

CANADIAN JUDICIAL COUNCIL

IN THE MATTER OF AN INQUIRY PURSUANT
TO S. 63 OF THE *JUDGES ACT*
REGARDING THE HONOURABLE FRANK NEWBOULD,
A JUDGE OF THE ONTARIO SUPERIOR COURT

NOTICE OF ALLEGATIONS
TO JUSTICE FRANK NEWBOULD
(Pursuant to section 64 of the *Judges Act*,
and section 5(2) of the *Canadian Judicial Council
Inquiries and Investigations By-laws, 2015*)
April 2017

TAKE NOTE that an Inquiry Committee has been convened under s. 63 of the *Judges Act*, R.S.C. 1985 c. J-1, as a result of complaints made to the Canadian Judicial Council;

The Inquiry Committee is required to conduct an inquiry into whether Mr. Justice Frank Newbould has become incapacitated or disabled from the due execution of the office of judge for any of the reasons set out in s. 65 of the *Judges Act* and should be removed from office;

BACKGROUND

1. The Saugeen First Nation has for many years been involved in a land claim over a disputed boundary with the Town of South Bruce Peninsula, in Ontario. This boundary dispute involves approximately 10 acres of land of Sauble Beach. The Government of Canada and the Government of Ontario are also involved in the dispute, which is currently before the Ontario Superior Court of Justice where it is being case managed by Mr. Justice Edward P. Belobaba.

2. Mr. Justice Warren Winkler, as he then was, had been the original case management judge on the file, and he had initially undertaken a judicial mediation of the dispute. Further mediation was later conducted by the Honourable Ian Binnie. This

mediation resulted in a proposed settlement of the claim, which was supported by the Saugeen First Nation and the Government of Canada, and which was unopposed by the Government of Ontario.

3. Mr. Justice Newbould has an interest in a family cottage at Sauble Beach.

THE FOLLOWING ALLEGATIONS ARE MADE AGAINST JUSTICE NEWBOULD:

(1) Alleged incapacity due to participation in a public forum

4. On August 6, 2014, Justice Newbould attended a meeting at the Sauble Beach Community Centre to discuss the proposed settlement of the Saugeen First Nation claim. At this meeting, the following occurred:

- (a) Prior to the start of the meeting, Justice Newbould approached the Town's counsel, Greg Stewart, and asked for an opportunity to speak at the meeting. Upon being informed that he could participate during the question period, Justice Newbould spoke privately with the Honourable Ian Binnie, who was also present;
- (b) During the question period, Justice Newbould identified himself not only as a cottage owner, but also as a judge of the Ontario Superior Court with experience in court cases like the Sauble Beach land dispute;
- (c) He commented on how short the deadline to present submissions on the proposed settlement was, as well as on the fact that a potential defence

against the Saugeen First Nation land claim had not been presented to the public;

- (d) He opined that the costs of litigation would be significantly less than the Town had claimed; and
- (e) He offered his services to lawyers for the Town, the Government of Canada and the Government of Ontario to review the evidence and to assess the strengths and weaknesses of each side's case.

5. Through his conduct at the meeting, did Justice Newbould conduct himself in a manner that undermined the public confidence in the impartiality, integrity, and independence of the judiciary? If so, did Justice Newbould become incapacitated or disabled from the due execution of the judicial role, such that the Inquiry Committee should recommend to the Canadian Judicial Council that Justice Newbould be removed from office?

(2) Alleged incapacity due to involvement in legal proceedings

6. Justice Newbould wrote three letters to the Mayor and members of the Municipal Council of the Town of South Bruce Peninsula. Two of these letters, dated August 8, 2014 and August 25, 2014, raise issues relating to questions before this Inquiry Committee.

7. In particular, in the letter dated August 8, 2014, sent on his personal letterhead:

- (a) Justice Newbould identified himself as a judge of the Superior Court of Ontario, and sent the letter by email from his judicial email address;
 - (b) He stated his concerns with the proposed settlement agreement;
 - (c) He questioned why the proposal should be accepted; and
 - (d) He offered to sit down with lawyers for the Town and the implicated governments in order to advise on the strengths and weaknesses of each side's case, "as a cottage owner and not in any official capacity as a judge".
8. In the letter dated August 25, 2014, sent on his personal letterhead:
- (a) Justice Newbould did not identify himself as a judge of the Superior Court of Ontario, but he did send the letter by email from his judicial email address;
 - (b) He indicated his willingness to speak to the Council about the case and his position that the proposed settlement agreement with the Saugeen First Nation should be rejected;
 - (c) He indicated that he had attempted to discuss the Saugeen First Nation claim with counsel for the Government of Canada and the Government of Ontario, both of whom had declined his offer;
 - (d) He indicated that he had spoken with Justice Winkler, the former mediator on the case, about the admissibility of a report commissioned by the

Ontario Ministry of the Attorney General supporting the defence of the Saugeen First Nation's claim; and

- (e) He provided detailed comments on the merits of the claim, including the potential defences that could be raised by the Town.

9. In writing these letters, did Justice Newbould conduct himself in a manner that undermined the public confidence in the impartiality, integrity, and independence of the judiciary? If so, did Justice Newbould become incapacitated or disabled from the due execution of the judicial role, such that the Inquiry Committee should recommend to the Canadian Judicial Council that Justice Newbould be removed from office?

(3) Alleged incapacity due to stereotypical comments about the Saugeen First Nation

10. In his letter dated August 25, 2014, Justice Newbould additionally made certain remarks about the Saugeen First Nation which reflected a reliance on stereotypical assumptions about Aboriginal Peoples:

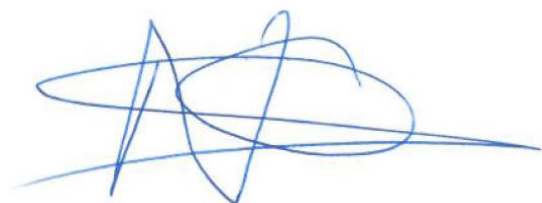
- (a) At page 7, paragraph (b) of the letter, Justice Newbould expressed assumptions about the Saugeen First Nation's interest in and anticipated use of Sauble Beach, indicating that the Saugeen First Nation would likely earn income from "tobacco sales" and "charging users" of the beach;

- (b) At page 7, paragraphs (c) and (f) he again speculated about the Saugeen First Nation's use of the beach to earn income from "user fees or cigarette sales"; and
- (c) At page 7, paragraph (e), he referred to the Saugeen First Nation's "anticipated casino" to explain what he perceived as its ability to "outspend the Town" in continuing mediation or arbitration.

11. Do these remarks demonstrate that Justice Newbould conducted himself in a manner that undermined the public confidence in the impartiality, integrity, and independence of the judiciary? If so, did Justice Newbould become incapacitated or disabled from the due execution of the judicial role, such that the Inquiry Committee should recommend to the Canadian Judicial Council that Justice Newbould be removed from office?

May 8, 2017

Signed:



The Honourable Richard J. Chartier, Chief Justice of Manitoba (Chair)



The Honourable Martel D. Popescul, Chief Justice of the Court of Queen's Bench for Saskatchewan



Ms. Clarine Ostrove