



## **In the Matter of an inquiry pursuant to s. 63(1) of the *Judges Act* regarding the Honourable Justice Robin Camp**

### **Directions**

#### **Background**

[1] This Inquiry Committee (the “Committee”) has been convened under s. 63(3) of the *Judges Act*, R.S.C. 1985 c. J-1, as a result of a request made by the Minister of Justice and Solicitor General of Alberta under s. 63(1) of the *Judges Act*.

[2] The Committee is required to conduct an inquiry into whether Mr. Justice Camp has become incapacitated or disabled from the due execution of the office of judge for any of the reasons set out in paragraphs 65(2)(b) to (d) of the *Judges Act* and should be removed from office.

[3] On May 2, 2016, the Committee issued a Notice of Allegations under s. 64 of the *Judges Act*, s. 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015* (the *By-laws*), and s. 3.6 of the *Handbook of Practice and Procedure of CJC Inquiry Committees* (the *Handbook*).

[4] On May 17, 2016, the Committee convened at the Supreme Court of British Columbia in Vancouver, and held a Case Management Conference by telephone with counsel for Justice Camp and Presenting Counsel. Counsel for Justice Camp argued

that the Judge had made no errors of law in the course of the trial in *R. v. Wagar*,<sup>1</sup> and invited the Committee to so find at the outset of the inquiry, therefore excluding errors of law from the inquiry's scope.

[5] The Committee requested that Justice Camp and Presenting Counsel make written submissions on this issue.

### **Submissions of Justice Camp**

[6] On May 18, 2016, counsel for Justice Camp wrote "seeking a clarification from the Committee that Justice Camp made no errors of law." He asks the Committee to "clarify at the outset that there is no cognizable complaint about his application of the law".

[7] While acknowledging that the Notice of Allegations does not specifically allege errors of law, Justice Camp argues that the issue must be addressed. Justice Camp submits that the public perception is that he refused to comply with s. 276 of the *Criminal Code*, R.S.C. 1985, c. C-46, which makes inadmissible "evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, [...] to support an inference that, by reason of the sexual nature of that activity, the complainant (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or(b) is less worthy of belief."

[8] Justice Camp submits that his alleged misapplication of s. 276 was argued by the Crown before the Alberta Court of Appeal, which held that "we are satisfied that the trial judge's comments throughout the proceedings and in his reasons gave rise to doubts about the trial judge's understanding of the law governing sexual assaults and in particular, the meaning of consent and restrictions on evidence of the complainant's sexual activity imposed by section 276 of the *Criminal Code*". Justice Camp argues that the misapplication of s. 276 is alleged by a complaint of Professors Elaine Craig,

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<sup>1</sup> In the Provincial Court of Alberta at Calgary bearing Action No. 130288731P1.

Jocelyn Downie, Jennifer Koshan and Alice Woolley, and by the Minister of Justice of Alberta, as well as in other complaints to the Council.

[9] Justice Camp takes the position that he correctly applied s. 276 in *R. v. Wagar*. Justice Camp argues that the absence of legal error is relevant in three ways:

- a) The allegation that he wilfully refused to apply the law has been widely reported, and the proceedings before the Committee are the only forum in which Justice Camp can defend his reputation.
- b) If the Committee concludes that s. 65(1)(d) provides grounds for removal based on the public's belief that Justice Camp is unfit to be a judge by reason of his misapplication of the law.
- c) The allegation in paragraph 1 of the Notice of Allegations regarding Justice Camp's antipathy towards s. 276. In this regard, the alleged antipathy must amount, it is argued, to more than criticism and must amount to "something approaching *animus* amounting to bias or a refusal to follow the law."

[10] Justice Camp is prepared to expand on his submissions that he made no errors of law by filing with the Committee a letter to Chief Justice MacDonald, the Chairperson of the Judicial Conduct Committee.

### **Submissions of Presenting Counsel**

[11] Presenting Counsel argues that it is the Notice of Allegations that frames the scope of the inquiry. She submits that the Committee cannot provide a ruling on whether Justice Camp made an error of law in advance of hearing evidence and submissions. It is open to Justice Camp to address these issues in the course of responding to the allegation as framed in the Notice of Allegations.

[12] Presenting Counsel further argues that the Alberta Court of Appeal determined that Justice Camp made errors of law, and ordered a new trial. It is not for the Committee to overrule the Court of Appeal, she submits.

[13] Presenting Counsel takes the position that the public perception of Justice Camp's conduct of the *R. v. Wagar* trial is one factor to take into account under s. 65(1)(d) of the *Judges Act*, but the legitimacy of that perception is another factor. It would be open to Justice Camp to respond to this to the extent that it is relevant to the allegations.

[14] Presenting Counsel submits that the Committee should not receive Justice Camp's letter to Chief Justice MacDonald, as it relates to another complaint. Justice Camp can reframe the submissions made in the letter in the course of the present inquiry.

### **Reply Submissions of Justice Camp**

[15] In reply, Justice Camp argues that he had no standing before the Court of Appeal; Mr. Wagar was not present to respond to the submissions of the Crown; and the Court of Appeal did not appoint *amicus curiae* to respond the Crown's submissions. He argues that the Court of Appeal held that Justice Camp's "comments throughout the proceedings and in his reasons gave rise to doubts about the trial judge's understanding of the law", but did not identify those errors.

[16] Justice Camp also observes that if Presenting Counsel intends to put Professor Craig's complaint letter before the Committee, the letter alleges errors of law.

### **Committee's Directions**

[17] Having considered the submissions of Justice Camp and Presenting Counsel, the Committee cannot accede to Justice Camp's request. It is premature at the outset of the inquiry – before hearing all of the evidence and receiving full legal submissions – to find that Justice Camp made no errors of law in the course of the trial in *R. v. Wagar*. The Committee refrains at this stage from deciding whether it can look behind the Alberta Court of Appeal's conclusion in this regard.

[18] However, the Committee observes that the Notice of Allegations, which is founded on the Minister of Justice and Solicitor General of Alberta's complaint, does not allege errors of law as freestanding grounds of misconduct.

[19] Making an error of law, without more, is not judicial misconduct, and is normally not a matter for the Canadian Judicial Council. Rather, errors of law are corrected by appellate courts.

[20] That said, grounds for the removal of a judge might arise when an error of law is caused by a wilful refusal to apply the law, bias, serious incompetence, or infirmity. (Infirmity is not raised in this inquiry.) To be clear, the Committee refrains from making any determination at this preliminary stage of the inquiry.

[21] In his letter of May 18, 2016, Justice Camp's counsel refers to allegations in a complaint made by Professor Craig *et al* to the Canadian Judicial Council ("Council"). The complaint of Professor Craig *et al* is not before the Committee, having been held in abeyance by the Chairperson of the Judicial Conduct Committee pending the outcome of the present inquiry.

[22] However, Justice Camp's counsel states that the allegation that Justice Camp refused to comply with s. 276 of the *Criminal Code* has been made by Professor Craig *et al*, and has been widely reported in the media. He argues that the allegation could undermine public confidence in the Judge, and that this inquiry is the only forum in which Justice Camp can respond. He asks for the allegation to be addressed directly.

[23] In light of this, the Committee requests that Presenting Counsel and Justice Camp make written submissions by June 21, 2016 on whether the Notice of Allegations should be amended to include an allegation that Justice Camp wilfully refused to apply the law or whether the Notice of Allegations as currently framed already engages, and permits a determination of, that issue.

June 11, 2016

The Honourable Austin F. Cullen, Chairperson of the Inquiry Committee, Associate  
Chief Justice of the Supreme Court of British Columbia

The Honourable Deborah K. Smith, Associate Chief Justice of the Supreme Court of Nova Scotia

The Honourable Raymond P. Whalen, Chief Justice of the Supreme Court of Newfoundland and Labrador, Trial Division

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