge's behaviour, outside of which anything not specifically prohibited is permitted. The Code is not a statement of punishable infractions, but rather a statement of objectives that all judges must pursue."[24]

By extension the very notion of judicial censure takes on a specific meaning. It is also preventive in nature, "forward-looking,"[25] and educational. It is aimed at the entire judiciary. In Ruffo v. Conseil de la magistrature, the Supreme Court restated that the Conseil committees' primary function is to rehabilitate the judiciary, not the individual judge being penalized. It added that, consequently, the underlying objectives in creating the Committee were not to punish noncompliant behaviour, but to safeguard the integrity of the entire judiciary.[26] This understanding imparts a collective notion to codes of ethics: "In recommending sanctions against a judge, the Inquiry Committee fulfills an educational and preventive role to avoid harming the integrity of the judiciary any further."[27]

All of the above shows how limiting a strictly coercive or punitive perspective is and reveals that the primary purpose of codes of ethics is not to punish behavior, notwithstanding the fact that having and using such a capability is necessary for the example it sets. Likewise codes of ethics are not aimed so much at judges individually—even though they always involve an individual judge—as at the institution as a whole. This educational function was in fact why the Conseil came to employ over time, over and above the sanctions provided for in the *Courts of Justice Act,* a complete range of warnings not at all included therein. Strictly speaking, the CJA provides that:

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23. Viau and Ruffo, 2000, opinion d'un membre

24. Descôteaux and Duguay, 1998, repeated in Bettan and Dumais (Small Claims Division), 2002, Bergeron and Pagé Small Claims Division), 2003, and Lessard and Cartier, 2004.

25. Lapointe and Ruffo, 1990.

26. Ruffo v. Conseil de la magistrature, 1995 (S.C.C.)

27. Lessard and Cartier, 2004.

**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 or section 167.

Systematic review of Conseil decisions shows, however, that most decisions by the Conseil in response to inquiries have not led to reprimands. In fact, over the last 30 years there have been only three cases of dismissal. But this is not to say that complaints that did not result in reprimands were not acted on. In all instances where it was felt that the case against the judge was not serious enough to justify a reprimand or dismissal but was cause for concern, the Conseil clearly and publicly stated that behaviours needed to change. It did not focus on punitive action, but on the collective, educational, and preventive nature of the code of ethics and how it was more than a mere instrument of punitive action against individuals.

### 2) Distinctions between different ethics traditions

Before pronouncing on the Conseil's jurisdiction to hear complaints about judges who have left the bench, we must identify what is different about the field of law. In Québec, judicial ethics is first and foremost a matter of caselaw. Just reading the Judicial Code of Ethics is enough to see that judicial duties must be judged in the context in which they are exercised. Standardized norms can only evolve slowly over time, as the caselaw accumulates. Thirty years of judicial review have led to a specific Québec approach to judicial ethics. This approach must be taken into account whenever the Conseil must rule on a matter of general principle, such as its jurisdiction over complaints about judges who have retired or resigned or who are deceased.

What characterizes judicial ethics as defined over the years by the Conseil de la magistrature? There are three different traditions—a disciplinary tradition, a moral tradition, and an institutional tradition—but only the latter is identified with Québec judicial ethics.

The disciplinary ethics tradition is the one closest to that in the professions. In its ideal manifestation[28], it is essentially noted for its (1) strict definition of professional obligations and prohibitions, (2) precise linkages between infractions and sanctions, (3) rigid and specific procedural law, (4) body of jurisprudence that lends itself to standardized sentences, and (5) individualized approach to decisions and sanctions. No perfect examples of such a tradition can obviously be found, but empirically it is the model that the U.S. ethics tradition resembles the most, as embodied by the American Bar Association Model Code of Judicial Conduct. This "model" code, which is used as an ethics standard in most American states, was drawn up in the 1920s and has undergone a succession of updates. The most recent version was adopted in February 2007. It takes its inspiration from the disciplinary tradition of ethics, setting out duties and prohibitions in great detail in 39 different sections grouped under four canons, with some sections having as many as ten different specific rules. The Code's authors of course recognize that for all intents and purposes it is impossible to define ahead of time all situations and rules applicable to judges, but the Model Code does attempt to point the way. Its focus is, however, disciplinary:

> "The Model Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies."[29]

This disciplinary tradition stands apart from a second tradition inspired essentially by morals or ethics and more characteristic of the Canadian Judicial Council's perspective, but also followed in Australia and the U.K. It is based mainly on a model of ideal behaviour and on dialogue between the Council and members of the federal

28. The notion of an "ideal" code was first put forward by sociologist Max Weber. He sought to define typical ethics situations in an abstract and deliberately consistent way so as to facilitate comparisons between concrete (and necessarily hybrid) cases encountered in real life using general reference models conducive to comparative analysis. So as we will see later, each code of ethics can be judged by its qualitative proximity to or distance from its corresponding ideal.

29. American Bar Association, *The Model Code of Judicial Conduct,* Washington, November 2007.

judiciary facing complaints. It holds that a code of ethics should seek mainly to establish "certain very strict standards to which judges must adhere." Thus, unlike the Model Code, the Canadian Judicial Council's ethics tool is but a list of several general duties (five in all) set out in a short text, itself followed by a longer commentary.

In its ideal form, the moral perspective is characterized by (1) a very broad and deliberately imprecise statement of ethical standards; (2) a generally non-mandatory approach to the levying of penalties; (3) a somewhat flexible review procedure based mainly on a form of discussion with judges facing complaints; (4) no systematic reference to earlier decisions under the code but rather a case-by-case analysis of each complaint, the conclusion to which is not systematically made public; and (5) a personalized approach to each situation. Complaints are viewed as opportunities to engage the judge in dialogue, not as something that must necessarily lead to sanctions. Given this, very few complaints result in public reprimands of judges since judicial conduct review is essentially discursive and educational in nature, and its goal is to ensure that members of the judiciary comport themselves appropriately.

> "The Statements, Principles, and Comments are simply recommendations. Their purpose is to help judges find answers to thorny ethical and work-related questions they face and to help the public better understand the role of judges. They are not a code or a list of prohibited acts and must not be used as such. They do not define standards of judicial misconduct."[30]

This second tradition inspired by morals (or ethics) stands apart from yet a third tradition, which approaches ethics from an institutional or collective viewpoint. This third tradition is the most representative of ethics as practised in Québec by the Conseil de la magistrature. Rather than disciplinary or ethical control of individual behaviour, it is aimed at an ongoing process of adjustments to judicial practice, defined in terms of the community of judges, i.e., a specific public body. Ideally such an institutional tradition is based on (1) a relatively broad statement of ethical duties; (2) general use of enticements, but associated with critical comment and gradually increasing penalties; (3) a precise review and inquiry procedure whose conclusions are conveyed to complainants; (4) a structure for referring systematically to past decisions, and (5) an approach that is both individualized and collective, with public release of inquiry decisions.

30. Canadian Judicial Council, *Principles of Judicial Ethics,* Ottawa, 2004, p. iii

Whereas the focus in the disciplinary tradition is on respect for the norm, and in the moral tradition on how ethically judges act, the institutional perspective founds its approach on the need to ensure the public trusts the judiciary and judicial institutions, and that it has reason to maintain that trust.

It thus strives for a form of ongoing mutual adjustment between the judiciary and the public it serves. The presentation by the president of the Conseil de la magistrature in the work *Applied Judicial Ethics* is very revealing in this regard:

> "Judicial ethics and judicial independence are interdependent and have the same objective: uphold the public's confidence in judicial institutions . . . the Conseil as an organization works to uphold this confidence, particularly in the judiciary . . . Certain situations can, however, lead members of the public to lodge complaints against judges. When they do, it is the Conseil's role to thoroughly investigate the complaints and respond. Complaints are alarm signals of sorts from the public about the judiciary, and the Conseil takes them seriously . . . It must be remembered that misconduct by a judge sullies the entire judiciary and erodes the credibility of our judicial institutions."[31]

This perspective holds that when judicial conduct is reviewed in response to a complaint, it is an opportunity to make adjustments to the entire institution in response to public expectations as a whole. It was this institutional and collective approach that led the Conseil to publish all of its previous decisions in 2005.[32] Such transparency is entirely in keeping with an institutionally oriented approach to judicial ethics, which presupposes a degree of transparency in relations between the judiciary and the public. It is essentially the same approach that guides other types of public oversight in Québec, such as that of the Québec Ombudsman and the hospital system ombudsmen, whose mission is to constantly adjust institutional service delivery (by government or by hospitals, as the case may be) to the public's expectations. But in the case of the judiciary it carries an added importance, given that the legitimacy of a non-elected institution necessarily derives from the repeated and ongoing support it receives from the public.

Each of the ideals described above (disciplinary, moral, and institutional) is underpinned by a different principle. And each is an abstract model in that it suggests a consistent and intelligible perspective that is never perfectly embodied in reality. Although each specific ethics system is directly linked to a specific ideal, no perfect match can be found for each one. It is a matter of degree. So although

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31. Guy Gagnon, "Présentation" in Pierre Noreau and Chantal Roberge, *La déontologie judiciaire appliquée,* Montréal, Wilson and Lafleur, 2005, p. i.

32. A similar approach was adopted by the French Judicial Council in 2006.

moral or ethical considerations[33], or disciplinary considerations[34], periodically make their way into decisions by the Conseil de la magistrature, the issue the Conseil raises most systematically is that of "public confidence"—the Conseil's benchmark for assessing how serious a breach is. This suggests that the Conseil's approach to judicial ethics is more in line with an institutional perspective and that this general principle must therefore guide any reflection on the Conseil's jurisdiction in situations not set out in the Act, such as whether the Conseil must renounce its jurisdiction when a judge facing a complaint leaves the bench for one reason or another.[35]

### 3) Impact of the institutional perspective on ethical reasoning: the test of public confidence

Up to here we have described the unique features and general principles of judicial ethics at the Conseil de la magistrature. An institutional perspective, unlike a moral or disciplinary perspective, looks beyond a judge's specific circumstances to balance the approach with the need for judiciary credibility. This has been the Supreme Court's stance, particularly in more complicated cases such as Ruffo or Therrien, and has been a mainstay in Conseil decisions.

> "The public's invaluable confidence in its justice system, which every judge must strive to preserve, is at the very heart of this case . . . and ultimately dictates the result."[36]

33. Bégin and Therrien, 1997 and Therrien v. La ministre de la Justice, 2001 (C.S.C.), admittedly citing Martin L. Friedland, *Une place à part: L'indépendance and la responsabilité de la magistrature au Canada,* Canadian Judlicial Council, 1995, pp. 90-91.

34. Côte and Hodge, 1989.

35. This perspective is inspired by the work of American philosopher and scholar of law Ronald Dworkin, who proposes that in the absence of clear and applicable provisions or standards setting out solutions to difficult cases and on which the law is consequently silent, judges must seek out solutions founded on more general, often unwritten principles that implicitly underpin the judicial systems in which they work. Judges should determine the underlying logic of the judicial systems and base their decisions on that. The "institutional" tradition of judicial ethics in Québec is an example of such underlying logic that can guide debate about the Conseil's jurisdiction in cases where judges facing complaints have left the bench. Ronald Dworkin, *L'empire du droit,* Paris, Presses universitaires de France (coll. Recherches politiques"), 1994.

36. Therrien v. the Minister of Justice, 2001 (S.C.C.)

> "[T]the primary purpose of ethics . . . is to prevent any violation and maintain the public's confidence in judicial institutions."[37]

This perspective is found throughout Conseil decisions. It is a corollary of the institutional perspective. As we noted earlier,

> "[For the Conseil,| public confidence is the yardstick against which it measures how serious a breach of an explicit ethical standard is. The decisions of the Conseil de la magistrature contain many examples of this type of reasoning, which serves as an empirical test and provides a better understanding of the standards that underpin ethical reasoning. In most cases the Committee's work mostly consists of deciding whether a judge's behaviour is a breach in that 'it undermines the public's confidence in and respect for the judiciary, the judicial institution, and the system of justice.'[38] The same test is also crucial in determining whether to reprimand a judge[39] or to recommend his or her dismissal.[40] In this regard, the notion of public confidence is also used to determine the severity of punishment. Decisions by the Conseil de la magistrature have shown that not all judicial statements or behaviours are

37. Ruffo v. Conseil de la magistrature, 1995 (S.C.C.)

38. Bégin v. Garneau, [2002] (C. Mag.); Desaulniers v. Crête, [2003] (C. Mag.); Couture v. Houle, supra, note 39.

39. "Judges are not reprimanded for the sole purpose of punishing them for breaching the Code of Ethics, but to serve the interest of the judiciary and maintain confidence in it." *Bettan v. Dumais (Small Claims Division),* [2002] (C. Mag.); "In judicial ethics, the main purpose [of reprimands] is to restore the public's confidence in the judge and the judicial system." *Paré v. Fortin,* [2003] (C. Mag.).

40. For a while the literature was hesitant about when a judge's dismissal could be contemplated or imposed. As noted earlier, a more abstract reference to how much "impartial individuals" could trust the uprightness, moral integrity, and honesty of the (judge and his or her) decisions has been periodically cited (M. L. FRIEDLAND, *op. cit.* note 21, p. 91). The Marshall case (see "Report to the Canadian Judicial Council of the Inquiry Committee;Donald Marshall Jr. affair," (1991) 40 *U.N.B.L.J.* 210, also cited by FRIEDLAND supra), put the main emphasis on "public confidence":"Has the misconduct so manifestly and totally undermined the notions of impartiality, integrity, and independence of the judiciary and eroded public confidence to such an extent that the judge is incapable of performing the duties of office?" (M. L. FRIEDLAND, *op. cit.* note 21, p. 91). This was also the criterion used by the Supreme Court in *Therrien (Re),* supra, p. 147: "Thus, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office" This same criterion is systematically cited by the Conseil de la magistrature du Québec. It is also repeated in Moreau-Bérubé v. New Brunswick (Conseil de la magistrature), [2002] 1 S.C.R. 249.

> considered to be equally serious, with some complaints upheld while others are not, and some misconduct deemed sufficient to merit a reprimand, or even dismissal, while other misconduct is not. In all cases the standard of public confidence is the yardstick by which the relative seriousness of the facts and the punishment is measured."[41]

Québec is not the only jurisdiction to refer to public confidence in cases of judicial ethics. Almost all jurisdictions do so directly or indirectly.[42] However, as we have seen, it happens more frequently in jurisdictions that follow an institutional tradition of ethics, of which it is a more central tenet; judicial review is viewed as an opportunity to reestablish the necessary trust between the judiciary and the public. It is not just an opportunity for the judiciary or the legal community to monitor the individual behaviour of judges or its ethical meaning, but to restore a form of reciprocity between the judiciary and society.

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41. Pierre Noreau, Chantal Roberge, "Émergence de principes généraux en matière de déontologie judiciaire: Éléments d'une théorie générale," in *Revue du Barreau canadien,* Vol. 84, no. 3, 2005, pp. 457-499.

42. The Council of Chief Justices of Australia, referring indirectly to standards of impartiality, independence, and integrity. suggests that we view ethical duties from the perspective that public confidence must be upheld: "The principles applicable to judicial conduct have three main objectives: To uphold public confidence in the administration of justice; To enhance public respect for the institution of the judiciary; and To protect the reputation of individual judicial officers and of the judiciary. Any course of conduct that has the potential to put these objectives at risk must therefore be very carefully considered and, as far as possible, avoided." (Council of Chief Justices of Australia, *Guide to Judicial Conduct,* Melbourne, Australian Institute of Judicial Administration Inc., 2002). There are also references in Europe to the notion of confidence in the judicial system: "There would appear to be various reasons why consideration of ethics is unavoidable. The methods used to settle disputes must always inspire confidence. A judge's powers are intimately linked to values of justice, truth, and liberty. Judicial standards of conduct are the corollary of these values and essential for ensuring confidence in the judicial system. Such confidence is even more important with the growing globalization of disputes and availability of judgments. Furthermore, the legitimate expectations of justiciables in a state of law dictate that general principles compatible with fair process and the guaranteeing of basic rights be defined. Judges' duties are imposed on them to guarantee their impartiality and efficiency." (Consultative Council of European Judges [CCJE], *Avis numéro 3 sur les principes and règles régissant les impératifs professionnels applicables aux juges and en particulier la déontologie, les comportements incompatibles and l'impartialité,* 2002). The international Bangalore declaration also affirms the link between public confidence and democratic society: "WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society. . ." (*Bangalore Principles of Judicial Conduct,* as adopted by the Judicial Group on Strengthening Judicial Integrity and revised at the Round Table Meeting of Chief Justices held at the Peace Palace in The Hague on November 25 and 26, 2002, Preamble, 6th Whereas. Lastly, in the United States, reference to public confidence as justification for the principles of independence, impartiality, and integrity is also found in the updated version of the U.S. *Model Code,* which states in Rule 1.01, *Promoting Confidence in the Judiciary,* that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." American Bar Association Joint Commission to Evaluate the Model Code of Judicial Conduct, Canon 1, p. 1.

Review of judicial conduct thus serves two purposes: education and prevention through constant adjustment of judicial practices to meet expectations, and the upholding of public confidence in the judiciary and judicial institutions, the yardstick against which misconduct is measured to determine how seriously it breaches the standards of ethical behaviour. This includes the duties of independence, impartiality, and integrity, the very core of judicial ethics.[43]

### 4) The institutional perspective: its expected consequences in the event of the resignation, death, or retirement of a judge facing a complaint

The question is, what conclusion should we draw from an institutional perspective when a judge retires, resigns, or dies, knowing that nothing inherently precludes our treating the three situations in three different ways? The answer, if our goal is to arrive at a generally applicable position, is difficult to determine without considering the general policies of the Conseil de la magistrature since its creation. The two main points that distinguish the institutional perspective from a moral or disciplinary perspective are that (1) ethical problems are contemplated not only on the basis of the judge's personal situation, but also from a collective angle and (2) ethical misconduct is judged in direct relation to its impact on public confidence. This is not the case in a strictly disciplinary approach, which focuses instead on sanctioning individual behaviour, and where public confidence, although always an issue, is a general consequence of actions taken and not a means to measure the seriousness of an ethical breach. The same holds for the moral or ethical tradition. In contemplating the moral or ethical value of behaviour, it seeks to guarantee the personal quality of each individual member of the group. The group's legitimacy thus resides in the fact that it embodies exemplary values. In all cases, the same parameters are obviously at play, but balanced together in a different way.

When the question is answered from an institutional perspective, however, consideration is made of the consequences for the judiciary should procedures against a judge who has left the bench be suspended. It appears to us that given the collective, preventive, and educational scope of ethics inquiry and the unique place that upholding public confidence has in the Conseil's approach, the Conseil and its committees are right to pursue inquiries and investigations even if a judge has

43. See Noreau and Roberge, *op. cit* note: 29

resigned, retired, or died. Given the legislation's stated purpose, this seems most likely to guarantee "the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit," as gradually defined by the Court and the Conseil over the last thirty years.

As to whether the current legislation authorizes the Conseil to continue investigating a complaint or conducting an inquiry after a judge has died or left office, this can obviously be subject to different interpretations depending on whether one's approach to the *Courts of Justice Act* is formal and abstract or broad and liberal. But past Conseil and court decisions and the need to meet the general and specific goals of the CJA tend to suggest today that the Conseil continues to have jurisdiction even if a judge is no longer sitting. Of course, whether or not it uses this jurisdiction is entirely up the Conseil (and its committees) as part of the judicial discretion it enjoys. Certain criteria can, however, guide it in this respect, as we suggest below in section 6.

### 5) The Conseil's past approach

The problem is not a new one—it has been around for over twenty years. The Conseil has periodically pondered the matter and sought opinions, which, as we have seen, have tended to argue that it has no jurisdiction in such cases. Given these repeated answers and the lack of positive affirmation of its jurisdiction in the *Courts of Justice Act,* the Conseil took action in 2002, calling for an amendment to its enabling legislation. This was a logical step considering it had taken such an approach to judicial ethics ever since its inception. It was also implicit recognition of what we have attempted to describe above. With no amendments forthcoming, however, the Conseil is now wondering whether it can at least claim jurisdiction in cases where judges have ceased to sit. This viewpoint, as we have seen, is in keeping with trends in judicial ethics.

The question is, is there a framework that fits with the goals of judicial conduct review and that can guide the exercise of such jurisdiction on the explicit basis of each goal each time the Conseil's discretion is in play. This is the question we will seek to answer.

### 6) Criteria for deciding whether to continue or end an investigation or inquiry into a judge who is no longer sitting

For the sake of clarity and consistency, let us quickly recap the previous discussion.

Successive court decisions show, as do approaches taken by the Conseil and its committees over the years in various investigations and inquiries, that judicial ethics has not only a remedial function, but also a preventive and reflective function. By this we mean that it seeks primarily to keep judicial practices current and in tune with the values of Québec society. This is necessary to uphold the public's confidence in the judiciary. It is also the core mission of the Conseil de la magistrature: to maintain the public legitimacy of the judiciary, i.e., as a social institution. In this regard, the Conseil's actions have sought to strike a constant and stable balance between a "moral" and a "disciplinary" approach and have been characterized by a perspective we have called "institutional." The sole purpose has not been "ethical" or "disciplinary" sanctions of misconduct, although this is a necessary part of any ethics approach, but also adaptation of judicial practice to the need for justice founded on ideals of integrity, impartiality, and independence. These principles are the foundation of a state of law. And in all democratic societies, the behaviours considered likely to undermine these principles undergo constant change themselves as our collective values evolve. What's more, the notions and criteria that underpin our concepts of integrity, impartiality, and independence have also undergone slow change over the past thirty years. An attentive reading of Conseil decisions attests to this ongoing adjustment and to the changing concerns that permeate both contemporary society and today's judiciary. The Conseil contributes to upholding democracy by seeking to uphold the link between public expectations and judicial conduct, i.e., the need for citizens to respect and support their public institutions. This need gives rise to a form of moral contract (or social contract) between citizens and our public authority–wielding judges.

This is the general thrust of how judicial ethics—still a sui generis field of law–has evolved. Each ethics decision helps orient the law's future direction. Each is fully part of the body of ethics caselaw and guides our understanding of it.[44] And each is the reason we can say judicial ethics is reflective in nature. It seeks to do more than just sanction the misconduct of individual judges—it also seeks to keep judicial practice current, and so approaches each case as a new opportunity to reflect on the judiciary as a whole and on how to uphold the public's confidence.[45] It does this first of all by guaranteeing to citizens that the entire judiciary is concerned by and takes an interest in criticisms of an ethical nature brought against any of its members. This means that each judge's behaviour has a collective or institutional dimension. Viewed from this

44. Patrick Glenn, "Indépendance et déontologie judiciaire," 1995, *Revue du Barreau,* Vol. 55, p 2.

45. Pierre Noreau and Chantal Roberge, *op. cit.* note: 29, Section 1.1.

perspective, each decision is an opportunity to adjust and fine-tune the institution as a whole. The Code has, as we saw, an "inspirational and educational function."[46] The same holds true, as we have also seen, for sanctions imposed on a judge whose statements or behaviour represent a breach of the duties of office.[47]

This approach is understandable knowing the need to uphold the public's confidence in the judiciary. Confidence is maintained when there is a way for the judiciary to remedy its functioning as an institution, but also to remedy individual cases where it could be felt that a judge acted in contravention of the duties of office. To the extent that each case is an opportunity for the judiciary to reflect further on its functioning, each case must be examined thoroughly. But each case is also the opportunity, in situations pitting specific citizens against specific judges, to show the judiciary's determination to continually adjust its practices.

This general approach must guide us in determining under which circumstances the Conseil should be authorized to proceed with complaints about judges who have resigned, retired, or died.

We stated earlier that this approach tends to suggest that investigations and inquiries should proceed regardless of the current status of the judge facing the complaint. This was the Conseil's contention in 2002 when it asked that the *Courts of Justice Act* be amended to legally enshrine its jurisdiction in cases involving judges who have resigned, retired, or died.

Proceeding with complaints would thus be standard procedure for the Conseil, and according to the rules of procedure, the Inquiry Committee is at complete liberty to examine any facts presented to it that concern a complaint. Section 275 of the *Courts of Justice Act* also states that "The committee may make rules of procedure or rules of practice for the conduct of an inquiry." In keeping with the rule that "he who decides must hear," the Conseil is bound by the Committee's inquiry report.[48] Taken together, these norms are a recognition of the Committee's discretion to proceed with or interrupt inquiries given its ethical role and the general principles that must

46. *Doucet and Sauvé* (Municipal Court, part time) (2001).

47. In *Ruffo v. Conseil de la magistrature,* 1995 (S.C.C.) the Supreme Court concluded likewise that the Committee played a remedial role toward the judiciary and not toward the judge facing sanction. It therefore follows that the underlying goals in creating the Committee are not to punish conduct deemed noncompliant, but rather to safeguard the integrity of the entire judiciary.

48. Ruffo v. Conseil de la magistrature du Québec, 1989 (C.S.), upheld in Ruffo v. Conseil de la magistrature du Québec, 1992 (C.A.)

be heeded for justice to be sustained. "The Committee must see to the proper administration of justice and the efficient use of judicial resources."[49]

On what basis such decisions should be made is discussed in Horne and Ruffo.[50] There it states that while it may be appropriate to continue an inquiry even if the judge has resigned in the time since the complaint was received, the decision to do so must be based on certain parameters:

> "This raises the following question: does the case concern a matter of such importance to the judiciary that the inquiry committee must continue its investigation of the complaint?"

This general question can itself be reformulated in a more specific manner to aid the later work of committees facing the same question. A quick look at past Conseil decisions shows that four factors provide a likely indication that a matter is truly important to the judiciary as a whole, given trends in judicial ethics:

1. How new the situation is and how the question it raises contributes to ethics caselaw
2. How exemplary the case is for the judiciary from an educational and preventive viewpoint
3. How important it is that the public's confidence in the independence, impartiality, or integrity of the judiciary be restored
4. How important it is that proper administration of justice and efficient use of public resources be ensured

Obviously not all these criteria need be present. Some in fact offset others. For instance, the need to ensure proper administration of justice could, despite the inherent interest a case raises, lead the Committee to conclude that investigation of the complaint should be suspended. Whatever the case, however, the Committee should remain focused on the institution's mission—to reveal the truth and safeguard judiciary integrity. In this regard, as we noted above, the Committee "fulfills a remedial role indisputably tied to public order."[51] It follows that cases should not simply be dropped whenever they are too difficult or convoluted.

As for the criteria themselves, they must be interpreted broadly. The first criterion—how the question raised contributes to ethics caselaw—can be evaluated through examination of past Conseil decisions.

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49. Horne and Ruffo, 2006, par. 12.

50. Idem.

51. Ruffo v. Conseil de la magistrature, 1995 (C.S.C).

Certain situations are more common than others and have already been considered by the Conseil and the judiciary as a whole. Others are more unusual and unprecedented. With judicial ethics being relatively new, it is normal that a complete inventory of situations likely to be encountered has yet to be done. In this respect, *La déontologie judiciaire appliquée*[52] is still the most useful reference work as it studies and classifies each decision by subject matter.

Second criterion: how exemplary the case is for the judiciary from an educational and preventive viewpoint. This criterion refers to the reflective function of ethics that we referred to earlier. But how important a case is does not necessarily correlate to how new a particular situation is to judicial ethics. A case could in fact be important because of its repetitive nature, because it is a regular but problematic situation. It could even be considered more necessary to proceed with the investigation or inquiry knowing that past decisions have already cast doubt on the behaviour and it is important that it stop. The preventive and educational character of the case is the key to deciding whether to proceed with or suspend the investigation or inquiry.

Third criterion: the need to restore the public's confidence in the independence, impartiality, or integrity of the judiciary. This criterion is without doubt the most important. While the previous criterion was preventive in nature, this one seeks instead to restore the relationship of trust between the public and the judiciary. Public confidence is also the yardstick by which we measure the seriousness of an ethical breach. It therefore indirectly determines how serious a punishment the Conseil should impose in specific situations. The short – and long-term goal is to safeguard the legitimacy of the judiciary as a social entity that wields a form of public authority.

The goal over time is to avoid conveying the impression to the public that members of the judiciary enjoy a form of immunity, especially given that they are accorded the privilege of passing judgment on the value and consequences of their own work. The public expects more of them because the judiciary has the social responsibility of judging the behaviour of others. This in itself is cause for a certain personal and institutional rectitude. When public confidence has been rattled by a series of complaints about judicial conduct thought to be incompatible with the office, how can we restore confidence if procedures are systematically interrupted whenever a judge resigns or retires, or even dies? Just the fact that the judge has quit or taken

52. Idem. note: 19.

early retirement, or even left the bench for any other reason, suggests that the alleged misconduct was indeed in some way harmful to the judiciary.

There are two short-term aspects to public confidence: the actual complainants or individuals directly or indirectly concerned by the behaviour or statements of a particular judge in particular circumstances and the collective impact in cases where a judge's behaviour or statement has received public or media exposure. In all cases it is reasonable for the public to expect that the complaint will be followed up on. Apart from the actual subject of the complaint, we must consider how serious the reported behaviour or statement is in order to determine whether the situation will fuel doubts in the public's mind about the independence, impartiality, and integrity of certain members of the judiciary, or the judiciary as a whole. And in deciding whether to proceed with an investigation or inquiry, we must always consider the short – and long-term effects of doing so. The two considerations are not, however, always in perfect accord. On an individual case basis, it can be tempting to terminate an investigation or inquiry for administrative reasons: one less file to deal with. And it can be reasonable to conclude that doing so is not enough to jeopardize the public's overall confidence in the judiciary, even knowing it can raise legitimate doubts in the minds of those who filed the complaint and got no answer. Over time, however, systematic invocation of retirement or resignation as a reason for closing a file could lead people to believe that the judiciary is unwilling to use the ethics process as a means to adjust its practices. We therefore need to think about how the process and the levying of sanctions can stand as an example, and not underestimate, even on a case-by-case basis, the cumulative impact of systematically deciding to terminate investigations or inquiries into judges who have retired or resigned. Although each case is different, we must remember that the ethics process has a remedial value not just for those directly concerned, but also for the judiciary as a whole. Ultimately the question we must ask is whether ending an ongoing investigation or inquiry will prevent the judiciary from restoring the relationship of trust that a judge's behaviour or statement has damaged. Is continuing the ethics process not in itself restorative?

The criterion of proper administration of justice and efficient use of public money must also be remembered and considered, but not piecemeal. It has both a short – and long-term impact. The short term is the actual cost of continuing with the ethics process. It introduces a principle of proportionality despite the fact certain aspects cannot really be measured: How can we put a value on the public's confidence in the judiciary? Does democracy have a cost? The proportionality is thus a qualitative comparison of the various criteria cited above. In a completely different respect, the judicial ethics process itself could be considered a prerequisite to the proper

administration of justice, defined in a very broad sense.[53] We must therefore ponder here too the short – and long-term consequences of continuing with or terminating the ethics process from an administration of justice viewpoint, defined both restrictively (the immediate cost) and broadly (the fact that judicial ethics is itself a tool in the administration of justice, beyond its actual cost). The point is to ensure that the desire for the proper administration of justice (from a restrictive, short-term viewpoint) does not paradoxically prevent the actual achievement of proper administration of justice (from an overall, more institutional, longer term viewpoint).

## Conclusion

Faced with two perspectives, one consisting of addressing the problem submitted by the Conseil from an abstract and formal viewpoint of judicial law, the other of taking a more overall approach that looks to evolving trends in ethics, we chose the latter. This second perspective is justified by the very nature of judicial ethics. Essentially it is a law of jurisprudence, a fact very quickly brought to bear by the doctrine.[54] The opinions provided to the Conseil to date did not have the distance or the required access to decisions to take into account the gradual evolution and direction of judicial ethics. These are considerations we have sought to reintroduce. Their basis is a simple goal: approach and interpret the law in such a way that it achieves its purpose. Restrictively and abstractly, the ethics process is aimed at punishing. It seeks to monitor and sanction the individual behaviour of judges. Court and Conseil decisions on the other hand afford it a broader function: keep judicial practice current and in tune with the public's values and expectations so as to uphold public

53. In a previous decision, the Committee wrote the following on the relationship between ethics and the administration of justice:
"To analyze the impact of the entire situation, the following aspects must be measured:
- the image of justice
- the transparency and integrity of the judicial system
- the public's confidence in the system

Does the situation compromise the integrity of the judicial system? Does it affect, erode, or undermine public confidence? What image does it give of justice? These are important questions. If the situation were analyzed objectively by a "reasonable, impartial, and well-informed individual," it could no doubt sap his or her confidence in the judiciary and thus his or her trust in the administration of justice." From *Bergeron and Pagé* (Small Claims Division), 2003.

54. Glenn, *op. cit* note 32.

confidence in the judicial institution and the judiciary. Implicit in such a perspective is that certain situations where ethics may come into play can fall outside the Conseil's purview and offer no possibility of informing the judiciary of best practices for ensuring its ongoing legitimacy. Such cases are all the more problematic in that they sometimes involve situations that would normally lead to reprimands. This runs counter to the very purpose of the ethics process: permit ongoing adjustment of judicial practices to societal imperatives and uphold the public's confidence over the short and long term.

A broad and liberal interpretation of the Act and consideration of the features of contemporary judicial ethics from an institutional perspective point in the other direction. They uphold the Conseil's continued jurisdiction even if judges have left the bench. In our opinion this option is not incompatible with the actual state of the law, but the doctrinal text we have produced here at the Conseil's request is not in itself a legal opinion. Thus the Conseil should envision a declaratory action in order to assess the precise limits of its jurisdiction in the above conditions.

Pierre Noreau,
April 20, 2008

APPENDIX 6

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The Conseil de la magistrature du Québec was created in 1978 by an act passed in the National Assembly.

The Conseil's mandate is to ensure compliance with judicial codes of ethics and, more specifically, to examine complaints lodged against provincially appointed judges.

Since its creation, the Conseil has examined over 2,000 complaints against judges in Québec.

Drawing on the decisions reached by the Conseil, inquiry committees and the courts, the authors analyze typical situations to provide a practical demonstration of the scope of the provisions of the Courts of Justice Act and the various codes of ethics.

By making its decisions more widely available, the Conseil seeks to help maintain public trust in our judicial institutions.

A legal expert and political scientist by training, Pierre Noreau is a professor in the Faculty of Law at the Université de Montréal and a researcher at the Centre de recherche en droit public, where he is active in the field of the sociology of law. Pierre Noreau was president of the Association francophone pour le savoir (ACFAS) from 2008 to 2012 and director of the North American office of the Agence universitaire de la Francophonie (AUF) from 2009 to 2011. He is currently vice rector of programming and development at AUF. His research focuses primarily on the workings and evolution of the judicial system, as well as on non-adversarial dispute resolution, access to the justice system, ethnocultural diversity and aboriginal governance. His recent publications explore issues dealing with judicial ethics and the conditions of interdisciplinary research in law. Pierre Noreau holds a PhD from the Institut d'Études politiques de Paris.

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ISBN 978-2-89689-218-1