



IN THE MATTER OF
Section 65 of the *Judges Act*,
R.S., 1985, c. J-1, and of the
Inquiry Committee convened
by the Canadian Judicial Council
to review the conduct of
the Honourable Michel Girouard
of the Superior Court of Québec:

**Report of the
Canadian Judicial Council
to the Minister of Justice**

Pursuant to its mandate under the *Judges Act*, and after inquiring into the conduct of Justice Girouard, the Canadian Judicial Council hereby recommends to the Minister of Justice, pursuant to section 65 of the *Judges Act*, that the Honourable Michel Girouard not be removed from office.

Ottawa, 20 April 2016

DANS L'AFFAIRE DE
l'article 65 de la *Loi sur les juges*,
L. R., 1985, ch. J-1, et du
comité d'enquête constitué par le
Conseil canadien de la magistrature
pour examiner la conduite de
l'honorable Michel Girouard de la
Cour supérieure du Québec :

**Rapport du
Conseil canadien de la magistrature
à la ministre de la Justice**

En vertu du mandat que lui confère la *Loi sur les juges*, et après avoir enquêté sur la conduite du juge Girouard, le Conseil canadien de la magistrature recommande par la présente au ministre de la Justice, aux termes de l'article 65 de la *Loi sur les juges*, que l'honorable Michel Girouard ne soit pas révoqué.

Ottawa, le 20 April 2016

**List of Council Members who
finalized this matter**

**Liste des membres du Conseil qui ont
finalisé ce dossier**

- The Honourable / L'honorable Neil C. Wittmann
(Chairperson / Président)
- The Honourable / L'honorable Heather J. Smith
- The Honourable / L'honorable David D. Smith
- The Honourable / L'honorable J. Derek Green
- The Honourable / L'honorable Jacqueline R. Matheson
- The Honourable / L'honorable David H. Jenkins
- The Honourable / L'honorable Robert Kilpatrick
- The Honourable / L'honorable Robert Bauman
- The Honourable / L'honorable John D. Rooke
- The Honourable / L'honorable Lawrence I. O'Neil
- The Honourable / L'honorable Austin F. Cullen
- The Honourable / L'honorable Martel D. Popescul
- The Honourable / L'honorable Shane I. Perlmutter
- The Honourable / L'honorable Alexandra Hoy
- The Honourable / L'honorable Frank N. Marrocco
- The Honourable / L'honorable Robert G. Richards
- The Honourable / L'honorable Christopher E. Hinkson
- The Honourable / L'honorable George R. Strathy

**IN THE MATTER OF SECTION 65 OF THE *JUDGES ACT*, R.S., 1985, C. J-1, AND THE
CANADIAN JUDICIAL COUNCIL INQUIRY COMMITTEE CONVENED TO REVIEW
THE CONDUCT OF THE HONOURABLE MICHEL GIROUARD OF THE SUPERIOR
COURT OF QUEBEC.**

**REPORT OF THE CANADIAN JUDICIAL COUNCIL TO THE
MINISTER OF JUSTICE**

[1] After inquiring into the conduct of Justice Michel Girouard (the “Judge”), the Canadian Judicial Council (CJC) recommends that the Judge not be removed from office because the allegations considered in this Report have not been established.

PROCESS

[2] The statutory framework mandates the CJC consider the recommendations of an Inquiry Committee before applying its own independent judgement to the facts. The process contemplated is a seamless one in which an Inquiry Committee, charged with hearing evidence and finding facts and coming to its own conclusions, plays a critical role. In fulfilling this obligation, the CJC does not employ, and is not constrained by, a standard of review equivalent to that of an appellate tribunal reviewing the decision of another body. To assist in this exercise, the CJC also has the power to hear additional submissions and receive and consider new evidence.

[3] This responsibility on the CJC to make its own independent assessment and judgement is as it should be given the serious nature of the interests at stake. Those interests include both the need to preserve public confidence in the integrity of the judiciary and the need to ensure that judicial independence is not improperly compromised through the use of disciplinary proceedings. Public confidence in the judiciary is essential in maintaining the rule of law and preserving the strength of our democratic institutions. All judges have both a personal and collective duty to maintain this confidence by upholding the highest standards of conduct both before and after their appointment.

[4] This approach is also mirrored in the procedure to remove a judge mandated by Canada’s Constitution. A recommendation by the CJC to the Minister to remove a judge from office must be brought before both Houses of Parliament. It is precisely because of the importance of the principles involved that a recommendation to the Governor General to remove a judge from office must come from both Houses of Parliament and not a committee of either House.

[5] The purpose of an Inquiry Committee is to investigate the complaint made, hear the relevant evidence, make the necessary fact findings and produce a report documenting the findings made and conclusions reached including whether or not a recommendation for removal should be made. The product of that exercise, the Inquiry Committee Report, is meant to assist and guide the CJC in its deliberations.

[6] This Inquiry Committee consisted of two chief justices and a senior member of the Bar. Its composition, expertise and role, together invite the CJC to carefully consider the Inquiry Committee's perspective described in its Report.

BACKGROUND

[7] The Judge was appointed to the Superior Court of Québec on September 30, 2010. After his appointment, he sat in the Regions of Rouyn-Noranda and Témiscamingue as well as remote areas of Québec.

[8] Prior to his appointment he practiced law for 25 years in the Province of Québec. At the time of his appointment he practiced mainly civil litigation and family law, although he periodically acted as defence counsel in criminal matters. He was President of the Barreau de l'Abitibi-Témiscamingue from 2008-2010 and a member of the Executive Council of the Barreau du Québec in 2009.

[9] In the fall of 2012, the Director of Criminal and Penal Prosecutions notified the Chief Justice of the Superior Court of Québec that a drug trafficker, turned police informant, claimed that he sold approximately one kilo of cocaine to the Judge between 1987 and 1991. The Director also told the Chief Justice that the police had a video recording which appeared to show the Judge purchasing cocaine, from one Yvon Lamontagne ("Lamontagne"), approximately 13 days before his appointment to the Superior Court.

[10] The drug trafficker¹ had been arrested in a Sûreté du Québec investigation in the Abitibi-Témiscamingue Region in 2009-2010. He had a lengthy criminal record and after his arrest cooperated with the Sûreté by providing information and testifying. At some point he pleaded guilty to trafficking in drugs, including cocaine, and received a 10-year jail sentence. The trafficker told police that the Judge had regularly purchased cocaine from him between 1987 and 1991.

[11] Lamontagne was arrested in 2010 in the same investigation. He pleaded guilty to trafficking in marijuana and received a nine-year sentence. His movie rental store was searched by police who seized a digital recorder/closed-circuit surveillance camera. On the recorder was a

¹ We have not referred to the drug trafficker by name because we do not know it; the drug trafficker's name is apparently protected by a publication ban.

video (without sound) of a September 17, 2010 meeting between Lamontagne and the Judge, who, at that time, was acting for Lamontagne in a tax matter. This video captured the alleged cocaine purchase.

[12] The Chief Justice reported this information to the CJC and requested a review of the allegations.

[13] In January 2013 Canadian Judicial Council investigation proceedings were launched, pursuant to the *Judges Act*, the *Canadian Judicial Council Inquiries and Investigations Bylaws (By-Laws)*, SOR/2002-371 and the *Procedures for Dealing with Complaints made to the Canadian Judicial Council about Federally Appointed Judges (Procedures)*. The Judge was asked to respond to the allegations.

[14] In a January 2013 letter to the Judicial Conduct Committee, the Judge denied both the drug trafficker's claims and the purchase of drugs from Lamontagne.

[15] Pursuant to the CJC *Procedures*, all the information was reviewed by the Vice Chair of the Judicial Conduct Committee, who decided that the matter warranted further consideration. The Vice-Chair referred the unverified allegations and the Judge's denial to a Review Panel. The Review Panel decided that this matter could prove to be serious enough, if established, to warrant the Judge's removal. In accordance with our procedures an Inquiry Committee (the "Committee") was constituted. Its mandate was to decide whether to recommend the Judge's removal from office. In making this recommendation, the Committee was to consider any allegations pertaining to the Judge as well as any other relevant allegation brought to its attention.

[16] The Committee unanimously found the allegations not proven on a balance of probabilities. The majority, however, recommended the Judge's removal due to the testimony he gave to the Committee. The dissenting judge agreed the allegations had not been proven but disagreed with the recommendation for removal.

[17] We set out below the allegations made against the Judge, the conclusions and recommendations of the Committee (both majority and dissent), our analysis of the issues and the reasons for our recommendation that the Judge not be removed from office.

The Notice of Allegations

[18] Section 5(2) of the *By-Laws* requires Independent Counsel to give the Judge notice of all allegations the Committee will consider so that the Judge can fully respond.

[19] Independent Counsel prepared an initial Notice of Allegations containing 8 allegations. There was an exchange of various drafts of the Notice among the Committee, Independent Counsel and the Judge's counsel.

[20] After various drafts, case management conferences with and directions from the Committee, allegation 1 was clarified; allegation 5 was amended and then later withdrawn; allegations 7 & 8 were withdrawn. The final version of the allegations to which the Judge responded at the Committee hearing is set out in an attached Appendix.

[21] The Committee decided to separate allegation 3 and to proceed with it first. That allegation is as follows:

On September 17, 2010, while his application for appointment as a judge was pending, and more specifically two weeks before his appointment on or about September 30, 2010, the Judge allegedly purchased an illicit substance from Yvon Lamontagne, who was also his client.

[22] This allegation relates to conduct observed in the 18-second video (without sound) seized from the digital recorder in Lamontagne's office.

Conclusions of the Committee

[23] The Committee unanimously concluded that allegation 3 had not been proven. Its reasons are set out at paras. 159 to 173 of its Decision. The Committee was unable to conclude, "on a balance of probabilities that there was clear and convincing evidence that the exchange captured and recorded on video in Lamontagne's store on September 17, 2010 [was] an illegal substance transaction." The Committee stated that, while the actions of Lamontagne and the Judge looked "suspicious", it could not determine whether they reflected dealing in an illegal substance or "simply innocuous gestures."

[24] The Committee found no evidence that Lamontagne possessed cocaine in the months preceding the meeting and no evidence, (despite the fact that individuals dealing in cocaine in the Region were apparently under constant and lengthy surveillance in 2010), that the Judge "used or purchased cocaine in the months preceding his appointment to the judiciary."

[25] The Committee also concluded that it would not be appropriate to pursue allegations 1, 2, and 4 because the passage of time would have weakened the quality of the evidence and it was unlikely that those allegations could be proven in light of the Committee's finding and conclusions drawn from the evidence. The Committee also found that in view of its conclusions regarding allegation 3, it was unnecessary to pursue allegation 6.

The additional conclusions of the majority

[26] Having found that none of the allegations had been proven, two of the three members of the Committee (the majority) expressed concern about the reliability and credibility of the Judge's evidence. Their analysis of six specific concerns is set out at paras. 181-222 of their reasons. They found the Judge's evidence contained "contradictions, inconsistencies and implausibilities" central to the September 17, 2010 transaction.

[27] These two members expressed "deep and serious concerns" about the Judge's credibility and therefore about his integrity. In their opinion, the Judge attempted to mislead the Committee by concealing the truth. It was their view that the Judge lacked candour, honesty and integrity before the Committee. They concluded that, in so doing, the Judge placed himself in a position incompatible with the execution of his office and that in testifying this way the Judge had undermined the integrity of the judicial system.

[28] The majority suggested that if Council thought procedural fairness required that the Judge be given an opportunity to respond to their concerns and conclusions, a further allegation could be brought against him in relation to his conduct during his testimony. They concluded, however, that he had been given an opportunity to respond to the evidence at the hearing and as a result procedural fairness did not require a further hearing. The majority also suggested, as an alternative that Council could hear the Judge so that he could respond to their concerns about his evidence.

[29] Finally, they expressed the opinion that Council should, due to the majority's conclusions about the Judge's testimony at the Inquiry, recommend his removal from office.

The conclusion of the minority

[30] The third member of the committee (the minority) expressed full agreement with the reasons of the Committee in finding that allegation 3 had not been proven, but did not agree with the majority's recommendation that the Judge be removed. He examined the inconsistencies, errors and weaknesses in the Judge's evidence and concluded that they did not raise a concrete doubt about the credibility of the Judge's testimony. He acknowledged that the events in the video seemed "shady". The minority member did not find the Judge's explanations false. Rather he thought that "the five or six inconsistencies [identified by the majority] ...are of the kind that can be expected in a testimony that lasted five (5) days, amounted to more than eight hundred (800) pages of transcripts, and focused on a brief exchange lasting eighteen (18) seconds that occurred almost five (5) years ago."

[31] The minority member stated that he required evidence, in addition to the Committee's credibility assessment, before he would find an attempt to mislead through the offering of false evidence.

[32] Finally, he added that the Committee was not entitled to recommend removal from office for misconduct that was not part of the ultimate allegations against the Judge. In his view, procedural fairness required that the Judge be given an opportunity to respond to any specific issue about his testimony.

PRELIMINARY MATTER

[33] In his written submissions to Council, Justice Girouard raised Constitutional Issues. In light of Council's recommendation that Justice Girouard not be removed from office, Council has decided not to deal with these issues.

ANALYSIS

[34] We accept the unanimous conclusion of the Committee that allegation 3 was not proven on a balance of probabilities. While we agree with Independent Counsel's written submission that we have jurisdiction to make different determination about proof of allegation 3, we decline to exercise that jurisdiction for the reasons which follow.

[35] The Committee had the benefit of hearing from thirteen witnesses, seven called by Independent Counsel, the Judge himself and five other witnesses on behalf of the Judge, including his spouse and professional and personal acquaintances. In addition, Independent Counsel submitted evidence of four phone calls which passed between the Judge and Lamontagne. These phone calls were recorded by the Sûreté du Québec because Lamontagne was under electronic surveillance. The Committee had the evidence of the 18-second silent video purportedly showing a cocaine transaction between the Judge and Lamontagne. The Committee had no other evidence that the judge used or purchased cocaine in the months preceding his appointment, despite the fact that individuals who were dealing in cocaine in the Region were under constant and lengthy surveillance.

[36] Police officers who had Lamontagne under surveillance testified before the Committee that they never saw him in possession of cocaine. When the Sûreté du Québec searched Lamontagne's movie rental business no cocaine was found, although police did find substantial quantities of marijuana. Lamontagne testified and denied that the video showed him selling cocaine to the Judge.

[37] The Judge testified for a total of five days. He denied purchasing cocaine from Lamontagne and denied that the video recorded a drug transaction. He denied using cocaine or other drugs.

[38] Friends and family members of the Judge testified. One family friend, a cardiologist, testified that he had seen the Judge regularly since 1996 and had never observed any behaviour that led him to believe that the Judge used cocaine. The Judge's former law partner, who started working with him in 1996 and took over his practice after his appointment, testified that he never observed odd behaviour on the part of the Judge or any sign of a drug problem. The lawyer indicated that he would never have tolerated such a problem in a law partner. Evidence was also received from a judge of the Court of Québec and a former articling student, both of whom testified that they had worked closely with the Judge and had never observed behaviour suggesting the Judge used drugs. The Judge's spouse testified that he never used drugs.

[39] We accept the Inquiry Committee's conclusion that allegation 3 was not established on a balance of probabilities.

[40] We agree with the Committee's conclusion that it could not be proven on a balance of probabilities that the Judge used cocaine regularly between 1987 and 1992, purchased \$90,000-\$100,000 worth of cocaine in that period and exchanged professional services in that period for cocaine and that as a result those allegations need not be pursued. Not only had a great deal of time (about 25 years) passed since the events, thereby weakening the quality of the evidence available, but there was also no evidence confirming the drug trafficker's allegations. There was, however, evidence to the contrary in the Judge's denial and the evidence of family, friends and professional colleagues.

[41] Finally, we agree that, as a result of the Committee's findings, Allegation 6, to the effect that the Judge withheld information concerning his past and present which would negatively reflect on himself and the judiciary could not have been proven and as a result should not be pursued.

The Majority/Minority Conclusions concerning the judge's testimony

[42] In this Report, we do not consider the majority's conclusion that the judge attempted to mislead the Committee by concealing the truth and that such conduct places him in a position incompatible with the execution of his office. The Council takes this approach because the judge was not informed that the specific concerns of the majority were a distinct allegation of misconduct to which he must reply in order to avoid a recommendation for removal.

[43] Because the judge was entitled to this kind of notice and did not get it, the Council does not know whether the majority's concerns would have been resolved had it received an informed response to them from the judge.

[44] Because we do not know if the majority's concerns would have been resolved, the Council, itself, cannot act upon the majority's concerns as if they were valid.

[45] Although unnecessary for purposes of our conclusions, we also observe that the majority's comments present a clear conundrum. It would seem that either (1) there was no drug transaction or (2) the judge misled the Committee and there was a drug transaction. The majority's reasoning does not resolve this apparent paradox.

[46] In light of this conundrum, and considering that all three members of the Committee concluded that there was not sufficient evidence to establish allegation number 3 that "on September 17, 2010, while his application for appointment as a judge was pending, and more specifically two weeks before his appointment on or about September 30, 2010, Me Girouard allegedly purchased an illicit substance from Yvon Lamontagne, who was also his client.", and in light of the minority conclusion about the judge's credibility, we would in any event have been unable to act on the majority's findings.

CONCLUSION

[47] The Council accepts the unanimous conclusion of the Inquiry Committee that the allegation that the Judge purchased drugs from Yvon Lamontagne has not been proven on a balance of probabilities.

[48] The Council accepts the Inquiry Committee's unanimous conclusion that allegations 1, 2, 4 & 6 should not be pursued because they cannot be proven. Allegations 5, 7 and 8 have been withdrawn.

[49] The Council recommends to the Minister of Justice, pursuant to section 64 of the *Judges Act*, that the Judge not be removed from office on the basis of these allegations.

APPENDIX

- Allegation 1: While he was a lawyer, during a period between 1987 and 1992, Me Girouard allegedly used cocaine on a recurring basis.
- Allegation 2: For a period of three to four years between 1987 and 1992, while he was a lawyer, Me Girouard allegedly purchased cocaine from Mr X for his personal use, namely a total of about 1 kilogram with an approximate value of between \$90,000 and \$100,000.
- Allegation 3: On September 17, 2010, while his application for appointment as a judge was pending, and more specifically two weeks before his appointment on or about September 30, 2010, Me Girouard allegedly purchased an illicit substance from Yvon Lamontagne, who was also his client.
- Allegation 4: In the early 1990s, while he was a lawyer, Me Girouard allegedly exchanged professional services provided to Mr X worth about \$10,000, in relation to a case before the predecessor of the Régie des alcools, des courses et des jeux, for cocaine for his personal use.
- Allegation 5: WITHDRAWN
- Allegation 6: On January 25, 2008, Me Girouard signed the Personal History Form used by the Office of the Commissioner for Federal Judicial Affairs and failed to disclose the information included in this Notice of Allegations in answer to the following question: “Is there anything in your past or present which could reflect negatively on yourself or the judiciary, and which should be disclosed?”.
- Allegation 7: WITHDRAWN
- Allegations 8: WITHDRAWN