



Office of the President
Cabinet du président

March 8, 2017

Members of the Judicial Conduct Committee
Canadian Judicial Council
Ottawa, Ontario
K1A 0W8

Dear Members of the Judicial Conduct Committee:

Complaint against the Honourable Mr. Justice Frank J.C. Newbould (CJC File 15-0171)

I write to you as President of the Canadian Superior Court Judges Association (CSCJA) which, as you know, represents the interests of almost 1,000 federally appointed judges in Canada. Our Association has received a number of inquiries and comments from members of the judiciary regarding the manner in which the complaint concerning Justice Newbould has been conducted by the Canadian Judicial Council. Many of the comments relate to jurisdictional issues since the reconsideration of a complaint that has already been dismissed is nowhere provided for in the By-laws and rules of procedure that govern the Judicial Conduct Committee.

The CSCJA's Conduct Committee, which is concerned with judicial conduct issues that have implications for the judiciary as a whole, has reviewed the materials including the decision of the Review Panel and has made recommendations to our Executive. We support Justice Newbould's legal position on the jurisdictional issue. Our decision whether or not to seek leave to intervene in the proceedings before the Federal Court is still pending.

Regardless of the outcome of that litigation, the question that remains is this: why is this matter proceeding to an inquiry, given the fact that Justice Newbould will be retiring from the bench effective June 1, 2017?

We have reviewed the letter dated February 28, 2017 from the President of the Indigenous Bar Association, Ms. Lightning-Earle. The content and tone of the letter are, quite frankly, disturbing. The complainant calls for the inquiry to be expedited and resolved before June 1, and it appears that this demand is being made for tactical reasons, since the letter connects the need for the expedited hearing to the alleged prejudice to their land claim that will last well beyond Justice Newbould's retirement. The response by Norman Sabourin outlined appropriately the scheduling challenges inherent in every inquiry as well as those additional challenges specific to this one. It is comforting that he made no promise to give this complaint any special treatment.

The practical reality, however, is that it is simply not possible to conduct an inquiry before June 1. The Inquiry Committee has not yet been constituted nor has counsel been retained to present the case. Dates would have to be set that are suitable to all participants and their counsel and witnesses summoned. Indeed, Justice Newbould's counsel will require time to prepare for such a hearing. It would be most surprising that a hearing could be scheduled before the end of 2017 let alone before the end of May.

The mandate of the Inquiry Committee would be to determine whether Justice Newbould's conduct has been so "manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office.": *Re Therrien*, [2001] 2 S.C.R. 3. The sole decision to be made would be whether to recommend that Justice Newbould be removed from the bench or not. By his retirement, Justice Newbould is removing himself from the bench. It, therefore, follows that the issue before the Inquiry Committee will be moot.

There is precedent in the decision of the Canadian Judicial Council relating to the inquiry of Associate Chief Justice Lori Douglas for staying a matter until the resignation of a judge becomes effective where it would not be in the public interest to proceed with the hearing and expend public funds.

It is certainly not in the public interest in the case of Justice Newbould to continue an irrelevant process against one of Ontario's most outstanding jurists, during the final months of his stellar career. You are well aware of Justice Newbould's many contributions to the administration of justice so I do not need to outline them here. Suffice it to say that he has been a giant in the area of commercial law and has devoted himself to public service. The public interest demands that he be allowed to retire with dignity.

Our Association respectfully urges you to bring these proceedings to an immediate conclusion based upon Justice Newbould's imminent retirement.

Yours very truly,

A handwritten signature in cursive script that reads "Madam Justice Susan G. Himel". The signature is written in dark ink and is positioned above the typed name.

Madam Justice Susan G. Himel
President

cc. Brian Gover, Counsel for Justice Newbould