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JUDGING ADMINISTRATIVE JUDGES: OVERSIGHT, ACCOUNTABILITY, AND CITIZEN COMPLAINTS

Sule Tomkinson, Hubert Brulotte, Dorothée Cormier, Nicolas Desnoyers, Katy Faye, Catherine Lanouette and Jérémy Trudel

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Article abstract

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JUDGING ADMINISTRATIVE JUDGES: OVERSIGHT, ACCOUNTABILITY, AND CITIZEN COMPLAINTS

Sule Tomkinson, Hubert Brulotte, Dorothée Cormier, Nicolas Desnoyers, Katy Faye, Catherine Lanouette, and Jérémy Trudel*

The Conseil de la justice administrative [CJA] is a distinct oversight body responsible for investigating complaints of deontological breaches committed by members of administrative tribunals in Quebec that wield quasi-judicial powers. In our examination of the CJA's decisions, we consider it to be a crucial accountability mechanism within the Quebec administrative justice system. Our analysis focuses on identifying the complainants, the nature of their complaints, the tribunals they target, the outcomes of these complaints, and the CJA's approach to handling them. We found that over 73 percent of the investigated complaints are filed by citizens who allege disrespectful conduct and delays in tribunal decision-making. A significant portion of investigated complaints – nearly 60 percent – are directed at judges from the Tribunal administratif du logement [TAL], the agency responsible for the largest caseload in the province. Of the complaints investigated, around 28 percent were found to involve misconduct, with the CJA recommending sanctions in over 70 percent of substantiated cases. Our analysis reveals that the CJA adopts inquisitorial and restorative approaches in handling complaints rather than an adversarial one. This strategy is focused on remedying harm, ensuring accountability, and restoring public confidence rather than solely imposing punitive measures. Our study contributes to the expanding literature on citizen complaints against public officials by providing an exploratory analysis of the oversight of Quebec's administrative judges and the handling of complaints against them.

Le Conseil de la justice administrative [CJA] est un organisme d'encadrement unique, chargé d'enquêter sur les plaintes de manquements déontologiques commises par les membres des tribunaux administratifs au Québec, qui exercent des pouvoirs quasi judiciaires. Dans notre examen des décisions du CJA, nous le considérons comme un mécanisme de reddition de comptes crucial au sein du système de justice administrative du Québec. Nous examinons l'ensemble de décisions pour déterminer qui dépose des plaintes, les motifs de ces plaintes, les tribunaux visés, les résultats de ces plaintes, et l'approche du CJA dans leur traitement. Nous trouvons que plus de 73 pour cent des plaintes enquêtées sont déposées par des citoyens qui allèguent un comportement irrespectueux et des retards dans la prise de décision des tribunaux. Une part significative des plaintes examinées – près de 60 pour cent – est dirigée contre les juges du Tribunal administratif du logement, l'organisme responsable du plus grand nombre de dossiers dans la province. Environ 28 pour cent de plaintes se sont avérées impliquer un manquement déontologique,

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The initial draft of this article was developed in collaboration with former graduate students from the POL-7058: Droit, politiques et administrations publiques seminar in Spring 2021, who are credited as co-authors. Correspondence concerning this article should be addressed to the first author.

le CJA recommandant des sanctions dans plus de 70 pour cent des cas avérés. Notre analyse révèle que le CJA adopte des approches inquisitoires et restauratrices dans le traitement des plaintes, plutôt qu'accusatoire. Cette stratégie vise à rectifier les torts, à assurer la responsabilité et à renforcer la confiance du public, plutôt qu'à imposer uniquement des mesures punitives. Cet article contribue à la littérature croissante sur le traitement des plaintes des citoyens contre des agents publics en offrant un regard exploratoire sur la manière dont les juges administratifs du Québec sont encadrés.

I. INTRODUCTION

Administrative judges are often defined as members of a hidden judiciary.[1] Their primary responsibility is to adjudicate disputes between citizens and public administration,[2] and they are part of the executive branch.[3] As members of administrative tribunals with quasi-judicial responsibilities, they perform adjudication that is similar to court judges. However, they often do this work in their capacity as employees of their respective tribunals, which places them in hybrid roles as both judges and bureaucrats.[4] In their judicial capacity, they preside over hearings, hear witnesses, evaluate facts and evidence, interpret relevant legislation, and issue various legal rulings.[5] As bureaucrats, they are involved in implementing public policies and operating within a hierarchical institutional structure.[6] In fulfilling their duties, they are required to ensure fair and equitable treatment of citizens, while navigating various constraints related to time, budgetary pressures, and performance measurement systems.[7]

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1 Chris Guthrie, Jeffrey J Rachlinski & Andrew J Wistrich, "The 'Hidden Judiciary': An Empirical Examination of Executive Branch Justice" (2009) 58:7 Duke LJ 1477; William D Schreckhise, Daniel E Chand & Nicholas P Lovrich, "Decision Making in the Hidden Judiciary: Institutions, Recruitment, and Responsiveness among US Administrative Law Judges" (2018) 40:2 Administrative Theory & Praxis 119.

2 Administrative judges also preside over disputes between parties, such as those involving residential tenancies or allegations of discrimination. Additionally, some tribunals are tasked with handling matters concerning non-citizens, such as asylum applicants. In this article, we use the term "citizen" to refer to individuals irrespective of their legal status. Similarly, the term "administrative judge" is used to encompass all members of tribunals.

3 Beverley McLachlin, "Administrative Tribunals and the Courts: An Evolutionary Relationship" (2013), online: *Supreme Court of Canada* <www.scc-csc.ca/judges-juges/spe-dis/bm-2013-05-27-eng.aspx>. *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 SCR 781.

4 Vicki Lens, "Judge or Bureaucrat? How Administrative Law Judges Exercise Discretion in Welfare Bureaucracies" (2012) 86:2 Social Service Rev 269; Sule Tomkinson, Mireille Paquet & Laurence Robert, "The Immigrant versus the State: The Marginal Contribution of Tribunal Judges to Administrative Justice' (2023) 19:4 Intl J Law Context 559.

5 Shannon Portillo, "The Adversarial Process of Administrative Claims: The Process of Unemployment Insurance Hearings" (2017) 49:2 Administration & Society 257; Sule Tomkinson, "Who Are You Afraid Of and Why? Inside the Black Box of Refugee Tribunals" (2018) 61:2 Can Public Administration 184; Sule Tomkinson, "Three Understandings of Administrative Work: Discretion, Agency, and Practice" (2020) 63:4 Can Public Administration 675.

6 Daniel E Chand & William D Schreckhise, "Independence in Administrative Adjudications: When and Why Agency Judges Are Subject to Deference and Influence" (2020) 52:2 Administration & Society 171.

7 Emmanuelle Bernheim, Richard-Alexandra Laniel & Louis-Philippe Jannard, "Les Justiciables non representés face à la Justice: une étude ethnographique du tribunal administratif du Quebec" (2018) 39 Windsor Rev Legal & Social Issues 67; Maya Eichler, "Administrative Tribunals and Equity: Military Sexual Assault Survivors at the Veterans Review and Appeal Board" (2021) 64:2 Can Public Administration 279; S Ronald Ellis, "Misconceiving Tribunal Members: Memorandum to Québec" (2005) 18 Can J Admin L & Prac 189; Martin Gallié & Louis-Simon Besner, "De la lutte contre les délais judiciaires à l'organisation d'une justice à deux vitesses: La Gestion du Role à la Régie du logement du Québec" (2017) 58:4 C de D 711; Daniel Mockle, "Le Tribunal administratif du Québec et la nouvelle gestion publique" (2013) 26:3 Can J Admin L & Prac 227; Sule Tomkinson, "Power and Public Administration: Applying a

The oversight of these actors' actions is an important concern in Canadian administrative law, and previous research has primarily focused on the judicial review of their decisions.[8] In this article, we focus on the assessment of their conduct. To do so, we focus on a distinct oversight body, the Conseil de la justice administrative [CJA], which is responsible for investigating complaints of deontological breaches against members of administrative tribunals in Quebec that wield quasi-judicial powers. Like judicial councils, the CJA possesses the authority to review and investigate complaints as well as to recommend sanctions against administrative judges who are found to have committed an ethical breach.[9] Drawing on existing research in the fields of judicial oversight, public accountability, and citizen complaints within the public sector, we analyzed the CJA's decisions to identify the complainants, the nature of their complaints, the tribunals they target, the outcomes of these complaints, and the CJA's approach to handling them. To the best of our knowledge, this study represents the first exploration of the CJA's decisions, aiming to illustrate how it oversees the conduct of administrative judges in Quebec.

We found that over 73 percent of the investigated complaints are filed by citizens who allege disrespectful conduct and delays in tribunal decision-making. A significant portion of investigated complaints – nearing 60 percent – is directed at judges from the Tribunal administratif du logement [TAL]. Of the complaints investigated, around 28 percent were found to involve misconduct, with the CJA recommending sanctions in over 70 percent of substantiated cases. Our analysis reveals that the CJA applies inquisitorial and restorative approaches in handling complaints rather than an adversarial approach. This strategy is focused on remedying harm, ensuring accountability, and bolstering public confidence rather than solely on imposing punitive measures. Our study contributes to the expanding literature on citizen complaints against public officials by providing an exploratory analysis of the oversight of Quebec's administrative judges and the handling of complaints against them.

This article proceeds as follows: the next section introduces our theoretical framework, which integrates insights on the oversight of judges, accountability in the public sector, and citizen complaints. The third section details the organization of Quebec's administrative justice system and the role and functioning of the CJA, along with an explanation of our methodology. The fourth section presents our methodology, and the fifth section provides our findings. Finally, in the concluding section, we suggest several avenues for future research on the oversight of administrative judges.

II. OVERSIGHT, ACCOUNTABILITY, AND CITIZENS

Judicial deontology, as a contemporary legal phenomenon, encompasses specific institutions and represents a legal framework governing the conduct of judges.[10] Central to discussions about the role of justice in society, with respect to ethics, deontology, and discipline, is the imperative to ensure judges'

Transformative Approach to Freedom of/Access to Information Research" (2024) Public Integrity 1. online: < doi.org/10.1080/10999922.2023.2262156>.

8 Paul Daly, *A Theory of Deference in Administrative Law: Basis, Application and Scope* (Cambridge, UK: Cambridge University Press, 2012); Patrick Robardet, "Le contrôle judiciaire de la procédure administrative: éléments de droit comparé, fédéral, ontarien et québécois" (1982) 23:3 C de D 651; Lorne Sossin, "Designing Administrative Justice" (2017) 34:1 Windsor YB Access Just 87.

9 Morton S Minc, "Masters in Our House: Adjudicative Sovereignty v. Judicial Oversight" (Paper presented at the National Roundtable on Administrative Law, Montreal, QC, 25 May 2019).

10 Caroline Dick, "Sex, Sexism, and Judicial Misconduct: How the Canadian Judicial Council Perpetuates Sexism in the Legal Realm" (2020) 28:2 Fem Leg Stud 133; Pierre Noreau & Chantal Roberge, "Émergence de principes généraux en matière de déontologie judiciaire: éléments d'une théorie générale" (2005) 84:3 Can Bar Rev 457 at 457; Yves-Marie Morissette, "Comment concilier deontologie et independance judiciaires? " (2003) 48:2 McGill LJ 297.

ethical conduct.[11] The deontological approach to ethics, which is commonly associated with Immanuel Kant, asserts that an action is morally right if it conforms to a moral norm or duty rather than according to an appraisal of its consequences. This approach emphasizes the inherent nature of an action and the principles or rules that guide it over the outcomes or results that it produces.[12] Such a duty-based ethical framework is grounded in principle-based morality.[13] Deontology, in this context, refers to the specific ethical principles tailored to a particular profession. These principles are often codified in a deontological code outlining good professional practices. To fully understand how ethical principles for judges are formulated and enforced, it is essential to examine the decisions of institutions responsible for overseeing judges' conduct.[14]

The oversight of administrative judges' conduct in each jurisdiction is influenced by a variety of social, political, cultural, and legal factors that define the respective administrative justice system.[15] In some contexts, this system is viewed as a combination of principles and organizations, with some serving as "bridging" institutions that form a complex and dynamic network.[16] Professional organizations or academic-led networks often take part in advocacy, education, and oversight activities related to administrative judges.[17] In some jurisdictions, the administrative justice system is intentionally structured to include a statutory oversight body, which provides guidance and direction.[18] In exceptional cases, the designated oversight body plays a more extensive role in ensuring public accountability, with the authority to investigate allegations of misconduct against administrative judges.[19]

In the realm of modern governance, there is a noticeable proliferation and fragmentation of accountability observed in both public and academic discourse.[20] The concept of public accountability is multifaceted, encompassing transparent and democratic governance, ethical conduct, responsibility, and integrity.[21] Public administration and governance scholars frequently dissect accountability into several key components: the delegation of authority to act to specific actors, the relationship between the accountable actors and an oversight institution, the normative expectations placed upon the accountable

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11 Noreau & Roberge, *supra* note 10.

12 Irene Van Staveren, "Beyond Utilitarianism and Deontology: Ethics in Economics" (2007) 19:1 Rev Political Economy 21.

13 Henk ten Have & Maria do Céu Patrão Neves, *Deontology, Professional in* Henk ten Have and Maria do Céu Patrão Neves, eds, *Dictionary of Global Bioethics* (Cham: Springer, 2021) 403.

14 A study of the decisions by the Conseil de la magistrature du Québec documents the centrality of explicit principles such as independence, impartiality, and integrity as well as the implicit principle of public trust as rules of ethics for judges and the diversity of meanings attributed to them. Noreau & Roberge, *supra* note 10 at 498–99. Another study on the Canadian Judicial Council's role in addressing judicial sexism finds how it perpetuates sexist stereotypes in courtrooms and among the judiciary by looking at investigations of allegations of judicial misconduct. Dick, *supra* note 10.

15 Sarah Nason, "Oversight of Administrative Justice Systems" in Marc Hertogh et al, eds, *The Oxford Handbook of Administrative Justice* (Oxford: Oxford University Press, 2022) 155.

16 Nick O'Brien, "Administrative Justice in the Wake of I, Daniel Blake" (2018) 89:1 Political Q 82.

17 Nason, *supra* note 15 at 159–60; Sule Tomkinson, "Cultivating an Administrative Justice Community: Tribunal Leaders and Public Value Co-creation" (2023) 2 Public L 227.

18 Nason, *supra* note 15, at 156.

19 Minc, *supra* note 9.

20 Mark Bovens, Thomas Schillemans & Robert E Goodin, "Public Accountability" in Mark Bovens, Robert E Goodin & Thomas Schillemans, eds, *The Oxford Handbook of Public Accountability* (Oxford: Oxford University Press, 2014) 1; Elena Madalina Busuioc, *European Agencies: Law and Practices of Accountability* (Oxford: Oxford University Press, 2013).

21 Jonathan B Justice, "Accountability" in Dominic A Bearfield, Evan Berman & Melvin J Dubnick, eds, *Encyclopedia of Public Administration and Public Policy*, 3rd ed (New York: CRC Press, 2015) 1.

actors, a requirement for the actors to explain their behaviour and decisions in relation to the expectations, and the subsequent evaluation of these explanations by the oversight institution.[22]

In his discussion of these diverse aspects of accountability, Mark Bovens offers a conceptual clarification.[23] He argues that there are two different ways to view the concept of accountability: as a virtue and as a mechanism. As a virtue, accountability is used as a normative concept that designates standards for assessing the behaviour of public actors. Used in this sense, accountability has an active meaning in that researchers focus on the accomplishments of governments, agents, and public agencies.[24] As a mechanism in the public sector, accountability can be seen as an institutional relationship, forum, or arrangement where a public official can be held accountable.[25] Accountability arrangements are in place to investigate the actions of the accountable party.[26] These mechanisms are among the most important ways in which governments can monitor and improve the performance of public sector organizations.[27] The focus of research that approaches accountability as a mechanism "is not [on] whether the agents have acted in an accountable way, but rather [on] whether and how they are or can be held to account *ex post facto* by accountability forums."[28]

While the notions of accountability as a virtue and a mechanism are distinct, they are "closely related and mutually reinforcing. … Accountability mechanisms are meaningless without a sense of virtue and, vice versa, there is no virtue without mechanisms."[29] In the interaction between a public official and an accountability forum, there are three key stages. First, the public official is required to provide an account of their actions to the forum. Second, the forum scrutinizes this account, questioning the official about the information provided and the legitimacy of their actions. At this point, the official has the opportunity to offer explanations and justifications to the forum. Third, the forum issues a judgment, which may include a formal or informal sanction if misconduct is determined.[30]

Exploring accountability as a mechanism not only allows the actual operations and outcomes of these forums to be documented, but it also sheds light on the complainants. The process of account giving can be initiated in response to citizen complaints about the delivery and the quality of public services. Citizen complaints are often viewed as indicators of dissatisfaction with the service.[31] Previous studies have primarily focused on citizen complaints regarding medical practitioners[32] and police officers.[33] There is

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22 Richard Mulgan, "Accountability: An Ever-Expanding Concept?" (2000) 78:3 Public Administration 555; Bernard Pras & Philippe Zarlowski, "Obligation de rendre des comptes. Enjeux de légitimité et d'efficacité" (2013) 237:8 Revue française de gestion 13; Thomas Schillemans, "Calibrating Public Sector Accountability: Translating Experimental Findings to Public Sector Accountability" (2016) 18:9 Public Management Rev 1400.

23 Mark Bovens, "Analysing and Assessing Accountability: A Conceptual Framework" (2007) 13:4 Eur LJ 447.

24 Bovens, Schillemans & Goodin, *supra* note 20.

25 Bovens, *supra* note 23; Mark Bovens, "Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism" (2010) 33:5 West European Politics 946.

26 Pras & Zarlowski, *supra* note 22.

27 Schillemans, *supra* note 22.

28 Bovens, Schillemans & Goodin, *supra* note 19 at 9–10.

29 Bovens, *supra* note 25 at 962.

30 Bovens, *supra* note 23.

31 Francisco Olivos, Patricio Saavedra & Lucia Dammert, "Citizen Complaints as an Accountability Mechanism: Uncovering Patterns Using Topic Modeling" (2022) 60:6 J Research Crime & Delinquency 740.

32 S Birkeland et al, "Sociodemographic Characteristics Associated with a Higher Wish to Complain About Health Care" (2022) 210 Public Health 41; Lisa Skär & Siv Söderberg, "Patients' Complaints Regarding Healthcare Encounters and Communication" (2018) 5:2 Nursing Open 224.

33 Euipyo Lee & Sean Nicholson-Crotty, "Symbolic Representation, Expectancy Disconfirmation, and Citizen Complaints against Police" (2022) 52:1 Am Rev Public Administration 36; Clare Torrible, "Reconceptualising the Police Complaints Process as a Site of Contested Legitimacy Claims" (2018) 28:4 Policing & Society 464.

also some scholarship examining complaints submitted to ombudsman institutions.[34] The scrutiny of citizen complaints expressing dissatisfaction with medical treatment often reveals unstructured information, which is conveyed in the citizen's own language and terms to healthcare organizations. These complaints frequently highlight inequitable access to complaint channels.[35] Patients may voice complaints about their treatment for various reasons, such as the desire to be heard, the desire to receive an apology or compensation, or desire to prevent others from experiencing similar harm.[36] Even without a formal obligation, citizens engage in accountability-seeking actions by making complaints about their treatment by public officials.[37]

Given that complaints are the primary, and often the only, means through which citizens can voice their concerns about the conduct of public officials, this study delves into the accountability mechanism provided by the Quebec administrative justice oversight body. It does so by examining the investigations carried out in response to complaints about the conduct of administrative judges. In the next section, we detail the legislative framework, composition, and functioning of this oversight body.

III. ADMINISTRATIVE JUSTICE AND THE MANDATE OF THE CJA

With legislation that recognizes the specificity of administrative justice and the significant centralization of its administrative tribunals,[38] the organization of the Quebec administrative justice system differs notably from other Canadian provinces.[39] The current system in Quebec took shape with the adoption of *Loi sur la justice administrative* (The Act respecting administrative justice) in 1996, which aims "to affirm the specific character of administrative justice, to ensure its quality, promptness and accessibility and to safeguard the fundamental rights of citizens."[40] The legislation is the culmination of over twenty years of reflection by three different working groups of administrative law scholars in the province.[41] With the rise of the welfare state in Quebec in the 1960s and an increase in the number of departments and agencies, the question of how to deliver administrative justice came to the forefront. For instance, in 1971, the first report recommended establishing a network of administrative tribunals to settle

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34 Steven Van Roosbroek & Steven Van de Walle, "The Relationship between Ombudsman, Government, and Citizens: A Survey Analysis" (2008) 24:3 Negotiation Journal 287; António F Tavares, Sara Moreno Pires & Filipe Teles, "Voice, Responsiveness, and Alternative Policy Venues: An Analysis of Citizen Complaints against the Local Government to the National Ombudsman" (2022) 100:4 Public Administration 1054.

35 Skär & Söderberg, *supra* note 32.

36 Jennifer Moore, Marie Bismark & Michelle M Mello, "Patients' Experiences with Communication-and-Resolution Programs after Medical Injury" (2017) 177:11 J American Medical Association Internal Medicine 1595.

37 Thijs de Boe, "Updating Public Accountability: A Conceptual Framework of Voluntary Accountability" (2021) 25(6) Public Management Rev 1128 online: <doi.org/10.1080/14719037.2021.2006973>.

38 Ron Ellis, *Unjust by Design: Canada's Administrative Justice System* (Vancouver: UBC Press, 2013); Pierre Noreau et al, *La justice administrative: entre indépendance et responsabilité, Jalons pour la création d'un régime commun des décideurs administratifs indépendants* (Cowansville, QC: Éditions Yvon Blais, 2014).

39 Denis Lemieux, "The Codification of Administrative Law in Quebec" in M Taggart & G Huscroft, eds, *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan* (Toronto: University of Toronto Press, 2006) 240.

40 *Loi sur la justice administrative*, LRQ, c J-3, art 1.

41 Hélène de Kovachich, "The Tribunal Administratif du Québec: Product of the Reform of the Québec Administrative Justice System" in Patrick Molinari & Trevor CW Farrow, eds, *The Courts and Beyond: The Architecture of Justice in Transition* (Montreal: Canadian Institute for the Administration of Justice, 2013) 149.

disputes between citizens and government departments, supervised by an administrative court, in line with the French administrative model.[42]

The 1987 report recommended the unification of several tribunals to increase their expertise and improve access to justice. It also advised adopting a code of ethics for administrative judges.[43] The final report, also known as *Garant* report,[44] endorsed the establishment of a single appeal tribunal with several divisions and the transfer of some powers, which had previously been under the jurisdiction of the Court of Quebec, to the Tribunal administratif du Québec [TAQ].[45] Consequently, the unique nature of Quebec's administrative justice system stands out compared to federal public law and the public law of other Canadian provinces, with the 1996 *Act respecting administrative justice* placing greater emphasis on institutional and regulatory structures.[46] Moreover, Quebec is the only Canadian jurisdiction that has an independent public agency responsible for investigating the conduct of administrative judges. Articles 165–97 of this Act detail the constitution and functioning of the CJA.

The mandate of the CJA administration is multifaceted. Its primary mission is to receive, consider, and investigate complaints of a deontological nature against members of adjudicative bodies under its jurisdiction – namely, the TAQ, the Tribunal administratif du travail [TAT], the TAL, the Tribunal administratif des marchés financiers, and the Bureau des présidents des conseils de discipline. The CJA has exclusive jurisdiction in deontological matters concerning the members of these bodies.[47] Administrative judges in each tribunal are subject to a code of ethics that sets out the rules of conduct and their duties towards the public, parties, witnesses, and representatives.[48] These codes regulate conduct that goes against the honour, dignity, and integrity of the tribunal members, they define obligations such as being objective, independent, and impartial, and they specify conduct that is incompatible with the administrative judge's role and office.

In the context of monitoring the conduct of administrative judges in Quebec, a deontological breach, as defined by the codes of conduct of respective tribunals, includes any action or behaviour that diminishes public trust or undermines the fundamental principles of impartiality and independence. This encompasses a range of behaviours, such as failing to administer justice according to the law, acting without honour, dignity, or integrity, or demonstrating bias. A breach may also occur if a judge acts without courtesy or

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[42] Lemieux, *supra* note 39.

[43] Kovachich, *supra* note 41; Mandat du Groupe Ouellette, *Rapport du Groupe de travail sur les tribunaux administratifs* (Québec : Mandat du Groupe Ouellette, 1987).

[44] Groupe de travail sur certaines questions relatives à la réforme administrative, *Une justice administrative pour le citoyen* (7 October 1994).

[45] France Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Can J Admin L & Prac 47.

[46] Pierre Issalys & Denis Lemieux, *L'action gouvernementale : précis de droit des institutions administratives*, 4th ed (Montréal: Éditions Yvon Blais, 2020).

[47] As of 31 March 2022, according to the last annual report of the Conseil de la justice administrative (CJA) , there were 121 members of the Tribunal administratif du Québec (TAQ), 154 members of the Tribunal administratif du travail (TAT), sixty members and five special clerks of the Tribunal administratif du logement (TAL), five members of the Tribunal administratif des marchés financiers, and fourteen members of the Bureau des présidents des conseils de discipline. As a result, 359 administrative judges of these five adjudicative bodies are subject to the CJA's oversight. Conseil de la justice administrative, ed, *Rapport annuel de gestion 2021–2022* (Quebec City: Bibliothèque et Archives nationales du Québec, 2022) at 3.

[48] *Code de déontologie applicable aux membres du Tribunal administratif du Québec*, c J-3, r 1; *Code de déontologie des membres du Tribunal administratif du travail*, c T-15.1, r 1; *Code de déontologie des membres du Tribunal administratif du logement, Code de déontologie des membres du Tribunal administratif des marchés financiers, Loi sur l'encadrement du secteur financier*, c E-6.1, a 115.15.25; *Code de déontologie applicable aux membres des conseils de discipline des ordres professionnels*, c C-26, r 1.1.

respect, engages in affiliations or situations that are harmful to their own reputation or that of the tribunal they serve, or fails to maintain professional competence. Other violations include breaching confidentiality or participating in activities that compromise the impartiality of their role. Essentially, any action or behaviour that detracts from the expected standards of integrity, impartiality, and professionalism, whether in their official capacity or in broader societal interactions, could be deemed a deontological breach.

The CJA presents its annual reports to the minister of justice in accordance with Article 25 of the *Loi sur l'administration publique*.[49] In one of its recent annual reports, the CJA outlines its role in the Quebec administrative justice system as follows:

> The Council acts as a guardian of the conduct of members of five jurisdictional organizations. In doing so, it contributes to the respect of their independence and to maintaining public confidence in administrative justice. This public confidence necessitates a complaint mechanism that is respectful of individuals and mindful of the guarantees of independence of the members of the jurisdictional organizations. Indeed, a code of ethics must reconcile these two requirements: on the one hand, attention to complaints and dissatisfaction of citizens, and on the other hand, the fairness and transparency owed to the members of the administrative tribunals targeted by the complaints.[50]

The CJA comprises nineteen members, ten of whom are from the five administrative tribunals under its jurisdiction and nine represent the public. The public representatives are "not members of any of those bodies, and only two of them shall be advocates or notaries, chosen after consultation with their professional order."[51] Except for the chairs of the five tribunals who are *ex officio* members of the CJA, the remaining members are appointed by the government for a three-year term, which may be renewed once.[52]

Anyone can file a written deontological complaint to the CJA at any time. The CJA is concerned with conduct that may undermine public confidence in the administrative tribunals that it monitors. Its constituency includes not only parties that appear before the tribunals and file complaints about conduct but also the general public. Therefore, the CJA is responsible for taking actions that help maintain public trust in the institutions delivering administrative justice. Additionally, the CJA's 2003–04 annual report specifies that tribunal judges under its jurisdiction, as well as the tribunals as institutions, expect the CJA to act fairly and transparently: "They anticipate that the CJA's actions will support their credibility as well as that of administrative justice."[53]

Not every submitted complaint is subject to an investigation. The annual management reports of the CJA indicate that many citizens misunderstand its mandate. The CJA often receives complaints that aim to contest tribunal decisions, which are outside its jurisdiction. According to the Rules for the Handling of Complaints, to determine the admissibility of complaints, the CJA needs to establish two review committees that meet in private. If the committee considers it necessary, it may request additional

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[49] *Loi sur l'administration publique*, LRQ, c A-6-01.

[50] Conseil de la justice administrative, *supra* note 47 [authors' translation].

[51] *Loi sur la justice administrative*, *supra* note 40, art 167.

[52] *Ibid*, art 168.

[53] Gouvernement du Québec, *Rapport annuel de gestion 2003–2004* (Quebec City: Conseil de la justice administrative, Bibliothèque et Archives nationales du Québec, 2004) at 75 [authors' translation].

explanations from the complainant or the administrative judge who is the subject of the complaint.[54] Decisions are taken by a majority. Complaints deemed admissible result in a decision that explains the accusations addressed to the administrative judge and the alleged breach of ethics. This decision is also sent to the complainant. An Inquiry Committee, formed by three members of the CJA, examines the complaints by conducting its own research and calling witnesses to its public hearings, including the complainant and the administrative judge in question. The Inquiry Committee decides on the merits of the complaint and writes reasoned conclusions. Where appropriate, it indicates its recommendation for one of the sanctions provided for in Article 190 of the *Loi sur la justice administrative* – namely, a reprimand, a suspension with or without pay for the period it determines, or a dismissal. In the next section, we explain how we examined the CJA's reports to understand its role in accountability and oversight.

IV. METHODOLOGY

The CJA publishes the reports of the complaints that have been investigated on its website. The corresponding decisions of the Inquiry Committee or a court – in the case of judicial review – are also disclosed. Between November 2000 and April 2022, the CJA rendered seventy-seven decisions,[55] and with the exception of one,[56] all were focused on the examination of complaints.[57] Although some reports address multiple complaints against the same administrative judge, they are reviewed by the same committee, and a single decision is derived from them.[58] That is why the number of decisions (seventy-six) is different than the number of complainants (eighty-six). The decisions of the Inquiry Committee are mostly unanimous except for a few decisions.[59]

We examined the entirety of investigation reports and corresponding decisions that the CJA took. Our analysis focused on the following elements: the grounds for the complaint, the status of the complainant, the tribunal of the administrative judge who was the subject of the complaint, the conclusion on whether there was a deontological breach, the analysis provided by the Inquiry Committee, and the outcome of the decision.[60] We also consulted the CJA's annual performance reports. Before presenting our findings, it is

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54 *Constitution d'un comité d'examen de la recevabilité des plaintes,* 29 November 2022, règle 9.

55 All reports of complaints that have been investigated can be found at Conseil de la justice administrative's website, available in French. online: <www.cja.gouv.qc.ca/fr/rapports-enquete.html>.

56 We did not consider Chantal Perreault et Marie-Josée Corriveau (BPCD), 2021 QCCJA 1410, as the report does not focus on the merits of the complaint filed against the chair of the Bureau des présidents des conseils de discipline. The preliminary decision concludes that the hearings within the scope of this investigation will be closed to journalists, and the evidence will be sealed.

57 Since the decisions of the CJA are subject to review by the Superior Court of Quebec and the Quebec Court of Appeal, the courts have been involved in nine cases. The administrative judges who were the subject of the complaint challenged either the admissibility of the complaint or the sanction. Except in two cases investigating complaints regarding the same judge (Thérèse Bussière et Ross Robins (RDL) 2014 QCCJA 669, and George Farmer et Ross Robins (RDL), 2014 QCCJA 691), the courts confirmed the decision of the CJA.

58 See e.g. Rosa Francescangeli Santini et Ross Robins (RDL), 2017 QCCJA 986; Lyne Théorêt et Ross Robins (RDL), 2018 QCCJA 996; Camille de Guire, Denis Caron et Ross Robins (RDL), 2018 QCJA 999. Linda Belhumeur, Sylvie Trembklay, Carole Dupuis et Éric Luc Moffatt (RDL) 2016 QCCJA 834, 838, 868.

59 See e.g. Robert Mongrain et Brigitte Morin (RDL), 2016 QCCJA 842; Hélène de Kovachich et Guy Gagnon (TAQ), 2012 QCCJA 627; Yolande Paquet, Guy Lachance et Paul Mercure (TAQ), 2011 QCCJA 516 (wherein two tribunal members of the committee concluded that the complaints did not have a deontological nature, while the public representatives indicated that there were cases of ethical breach and a reprimand was necessary).

60 Six coders worked on the content analysis, while an additional coder was responsible for ensuring coding consistency. To do so, they recoded the already coded decisions and informed the other coders to ensure high inter-coder reliability. Even though the elements we coded were not open to interpretation, the first author checked the coding for validity.

important to clarify how we categorized the tribunal of the administrative judge who was the subject of the complaint. In 2016, the TAT was established through the merger of the Commission des lésions professionnelles and the Commission des relations du travail.[61] In our coding, we combined the complaints filed against members of these three organizations and considered them as complaints targeting the administrative judges of the TAT. We applied the same approach to complaints filed against members of the Régie du logement, which was the predecessor of the TAL,[62] considering them as complaints targeting the administrative judges from the TAL. All direct quotes are translated from French to English.

V. FINDINGS

In this section, we first present a descriptive overview of the complaint outcomes as well as the complainants. Our findings indicate that the majority of investigated complaints target the administrative judges of the TAL, the tribunal that holds exclusive jurisdiction for resolving disputes between homeowners and their tenants.[63] Then, we focused on the complainants, documenting that almost three out of every four complaints were filed by citizens. While citizen complaints constitute the majority of the cases treated by the oversight body, complaints by professionals are more likely to be ruled as well founded regarding deontological breaches. Next, we attended to the analysis and reasoning offered by the CJA in its decisions regarding citizen complaints. We found that, in the implementation of its oversight mandate, the CJA advances inquisitorial and reparative approaches rather than an adversarial approach. It acts as an investigatory body in its review of complaints and aims to establish the facts regarding the situation that gave rise to the complaint. Furthermore, public hearings aim to facilitate a dialogue between citizens who have suffered harm and those administrative judges accountable for the harm in order to restore public trust in administrative justice.

A. Overview of Complaint Outcomes by the CJA

As illustrated in Table 1, administrative judges from the three tribunals have been the subject of deontological complaints – namely, the TAQ, the TAT, and the TAL.[64] A focus on the number of investigated complaints show that the TAL received the most complaints, accounting for 58 percent of the complaints. The administrative judges of the TAT follow those of the TAL, with about 28 percent of the complaints. Finally, the judges of the TAQ were targeted by less than 15 percent of the complaints.

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[61] *Loi instituant le Tribunal administratif du travail*, RLRQ, c T-15.1.

[62] *Loi sur le Tribunal Administratif du Logement*, RLRQ, c T-15.01.

[63] For a description of the TAL's duties, see Tribunal adminstratif du logement's official website, online: <www.tal.gouv.qc.ca/en/about-us>.

[64] There is a recent complaint against the chair of the Bureau des présidents des conseils de discipline that is not part of our corpus. See *Chantal Perreault et Marie Josée Corriveau (BPCD)*, 2021 QCCJA 1410.

Table 1: Overview of Investigated Complaint Outcomes by the CJA

Targeted administrative tribunal	*Decisions*	*Finding of deontological misconduct*	*Recommendation of a sanction*
Tribunal administratif du Québec	11	5	4
Tribunal administratif du travail	21	5	3[a]
Tribunal administratif du logement	44	11	8[b]
Total	*76*	*21*	*15*

Notes: [a] In Lise Turcotte et Guy Cavanagh (TAT), 2014 QCCJA 703, the Inquiry Committee found deontological misconduct and indicated that it would recommend a sanction if the judge who was the subject of the complaint had not passed away. We counted it among the sanctions.
[b] In *Robins c Conseil de la justice administrative*, 2016 QCCS 1566, Judge Guylène Beaugé, of the Superior Court of Quebec, overruled the CJA's recommendation of reprimand against the TAL judge Robins Ross and dismissed the two complaints against him: *Thérèse Bussière et Ross Robins (RDL)*, 2014 QCCJA 669, and *George Farmer et Ross Robins (RDL)*, 2014 QCCJA 691. In the following complaints, the CJA found a deontological breach but has not determined a sanction yet: *Chantale Bouchard et Micheline Leclerc (TAL)* 2022 QCCJA 1529 and *Zihue Zhang, Jonathan Bourgelas-Nicol, Mélanie Morissette et Ross Robins (TAL)*>, 2021 QCCJA 1408, 1446, 1447.

It is important to clarify that our analysis does not aim to assess the complaint rate. In other words, we do not examine whether the number of cases adjudicated by each tribunal is proportional to the number of complaints targeting its administrative judges. As explained in the section on the mandate of the CJA, not every complaint to the CJA is deemed admissible, and only a subset of these complaints is subject to investigation. Consequently, attempting to establish such a rate would be unreliable. However, it should be noted that, among the tribunals under the oversight body's purview, the TAL hears and adjudicates the largest number of cases, representing a significant proportion of the total caseload handled by the tribunals in the province. According to the TAL's 2022–23 annual report, the tribunal held 70,885 hearings.[65] In the corresponding period, the TAQ scheduled 10,994 hearings and conciliation sessions.[66] During this same period, the TAT convened 45,421 hearings.[67] These figures are broadly representative of a consistent trend observed over the years. Given the high volume of hearings conducted by each tribunal, particularly by the TAL, it is not surprising that the judges of the TAL are subject to a greater number of complaints. An investigation into a complaint does not automatically imply that the CJA considers it to have merit. For example, the earliest CJA decision, dated 6 November 2000, involves a complaint against a TAL judge. The complaint accused the judge of behaviour that "showed he was mentally ill, as he ran out of the courtroom laughing at the dirty trick he was pulling [*sic*]." In its decision, the CJA committee detailed the efforts made to obtain further information about the reason of the complaint from the complainant, but these efforts were unsuccessful. After reviewing the written complaint, the response from the judge in question, the transcript of the hearing, and the tribunal's decision, the CJA concluded that the allegations against the judge were "vague, imprecise, and lacking a factual basis."[68]

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[65] Gouvernement du Québec, Tribunal administratif du logement, *Rapport annuel de gestion 2022–2023* (Québec: Bibliothèque et Archives nationales du Québec, 2023) at 2.

[66] *Ibid* at viii.

[67] *Ibid* at 63.

[68] Marie Marthe Haché et Germain Lafrance (RDL), 1998 QCCJA 1 at 5.

In evaluating deontological breaches and determining sanctions, the CJA applies high standards. For instance, in one of its early decisions, the CJA found that the TAL member hearing a residential tenancy dispute had not respected her deontological duties as she had failed to explain that she was proposing an amicable settlement to the parties, who felt that they were being forced into an agreement: "The Inquiry Committee is of the opinion that the Member has deviated from the conduct stipulated in sections 1 and 8 of the Code, particularly with respect to her duty to render justice accessible by considering the parties and to ensure that each party can present their case."[69] However, as the CJA reflected on the gravity of the breach, it did not find deontological misconduct, indicating that

> [a] complaint can be deemed well-founded for a serious breach, that is to say, a breach that objectively undermines the trust of citizens in the integrity and impartiality of the member and the Tribunal, and which requires the imposition of a sanction to preserve that trust. The imposition of a sanction, even a simple reprimand, is a serious and grave judgment. … The Committee considers that the authority of a member must be used to serve justice, which includes exploring avenues for amicable settlement. However, the member cannot use their authority to compel parties to give their consent to an agreement. A member who knowingly acts for this purpose commits an abuse of authority that must be sanctioned. … Given the circumstances of the case, the Committee considers that the misconduct is not sufficiently serious to warrant imposing a sanction on the member to restore public confidence in the Tribunal and the member.[70]

This explanation by the CJA indicates a principled approach to assessing deontological misconduct, emphasizing the preservation of public trust, the responsible use of authority, and the necessity of proportionate responses to ethical breaches. This reasoning underscores the idea that a complaint is considered valid when there is a serious breach. This seriousness is defined not merely in terms of the actions of the tribunal member but also in terms of its impact – specifically, the breach must "objectively undermine the trust of citizens in the integrity and impartiality of the member and the Tribunal." This criterion places significant weight on public perception and trust, highlighting the importance of ethical conduct. Under certain conditions, the imposition of a sanction is viewed as a necessary action to preserve public trust. The fact that even a "simple reprimand" is considered "serious and grave" illustrates the high stakes involved in maintaining ethical standards. This perspective treats sanctions not merely as punitive measures but also as vital tools for upholding the integrity of administrative justice. The explanation also outlines the appropriate use of a tribunal member's authority. It emphasizes that, while administrative judges should facilitate justice, which includes encouraging amicable settlements, they must not overstep their authority by compelling parties into agreements. This distinction is crucial as it balances the proactive role of a tribunal member in dispute resolution with the need to respect the autonomy of the involved parties. In the CJA's explanation, there is a clear stance against the misuse of authority. An administrative judge who knowingly uses their position to force an agreement is committing an abuse of authority, warranting sanctions. Finally, the CJA acknowledges that not all misconduct merits sanctioning. The committee should consider the severity of the misconduct and its impact on public trust before deciding on sanctions. This approach suggests a nuanced understanding that not all breaches have the same ethical weight or consequences and that responses should be proportionate to the misconduct's severity.

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[69] Joscelyne Martin et Johanne Gagnon-Trudel (RDL), 2001 QCCJA 50 at paras 20–21.

[70] *Ibid* at paras 21–22.

While most complaints involve allegations of disrespectful conduct by the administrative judge in the hearing room and delays in rendering tribunal decisions, some sanctioned complaints relate to allegations of conduct that is incompatible with the duties and responsibilities of an administrative judge. This includes engaging with the media on matters related to the tribunal[71] or using tribunal funds for personal matters.[72] Of the complaints investigated, around 28 percent were found to involve misconduct, with the CJA recommending sanctions in over 70 percent of substantiated cases. The most common sanction issued is a recommendation for reprimand, recorded in ten instances, followed by suspension without pay in four instances, and dismissal in one instance. Furthermore, some administrative judges have faced several complaints, which have led to increasingly severe sanctions when the judges in question failed to acknowledge their misconduct and did not take the necessary steps to rectify the situation. Kathya Gagnon is the only administrative judge who has been dismissed following a complaint. This complaint, filed by the president of the TAQ, criticized her for not meeting designated deadlines to deliver decisions and for neglecting to request extensions when necessary. Prior to her dismissal, she had already received recommendations for reprimand and suspensions without pay.[73]

B. Profiles of the Complainants

In this section, we examine the profiles of the complainants and analyze whether the complainant's status impacted the outcome of the CJA's decisions. The complaints filed with the CJA are made by complainants with different profiles. Two primary groups are distinguishable. The first group comprises those individuals who did not have professional involvement in the Quebec administrative justice system. The second group includes complainants engaged in the legal or administrative domain professionally. Compared to the latter, citizens are likely to possess more limited knowledge and resources to present their case effectively. As the Table 2 illustrates, most complaints are filed by citizens, predominantly concerning their encounters with, and treatment by, administrative judges. Among professionals, identifiable complainants include lawyers, private companies, an administrative authority, presidents of two administrative tribunals, and a minister.

Table 2: Profiles of the Complainants and the Outcome of the Complaint

Status	*Number of complaints*	*Finding of deontological misconduct*	*Recommendation of sanction*	*Other*[a]
Citizens	63	12	11	8
Professionals	23	9	4	10
Total	*86*	*21*	*15*	*18*

Notes: [a] The term "Other" encompasses a variety of situations, including the retirement of the judge, non-reappointment of the judge, the passing away of the judge, withdrawal of complaints by the complainants, or the absence of complainants during the hearing. This absence can render it impossible to proceed with the investigation.

Out of the sixty-three complaints from citizens, twelve resulted in a finding of deontological misconduct. This represents approximately 19 percent of the complaints from citizens. In comparison, nine out of

[71] Chantale Bouchard et Micheline Leclerc (TAL), 2022 QCCJA 1529.

[72] Jean Péloquin et Hélène de Kovachich (TAQ), 2013 QCCJA 645.

[73] The TAQ president had removed her from the roster in March 2012 as she had not yet written reasons for 427 out of 447 cases heard since 2010. While delays in writing reasons are common, no other member had accumulated delays of the magnitude seen in her case.

twenty-three complaints from professionals resulted in findings of deontological misconduct, which is roughly 39 percent. Of the citizen complaints, eleven led to recommendations for sanctions (about 17 percent of citizen complaints). For professionals, four complaints resulted in sanction recommendations, constituting roughly 17 percent of the professional complaints. Ultimately, complaints filed by professionals were more likely to result in findings of deontological misconduct and sanctions compared to those made by citizens.

The last three annual reports of the CJA illustrate the recognition of citizens' increasingly high expectations for professional ethics and deontology in administrative tribunals. At the same time, the CJA acknowledges that the concepts and the standards applied in deontological assessments are difficult and abstract for the members of the public. The CJA's role is frequently misunderstood, resulting in discontent with its work when citizens believe that the CJA can review tribunal decisions or intervene in proceedings. The CJA relatedly recognizes that citizen dissatisfaction stems from the perceived performance of the organization.[74]

C. Inquisitorial and Restorative Approaches in Complaint Handling: Remedying Harm and Restoring Public Trust

In this section, we delve into the approaches adopted by the CJA in addressing citizen complaints against judges of the three tribunals. These deontological complaints predominantly revolve around two issues: disrespectful behaviour in the hearing room[75] and delays in decision-making exceeding legislated time limits.[76] An exceptional category of complaints has also emerged, relating to judges' conduct within broader societal contexts.[77] In the following discussion, we examine how the CJA conducts hearings, weighs evidence in its analyses of citizen complaints, determines misconduct, and issues sanctions. We observed that the CJA employs inquisitorial and restorative approaches and focuses on repairing damage and restoring public confidence.

Most decisions indicate that the CJA operates as an inquisitorial tribunal, focusing on truth finding rather than on handling an adversarial process. It conducts inquiries through its own research, taking into account the information provided by both the complainant and the implicated judge, and offers an analysis based on the specific circumstances of each case. In this sense, the investigations conducted by the CJA are extensive and encompass not only the arguments presented by the involved parties but also an in-depth examination of the contextual factors that led to the filing of a complaint, which may include the review of hearing records and other relevant materials.

In line with its truth-seeking function, the CJA's evaluation process is thorough, encompassing not just the incident in question but also the administrative judge's overall conduct during the investigation. This holistic approach ensures a fair and complete assessment of the judge's behaviour. For instance, in an extensive forty-nine-page decision addressing a citizen complaint against Judge Carl Leclerc in the TAQ,[78] the CJA included lengthy excerpts from the hearing that vividly depicted the judge's disrespectful demeanor towards the complainant that lasted throughout the hearing and recommended a sanction of suspension without pay for sixty days, concluding that:

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74 Gouvernement du Québec, *Rapport annuel de gestion 2019–2020* (Québec: Conseil de la justice administrative, Bibliothèque et Archives nationales du Québec, 2020) at 4.

75 Nadia Poitras et Carl Leclerc (TAQ), 2015 QCCJA 796.

76 Our analysis concerns the following cases: Gérard Bernier et Daniel Gilbert (TAL), 2021 QCCJA 1328; Elizabeth Saint-Jacques et Daniel Gilbert (TAL), 2021 QCCJA 1345; Jean-Pierre Bélanger et Daniel Gilbert (TAL), 2021 QCCJA 1346.

77 Sylvie Desrochers et Isabelle Therrien (TAT), 2018 QCCJA 1074.

78 Poitras et Leclerc, *supra* note 75.

> [120] … The judicial independence of administrative judges does not grant them the freedom to express their opinions without exercising restraint, while relying on judicial independence as protection.
> [121] In this case, Administrative Judge Leclerc clearly exceeded the permissible threshold of intervention allowed by his role and delineated by ethical rules. He failed to demonstrate the necessary restraint and unexpectedly interjected himself into the proceedings to the extent that a reasonable and informed observer could doubt his impartiality and objectivity.
> [122] He particularly intervened excessively, even abusively. He displayed extreme incisiveness, needlessly arguing with the complainant throughout the hearing in a frequently aggressive, dismissive, or sarcastic tone. This manner of conduct could certainly cast doubt on his impartiality.
> [134] During the hearing before the Committee, the administrative judge apologized for the perception that the complainant had of him. Although he admitted on several occasions that certain interventions or actions were not desirable, he explained the reasons that justified them as acceptable. The absence of self-criticism on his part reveals a lack of remorse regarding his conduct throughout the hearing.
> [135] The Committee believes that a strong message must be conveyed to the public and to the administrative judges. It is important to emphasize that the ethical standards of respect, courtesy, honor, dignity, integrity, and restraint are more than mere statements of principle and should not be taken lightly.[79]

This detailed excerpt from the decision illustrates that the CJA places importance on the acknowledgement of misconduct. The emphasis on whether judges acknowledge their mistreatment of citizens shows the CJA's focus on accountability and self-awareness in judicial conduct. This is crucial in maintaining the integrity and trustworthiness of the administrative justice system. In this particular case, the sanction can be seen as a deterrent and corrective measure. A critical aspect of the CJA's approach is its focus on whether administrative judges acknowledge wrongdoing, assume responsibility, and demonstrate a commitment to not repeating the misconduct. Absent this acknowledgement, a serious sanction will be imposed, emphasizing the CJA's preference for restorative, rather than purely punitive, measures.

Informed by the decisions of judicial councils, discussions on judicial ethics,[80] and its own recent rulings, the CJA recognizes that not every deontological breach warrants punishment.[81] The CJA has clarified that the ethical conduct of administrative judges is guided by principles applicable to all members of the judiciary.[82] These principles outline the expected attitudes, behaviours, and expressions appropriate for all court judges, including administrative judges. The CJA emphasizes that administrative judges represent the state in the exercise of their authority.[83] In the public hearings that it conducts, the CJA has adopted a reparative approach, prioritizing the repair of harm caused by the offence.[84] This action has involved engaging both the complainant and the judge in a dialogue aimed at understanding the impact of

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[79] Judge Leclerc also sought judicial review of the CJA decision that was dismissed.

[80] Especially *Ruffo v Conseil de la magistrature*, [1995] 4 SCR 267; *André Lamoureux c Paul-Émile L'Écuyer*, CM-8-95-83 (1997) (Gallup et L'honorable juge Michel-H Duchesne, Conseil de la magistrature).

[81] Éduardo Branco, Jean-Yves Therrien et Éric Luc Moffatt (RD), 2012 QCCJA 570.

[82] Brigitte Beaudoin et Stéphane Sénécal (TAL), 2021 QCCJA 1416 at para. 24.

[83] *Ibid* at para 25.

[84] Law Commission of Canada, *Transforming Relationships through Participatory Justice* (Ottawa: Law Commission of Canada, 2001).

the judge's conduct and finding a resolution that repairs the damage caused. This approach is evident in the CJA's complaint handling. The CJA assesses the objective severity of a breach and considers its impact on the affected individual and the public confidence in the administrative justice system. The CJA explains that the analysis must weigh the impact of the judge's actions on public perception and the judicial system's credibility. This evaluation differentiates between behaviour that is merely undesirable and that which is unacceptable in a disciplinary legal context.[85]

As outlined in the Micheline Bélanger et Alain Archambault [CLP] decision, which concerned disrespectful conduct in the hearing room, the CJA served an oversight function that was reparative for the entire judiciary.[86] This case reflected the CJA's understanding of its role as a guardian of judicial integrity and public confidence. In the decision, the CJA explains that the objectives of a reprimand are twofold: to restore the public's trust in both the individual judge and the judicial system at large. In cases where an administrative judge has retired and will no longer serve, a reprimand may no longer achieve its intended purpose of amending or correcting conduct. However, even in such cases, the committee's decision to continue the investigation and make a clear ruling on the validity of the complaint is deemed sufficient to restore public confidence in the integrity of the administrative justice system. Therefore, this decision indicates that the CJA's approach is not only about penalizing misconduct but also about fostering a culture of respect and responsibility towards citizens within the administrative justice system.

The CJA does not automatically consider delays in decision-making as a breach of deontological conduct. The distinction between respecting the regulatory deadline for decisions and the deontological obligation of due diligence is critical; the latter is assessed in light of each case's specific circumstances. For instance, in its examination of two citizen complaints targeting Judge Daniel Gilbert, of the TAL, for issuing decisions past the three-month deadline, the CJA observes that Gilbert J had explained that he had been under medical care for a health problem that he had had for several years. The CJA noted that his substantial workload and medical condition accounted for the delays in both cases.[87] Apologizing to the complainants regarding the delay, he explained that he had prioritized urgent cases in his decision-making. Under these circumstances, the committee concluded that there was no deontological breach, stating that "Mr. Gilbert is committed to being vigilant regarding the impact of his medical condition on his duty performance."[88]

In a different complaint targeting the same TAL judge, the CJA arrived at a different conclusion, as evidenced in the case involving the complainant Gérard Bernier.[89] Bernier had sought to repossess a property he owned, with the intention of living there with his daughter. During a hearing on 24 November 2020, Gilbert J indicated that he would authorize the repossession, initially considering 12 December 2020 as the date for this action. However, the decision was not rendered until 1 March 2021, and the repossession was only granted for 31 March 2021. This delay led to significant consequences for Bernier as he was unable to use the property, and the tenants left it in a state of disrepair, resulting in substantial costs. Bernier expressed dissatisfaction, questioning why Gilbert J had promised a decision by 12 December 2020 but had then delayed it. The situation highlighted an inconsistency between the judge's initial commitment and the actual outcome, prompting scrutiny and a sanction from the CJA: "[7] Mr.

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85 Rosa Francescangeli Santini et Ross Robins (RDL), 2017 QCCJA 986; Lyne Théorêt et Ross Robins (RDL), 2018 QCCJA 996; Camille de Guire, Denis Caron et Ross Robins (RDL), 2018 QCJA 999.

86 Micheline Bélanger et Alain Archambault (CLP), 2003 QCCJA 139.

87 Josée Bélanger et Daniel Gilbert (TAL), 2019 QCCJA 1181; André Bourgeois et Daniel Gilbert (TAL), 2020 QCCJA 1220.

88 *Ibid*, at para 42.

89 Gérard Bernier et Daniel Gilbert (TAL), 2021 QCCJA 1328.

Bernier's complaint is well-founded, and the committee recommends the imposition of a reprimand. The circumstances surrounding the file, and the comments made by Mr. Gilbert gave the decision a sense of urgency. His health problems do not explain this period of delay in making the decision and there is a failure in his duty of celerity."[90]

The last complaint under discussion is atypical as it involved the conduct of an administrative judge in their personal life outside the tribunal. This case revolved around a citizen's complaint against Judge Isabelle Therrien, of the TAT, who failed to provide compensation for housekeeping services, forcing the service provider and the complainant, Sylvie Desrochers, to pursue the owed payment through the Small Claims Division of the Court of Quebec. Subsequently, Desrochers had to employ a bailiff to execute the judgment by garnishing income.[91] The CJA was tasked with determining whether Therrien J's actions compromised the tribunal's integrity and whether she exhibited the necessary restraint and prudence expected in her public conduct.[92]

The CJA's report notes that the committee deemed it necessary to outline the various stages of the investigation process. It details how Therrien J repeatedly requested extensions over a year to provide her oral and written arguments, failing to do so each time. Her final request for a postponement was accompanied by a medical certificate that stated a month-long sick leave without further details, and, in her email, she mentioned that she was awaiting a diagnosis. The committee considered her final request to be abusive and dilatory. It further observed that, despite Therrien J's claim of being on sick leave, she had rendered seven decisions in her capacity as an administrative judge between 20 January 2020 and 31 March 2020, which the committee viewed as being contradictory to her postponement requests.[93]

The CJA's report elaborates on how Desrochers maintained confidence in Therrien J, consistently treating her with respect in their textual communications while seeking payment for completed housekeeping services. In her testimony, the complainant conveyed feeling demeaned by the judge's conduct, particularly noting that Therrien J had failed to initiate any communication following the enforcement notice from the bailiffs. Echoing the complainant's poignant question: "If a judge does not respect a judgment, how can she judge others?"[94] the committee underscored that Therrien J's possibly challenging situation at the time, based on the scant information provided, did not excuse the "indifference or even negligence" that she displayed towards the complainant:

> [79] It is one thing to encounter personal difficulties leading to payment delays for a member of the judiciary, but it is another when a judge remains silent regarding a legal action, allows herself to be condemned by default, and neglects to respect the judgment rendered against her.
> [80] By acting in this way, Judge Therrien trivialized the judicial process that Ms. Desrochers was compelled to undertake after several months of patience.
> [81] This reprehensible conduct undermines the dignity and integrity of her office and the Tribunal administratif du travail.
> [82] A well-informed, reasonable, and impartial member of the public could only hold a negative perception that could lead to a loss of trust and respect towards Judge Therrien.

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90 *Ibid* at para 7.
91 Sylvie Desrochers et Isabelle Therrien (TAT), 2018 QCCJA 1074.
92 *Ibid* at para 6.
93 *Ibid* at paras 26–27.
94 *Ibid* at para 73.

The CJA imposed a reprimand on Therrien J, concluding that her conduct, which belittled the judicial process and undermined the dignity of her office, could erode public trust and respect. The CJA's process of evaluating the conduct of administrative judges, as explained in this section, is comprehensive, considering the judges' behaviour throughout the investigative process. However, this process can also be subject to judicial scrutiny, as illustrated by the judicial review concerning the reprimand given to Robins J, of the TAL, due to delays in issuing decisions.[95] During its inquiry, the CJA had sought extensive statistics from the TAL vice-chair on Robins J's caseload over a thirteen-month period, such as the number of hearings that he conducted and the decisions that he took.[96] Justice Guylène Beaugé, who reviewed the case, determined that the CJA's collection of broad statistical data was extraneous and unfairly positioned Robins J in a negative light, indicating that the investigation should have been confined to the particular instances specified in the complaints. This underscores the critical balance that the CJA must maintain between a thorough investigation and the relevance and fairness of the evidence gathered.

VI. CONCLUSION

In the CJA's inaugural annual report, filed in October 2002, Laurent McCutcheon, then chair of the CJA, emphasized the importance of administrative justice meeting the same standards of excellence as judicial justice.[97] The aim was to encourage reflection on the role of administrative justice within the broader justice system and to contribute to increasing public confidence in its institutions. The provision of an independent avenue for complaints serves multiple purposes, benefiting not only the individuals who file complaints against judges but also the community at large and the organizations that are the subject of the complaints.

Examining the CJA's oversight function over administrative tribunals in Quebec, this study considers complaints as a source of information about citizens' experiences with these tribunals. Perceived as an accountability mechanism, the analysis of the CJA's complaint handling brings to light what has been described as the hidden judiciary.[98] According to some researchers, sanctions are not a mandatory aspect of ensuring accountability. For instance, ombuds institutions cannot impose sanctions, yet their role as accountability mechanisms in the public sector is well recognized.[99] Although sanctions or consequences for misconduct do not always have to be strictly legal, they should be included within accountability frameworks. The presence or possibility of sanctions provides repercussions for misconduct contributing to the effectiveness of the accountability mechanisms.[100] The CJA acknowledges that its mandate extends beyond merely imposing sanctions. The investigations it conducts further enable the CJA to define precise norms of conduct that administrative judges should strive towards. The CJA serves a monitoring function that is fundamentally reparative for the administrative justice system as it acts as a guardian of judicial integrity and public confidence.

To enhance our understanding of citizens' grievances in relation to administrative justice, future studies can analyze the content of all complaints submitted to the CJA (not only the ones that were deemed

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[95] Thérèse Bussière et Ross Robins (RDL) 2013 QCCJA 669.

[96] *Robins c Conseil de la justice administrative*, 2016 QCCS 1566.

[97] Gouvernement du Québec, Conseil de la Justice Administrative, *Rapport Annuel de Gestion 2001–2002* (Quebec City: Conseil de la justice administrative, Bibliothèque et Archives nationales du Québec, 2002 at viii.

[98] Guthrie, Rachlinski & Wistrich, *supra* note 1.

[99] Natasha V Christie, "Accountability: Multiple Accountabilities" in Bearfield, Berman & Dubnick, *supra* note 21, 33; Steffan Lindberg, "Mapping Accountability: Core Concept and Subtypes" (2013) 79:2 Intl Rev Administrative Sciences 202.

[100] Bovens, *supra* note 25 at 952.

admissible). In such studies, the focus would not only be on determining the appropriateness of the complaints but also on understanding the nature of the complaints themselves. Furthermore, exploring the judicial review of the CJA's decisions could be another avenue for future research, providing insights into the CJA's investigative scope.