

**INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL REGARDING THE
CONDUCT OF THE HONOURABLE GÉRARD DUGRÉ, J.S.C.**

MEMBERS OF THE INQUIRY COMMITTEE:

The Honourable J.C. Marc Richard (Chairperson), Chief Justice of New Brunswick

The Honourable Louise A.M. Charbonneau, Chief Justice of the Supreme Court of the Northwest Territories

Audrey Boctor, IMK LLP

COUNSEL OF RECORD

For Justice Dugré:

Magali Fournier, Ad. E., Fournier Avocat inc.

Gérald Tremblay, Ad. E., McCarthy Tétrault LLP

For the Inquiry Committee:

Giuseppe Battista, Ad. E., Battista Turcot Israel s.e.n.c.

Emmanuelle Rolland, Audren Rolland LLP

Decision on the request to postpone the hearing scheduled for January 18 to February 5, 2021

[1] The Inquiry Committee (the **Committee**) was constituted in accordance with subsection 63(3) of the *Judges Act*, R.S.C., 1985, c. J-1.

[2] The Committee's mandate is to conduct an inquiry and submit a report to the Canadian Judicial Council setting out its findings and advising whether to recommend that the Honourable Gérard Dugré, j.c.s., be removed from office for any of the reasons set out in subsection 65(2) of the *Judges Act*.

[3] On July 24, 2020, the Committee scheduled the hearing for January 18 to February 5, 2021.

[4] On December 23, 2020, following a request for further instructions regarding the conduct of the inquiry, the Committee issued a decision confirming that its hearing would be held in Montreal from January 18 to February 5, 2021 and would continue from April 12 to April 23, 2021.

[5] On January 6, 2021, as a result of the health crisis, the Government of Quebec imposed a confinement of the population from January 9 to February 8, 2021. The government also ordered the introduction of a curfew during this same period, while advising against travelling and advocating teleworking.

[6] On January 7, 2021, the Committee held a case management hearing in order to determine how to proceed under the circumstances.

[7] During the case management hearing, counsel for Justice Dugré submitted a request to postpone the hearing scheduled for January 18 to February 5, 2021.

[8] In submitting this request, counsel for Justice Dugré argued that the rules regarding the confinement and the curfew would make it difficult to hold an in-person hearing. They added that a virtual hearing would infringe the rights of the judge. In their view, ideally, the entire inquiry should be postponed until such time as health conditions allow for the hearing to be held in person.

[9] Counsel responsible for submitting the evidence, Mr. Giuseppe Battista, does not oppose the request to postpone the hearing. He adds that, in his view, certain technical difficulties related to submitting the evidence could arise in a virtual hearing.

[10] In view of the foregoing, the Committee considers that the in-person hearing scheduled for January 18 to February 5, 2021 should not proceed.

[11] As for the appropriateness of a virtual hearing, the Committee emphasizes that courts of law as well as administrative tribunals throughout Canada have been forced to adapt to the new reality in which we find ourselves, and have also had to ensure that the activities of the justice system continue without delay.¹ Virtual hearings, even with witnesses, are being held every day in Canada. The Supreme Court of Canada is currently conducting its activities virtually.

[12] The Superior Court of Ontario expressed as follows the need to adapt to this new reality, rejecting the claim that a virtual hearing, in and of itself, raises concerns with regard to procedural fairness:

[32] I respectfully do not find the presence of any “due process concerns” inherent in the format of a video hearing. All parties have the same opportunity to participate and to be heard. All parties have the same ability to put all of the relevant evidence before the court and to challenge the evidence adduced by the other side. The only possible “unfairness” is a lack of comfort by one counsel that he or she will be at their best in presenting evidence and making arguments using technology. [...]

[33] In my view, in 2020, use of readily available technology is part of the basic skillset required of civil litigators and courts. This is not new and, unlike the pandemic, did not arise on the sudden. However, the need for the court to operate during the pandemic has brought to the fore the availability of alternative processes and the imperative of technological competency. Efforts can and should be made to help people who remain uncomfortable to obtain any necessary training and education. Parties

¹ *Bélanger et Gagnon*, 2020 CanLII 96545 (QC CJA); *Arconti v. Smith*, 2020 ONSC 2782; *Rovi Guides, Inc. v. Vidéotron Ltd.*, 2020 FC 596; *Van Lierop c. Fortin*, 2020 QCCS 1782.

and counsel may require some delay to let one or both sides prepare to deal with unfamiliar surroundings. [...]²

[Emphasis added]

[13] The Committee must also consider the public interest as well as the judge's interest in ensuring that the process is conducted within a reasonable time.

[14] In light of all these considerations, the Committee accepts Justice Dugré's request to postpone the hearing, but it does not agree to postpone the entire inquiry until such time as the parties are certain of being able to proceed in person. Although such an approach would be ideal, it is not reasonable.

[15] The Committee's hearing of January 18 to February 5, 2021 is therefore postponed until April 12 to 23, 2021. It will continue from May 17 to 21 and will conclude on May 31 to June 30, 2021.

[16] The hearing will be held in person or virtually, depending on how the health crisis evolves. If the hearing is held virtually, the parties will be able to make any request for technological support, in order to ensure the efficient conduct of the hearing.

[17] Furthermore, the Committee is aware that counsel for Justice Dugré would have liked to pause for a few weeks between the submission of evidence by Mr. Battista and the submission of Justice Dugré's evidence.

[18] However, the Committee considers that such a pause is unnecessary and would be inconsistent with the proper administration of justice.

[19] It should also be recalled that disclosure of evidence was initiated in the spring of 2020 and was completed in December 2020. Since the request for postponement has been granted and that the hearing has been rescheduled for April 12, 2021, with the Committee pausing for several weeks in April and May 2021, Justice Dugré and his counsel will have ample time to prepare to submit their evidence.

[20] In view of the foregoing, the Committee reiterates that its hearing of January 18 to February 5, 2021 is postponed until April 12 to 23, 2021. The hearing will continue from May 17 to 21 and will conclude on May 31 to June 30, 2021.

[21] The Committee will convene a case management hearing in due course, or at any time at the request of the parties, in order to determine the form of the hearing.

[22] In the meantime, the Committee asks that counsel discuss among themselves and submit joint proposals for the proper conduct of the inquiry, whether the hearing is held in person or virtually.

² *Arconti v. Smith*, 2020 ONSC 2782, paras. 32-33.

Signed by:

January 8, 2021

The Honourable J.C. Marc Richard

January 8, 2021

The Honourable Louise A.M.
Charbonneau

January 8, 2021

Audrey Boctor