

Our File: 143135

May 24, 2016

VIA EMAIL: [ORees@conway.pro](mailto:ORees@conway.pro)

Owen Rees  
Conway Baxter Wilson LLP/s.r.l  
401-1111 Prince of Wales Drive  
Ottawa ON K2C 3T2

Dear Mr. Rees

**Re: Justice Camp Inquiry and the Relevance of Errors of Law**

I am writing in reply to the May 18 letter from Frank Addario addressing the relevance of errors of law.

Mr. Addario quotes from the Crown Factum in *Wagar*, the Alberta Court of Appeal decision, the complaint from the “law professors”, and the letter from the Alberta Justice Minister, all to the effect that Justice Camp did not understand the law, refused to comply with it, or had a distorted view of legislation and an unsupportable view of s. 276 in particular.

Mr. Addario asks me to do one of two things:

- a. Join with him in proposing an amendment to the Notice of Allegations acknowledging Justice Camp committed no errors of law, or
- b. Agree as Presenting Counsel that any public perception he committed an error of law is irrelevant to the Committee’s ultimate decision.

I cannot agree to either request.

The first request from Mr. Addario is in effect a request for an advance ruling from the Inquiry Committee that Justice Camp made no errors of law, without hearing either evidence or submissions on that point from the parties during the inquiry, and without the matter being an allegation in the inquiry. He asks at page 3 of his letter for the Inquiry Committee to “clarify at the outset, as a matter of fairness to Justice Camp, that there is no cognizable complaint about his application of the law”. He notes later on the same page that “part of Justice Camp’s answer to the Allegations will be that he correctly applied the law. If the Inquiry Committee agrees with this and can so state, it will shorten the hearing and reduce the number of issues in dispute. If the Committee cannot clarify now that Justice Camp made no errors of law, I will assume the burden to prove this”.

With respect, how can the Committee rule now, in advance of evidence and submissions at the inquiry, that there were no errors of law - particularly where this issue has not been identified by the Committee as a direct subject for inquiry? Rather, in advancing his response to the Allegations which frame the scope of the inquiry, it will be open to Mr. Addario in the context of the language of each allegation to address the application of law by Justice Camp - wherever that may be needed to respond to the specific allegations.

For example, in response to Allegation 1, it will be open to Mr. Addario to present arguments that Justice Camp correctly applied the law regarding s. 276, and in so doing did not reflect antipathy toward it. That is the manner in which I suggest errors of law can properly be addressed in the context of the Notice of Allegations, without the Committee having to directly rule on errors of law. The Committee instead would rule on the allegation itself. That is the manner in which Justice Camp can choose to defend his reputation at this inquiry and can address issues respecting his application of the law.

Specifically, in response to Mr. Addario's two requests:

- (a) The request for an amendment to the Notice of Allegations acknowledging no error of law:

Firstly, it is the responsibility of the Inquiry Committee to determine the content of the Notice of Allegations. It is my understanding of the role of Presenting Counsel that I am to present evidence respecting the allegations identified by the Committee.

Even if it was appropriate for Presenting Counsel to suggest amendments, such amendments could not amount to an exculpatory statement that no errors of law were made by Justice Camp. A Statement of Allegations is a statement of the conduct that is alleged to be wanting; it is not a statement of what may have been done correctly. Charging documents in both criminal and disciplinary proceedings allege the "wrongs" and are not the forum to rule on what was done "right". It will be open to the members of the Committee to comment as they believe is appropriate in their Decision on matters raised by Justice Camp in his defence, but the charging document is not the place for such commentary.

In any event, the Alberta Court of Appeal determined there were errors of law and remitted the matter back for a new trial. The Inquiry Committee is not in a position to overrule the Alberta Court of Appeal.

- (b) The request for agreement that any public perception Justice Camp committed an error of law is irrelevant to the Committee's ultimate decision

Clause 65(1)(d) of the *Judges Act* provides for removal if a judge is "placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office".

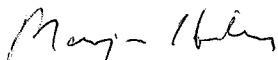
The public perception of Justice Camp arising from his conduct of the *Wagar* case is one factor for consideration by an Inquiry Committee under clause 65(1)(d). The legitimacy of that perception is another factor for consideration. Once again it will be open to Mr. Addario to argue the correctness of Justice Camp's legal analysis in the context of the allegations as drafted by the Inquiry Committee to the extent it has relevance to the allegations. The Inquiry Committee can take such arguments into account when considering the "attitudinal" component of the allegations which are the subject of the inquiry, without having to rule on the correctness of the law that was applied.

Mr. Addario argues that Justice Camp needs to be able to address the issue of error of law directly, regardless of the outcome of the other aspects of his conduct. The Alberta Court of Appeal has already addressed this issue, and was the appropriate forum for so doing. In any event, Justice Camp will have the opportunity to address it within the evidence he gives at the hearing to explain his conduct vis a vis the specific allegations, and within the submissions to be made on his behalf by Mr. Addario, which I anticipate will reflect his written submissions to Chief Justice MacDonald.

I do not think it is appropriate for the Inquiry Committee to receive a copy of Mr. Addario's letter to Chief Justice MacDonald, where it was responsive to another complaint and addresses matters that have not been advanced as allegations in this inquiry. Rather, as noted, the submissions in that letter can be reframed as submissions in this inquiry by Mr. Addario, to be advanced as part of this inquiry process.

Should you require anything further on this matter, kindly advise.

Sincerely,



Marjorie A. Hickey

cc Frank Addario