



Canadian
Judicial Council
Conseil canadien
de la magistrature

13 March 2017

Ottawa, Ontario K1A 0W8

The Honourable Susan G. Himel
President
Canadian Superior Court Judges Association
275 Slater Street, 14th Floor
Ottawa ON K1P 5H9

Dear Justice Himel:

I wish to acknowledge receipt of your letter of 8 March 2017, addressed to the members of the Judicial Conduct Committee of Council (JCC), about the Inquiry Committee regarding the Honourable F.J.C. Newbould.

In this matter, Chief Justice Wittmann acts as “senior member” of the Judicial Conduct Committee as that term is defined by the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015* (the *By-laws*). I have shared your correspondence with Chief Justice Wittmann and sought his direction. He has asked me to respond directly to your correspondence.

As you know, a Judicial Conduct Review Panel was constituted pursuant to the *By-laws*. In keeping with its statutory duty, the Panel decided on 8 February 2017 that an Inquiry Committee is to be constituted on the basis that the matter involving Justice Newbould might be serious enough to warrant the judge’s removal. The Panel’s reasons for decision are public.

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You indicate that you support Justice Newbould's position that Council had no jurisdiction to proceed with this matter after an initial complaint was dismissed by Chief Justice MacDonald. However, the Panel rejected Justice Newbould's submissions on jurisdiction, and found that the Council does have the jurisdiction to proceed with the matter. Its decision speaks for itself, and the matter proceeded on this basis.

In keeping with the provisions of the *Judges Act*, the Minister of Justice was invited, on 10 February, to appoint "one or more members of the bar of a province" to serve on the Inquiry Committee. The Minister has 60 days to respond to the invitation; she has not responded as of today. Once the Minister informs the Council of her decision, all members of the Inquiry Committee (including Council members) will be designated. At that time, it will be up to the Inquiry Committee to determine its steps.

Your letter asks, essentially, that the Inquiry Committee be put on hold. The only authority to do this would be a decision of the Inquiry Committee itself. As you note, there is a precedent for not proceeding with an Inquiry Committee hearing. In that case, the *Douglas* matter, the decision not to proceed was made by the Inquiry Committee, at a public hearing, after considering submissions on the issue from all concerned, including Independent Counsel in that case. Justice Newbould is free to make such a request to the Inquiry Committee, when it is in place, to decide how to proceed.

It would be improper and contrary to the public interest for Council, as an institution, to attempt to intervene in the proceedings of the Inquiry Committee, deemed a superior court for purposes of inquiring into the judge's conduct. Council must discharge its duties fairly, independently, and impartially in accordance with the terms of its mandate.

Further, I must respectfully decline to bring your correspondence to the attention of all members of the JCC. You might, of course, wish to communicate directly with members of the JCC; however, I would urge you not to do so.

Your letter implies that the JCC can direct the Minister, or Chief Justice Wittmann, or the Inquiry Committee to take, or refrain from taking, certain actions. In all instances, these decision-makers are performing a statutory duty. It would be highly inappropriate for the JCC to attempt to influence any of them.

Additionally, individual members of the JCC may be called upon, in future, to serve in various capacities in relation to the Newbould matter. As such, it would be problematic for individual members to consider issues that might later come before them for decision.

I conclude with the following comment. You express comfort that I have made no promises of special treatment to the complainant. That goes without saying. I expect the complainant would also take comfort in knowing there will be no special treatment for Justice Newbould.

Yours sincerely,

**Original signed by
Norman Sabourin
a signé l'original**

Norman Sabourin
Executive Director and Senior General Counsel

cc: Mr Brian Gover, counsel to Justice Newbould