

June 6, 2017

**VIA EMAIL**

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

Dear Members of the Inquiry Committee:

**Re: The Honourable F.J.C. Newbould**  
**CJC File: 15-0171**

We have reviewed the Inquiry Committee's Report to the Canadian Judicial Council in this matter, which, as you know, was posted on the Council's website yesterday, but is dated June 1, and was not sent to our client or me.

We ask that the Committee amend its Report to correct the following factual inaccuracies:

1. At para. 1, the Report states that, "On February 8, 2017, a Review Panel...concluded that an Inquiry Committee should be appointed" in this matter. This is inaccurate. The Panel's decision that an Inquiry Committee should be appointed was dated February 10, 2017 and sent via email to Justice Newbould on February 13, 2017. For ease of reference, the Panel's decision and correspondence by which it was sent to Justice Newbould is enclosed.
2. At para. 1, the Report states that "two days later, [*i.e.*, following the Review Panel's decision] on February 10, 2017" Justice Newbould notified the Minister of Justice of his decision to retire effective June 1, 2017. This, too, is inaccurate. I enclose, for ease of reference, Justice Newbould's letter to the Minister of Justice, dated February 10, 2017, providing the Minister notice of his decision to retire.

It is misleading to state that Justice Newbould gave this notice "two days" after the Review Panel made its decision that an Inquiry Committee should be appointed, as the

Review Panel's decision is also dated February 10, 2017. Moreover, it is inaccurate to imply – as the Report does – that Justice Newbould gave notice of his decision to retire after he learned of the Review Panel's decision. As the enclosures demonstrate, Justice Newbould gave this notice three days before the Council informed him of the Review Panel's decision.

3. At para. 1, the Report states that “Justice Newbould formally apologized for his actions” between the time of the Review Panel's decision and the date on which he gave notice of his retirement to the Minister of Justice. This is inaccurate. As you know, Justice Newbould first formally apologized to the Council for the conduct at issue by way of a letter to Chief Justice MacDonald dated October 14, 2014. Though Justice Newbould reiterated this multiple times during the 2.5 years during which the Council's proceedings related to this conduct were ongoing, it is inaccurate to state that he “formally apologized” between the time of the Review Panel's decision and the date on which he gave notice of his retirement. In fact and as noted above, his notice preceded the Review Panel's decision.
4. At para. 2, the Report states that “Justice Newbould applied for judicial review of the Review Panel's decision” and that “[o]n March 29, 2017, the Federal Court of Canada dismissed the application.” This is inaccurate. The Federal Court has not issued a decision on the application. The March 29, 2017 decision of the Federal Court, enclosed for ease of reference, dismissed a motion to stay the effect of the Review Panel's decision pending the determination of the judicial review application.

It is, of course, important to the integrity of the Council's investigative process that reports of its Inquiry Committees be factually accurate. The Council and the Inquiry Committee owe that to the public, to the judiciary generally and to my client. As such, the Report should be revised to correct the factual inaccuracies outlined above, and this should be done as soon as possible.

Please advise me of the steps that will be taken in this regard.

Yours truly,



Brian Gover  
BG/  
Encl.

- c. Norman Sabourin (*via email*)  
Doug Mitchell (*via email*)  
The Honourable F.J.C. Newbould (*via email*)

June 9, 2017

**VIA EMAIL**

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

Dear Members of the Inquiry Committee:

**Re: The Honourable F.J.C. Newbould**  
**CJC File: 15-0171**

I am writing to you further to my correspondence of June 7, 2017, and my conversation with Doug Mitchell yesterday morning.

During our conversation, Mr. Mitchell informed me that the Inquiry Committee relied on information posted on the Canadian Judicial Council's website in stating in its Report to the Council that the Review Panel had issued its decision to refer this matter to an Inquiry Committee on February 8, 2017.

Neither my client nor I had realized – and we were shocked to learn – that there is a discrepancy in the dates of the Review Panel decision that was provided to us and the version of the Review Panel's decision that is now posted online.<sup>1</sup> Justice Newbould received an email from Josée Gauthier, the Council's Registry Officer, on February 13, 2017 attaching "Letter to Justice Newbould including Panel Reasons 2017-02-10 RFS". The reasons of the Review Panel are dated 10 February 2017. Attached is a copy of that email to Justice Newbould with enclosures.

The letter to Justice Newbould stated that the Council would be providing his Chief Justice a copy of the Review Panel's reasons. I am informed that the Chief Justice's office received the identical letter, along with an identical copy of the reasons, dated February 10.

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<sup>1</sup> The version of the decision posted to the Council's website is available at: [https://www.cjc-cm.gc.ca/cmslib/general/Newbould\\_Docs/2017-02-08%20Decision%20of%20the%20Review%20Panel.pdf](https://www.cjc-cm.gc.ca/cmslib/general/Newbould_Docs/2017-02-08%20Decision%20of%20the%20Review%20Panel.pdf).

Further, as demonstrated by the enclosures to my June 7 letter, on February 13, 2017, I received an email from Ms. Gauthier on behalf of the Council attaching “a letter confirming the 10 February decision of the Review Panel to refer to [*sic*] matter to an Inquiry Committee along with the reasons for doing so.” The reasons themselves are clearly dated “10 February 2017”. Indeed, two levels of court have subsequently stated as a fact, based on the filing of that decision as evidence, that the Review Panel’s decision was made on February 10, 2017.<sup>2</sup>

As you will appreciate, and as is evidenced by the Inquiry Committee’s Report, this apparent backdating of the publicly-released version of the Review Panel’s decision has the effect of making it appear that Justice Newbould’s decision to retire, communicated to the Minister and the Council on February 10 – before receiving the Panel’s decision – was actually prompted by the Panel’s decision. Rather, and as the February 13 correspondence from the Council demonstrates, the Panel’s decision, dated “10 February 2017”, was communicated to my client and me three days after we had informed the Council of Justice Newbould’s decision to retire effective June 1.

In the circumstances, I know you will agree that it is appropriate for the Inquiry Committee to amend its Report to reflect the date on which the Panel actually made its decision. It is apparent to me that the version of the decision posted online altered the genuine decision of the Panel and has been acted on as genuine to my client’s prejudice. As well, the reference to Justice Newbould formally apologizing is completely misleading for the reasons I expressed in my earlier letter to you of June 7, 2017 and should be removed.

I will be writing to the Council under separate cover to convey that my client and I require an explanation from the Council for what appears to be backdating of the publicly-released version of the Review Panel’s decision, and that this version must be removed from its website and replaced with the genuine version immediately.

I also reiterate my previous request to the Inquiry Committee to amend its Report to correct the inaccurate statement at para. 2 that “[o]n March 29, 2017, the Federal Court of Canada dismissed the application” for judicial review of the Panel’s decision. As I said both in my June 7 correspondence and in my conversation with Mr. Mitchell, the Federal Court made no such decision. It is simply inaccurate for the Committee to state otherwise. Readers of the Report should not be misled into believing that the application for judicial review was dismissed.

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<sup>2</sup> *The Honourable Justice Francis J.C. Newbould v. Attorney General of Canada*, 2017 FC 326 at para. 1; *The Honourable Francis J.C. Newbould v. Attorney General of Canada*, 2017 FCA 106 at para. 7 (“In a decision dated February 10, 2017, the Review Panel concluded that the CJC had jurisdiction to reopen the Indigenous Bar Association’s complaint. It went on to constitute an Inquiry Committee [...]).”)

I look forward to hearing from you regarding the steps that will be taken to revise the Report as outlined above.

Yours truly,



Brian Gover  
BG/sjb

Enclosure

- c. Norman Sabourin (*via email*)  
Doug Mitchell (*via email*)  
The Honourable F.J.C. Newbould (*via email*)  
Chief Justice Smith (*via email*)  
The Honourable Susan Himel (*via email*)



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

Ottawa, Ontario K1A 0W8

9 June 2017

Mr Brian Gover  
TD North Tower  
7 King Street West  
P.O. Box 140  
Toronto, ON M5K 1H1

Dear Mr Gover:

Your letter of 6 June 2017 to the members of the Inquiry Committee in the matter of the Honourable F.J.C. Newbould has been provided to me for response, in my capacity of administrator of the Canadian Judicial Council's judicial complaints process.

The Inquiry Committee is for all purposes *functus officio*. As you have raised a number of concerns about the Committee's report to Council, I wish to offer the following.

*Notice to the judge pursuant to s. 8 of the By-laws*

You appear to question why the Committee's report was not formally provided to Mr Newbould or to you. I note that the purpose of s. 8 of the *By-laws* is to provide the judge an opportunity to make a written submission to Council about the report (see s. 9). Given the conclusion of the report of the Inquiry Committee to end the inquiry, I concluded that there was no purpose in inviting any submission. I understand that you were made aware of the Inquiry Committee's report immediately upon its publication.

*Alleged factual inaccuracies in the Inquiry Committee's Report*

You raise a number of points in the Report that, in your view, are inaccurate: dates; timing of certain actions; status of Federal Court proceedings. Respectfully, I believe they are of no consequence for either the report itself, or for your client. Furthermore, as you must appreciate, the Inquiry Committee's report was based exclusively on a review of

publicly available facts. For example, the date of the Review Panel decision is shown on Council's website as 8 February 2017. Whether or not an administrative error was made and the actual date of decision is 10 February 2017 is of no relevance to what transpired before the Committee, whose members received a copy of the report by way of letter dated 30 March 2017. Your client received on that date the exact same information. I don't believe anything turns on the possibility of an error in the date of the issuance of the Review Panel's report, or whether your client provided notice of his retirement on the eve of, or immediately following, the Review Panel's decision.

The Inquiry Committee Report clearly bases its conclusion on its assessment that the public interest was not served by a continuation of the inquiry. There is no judgement on your client's conduct in the Report. If anything, I read the finding regarding the public interest and the reference to an apology as reflecting favourably on your client.

*Council jurisdiction to inquire into a former judge*

All of the above should be read in the context of Council's jurisdiction. As you know from my memorandum of 29 May 2017 to Chair of the Inquiry Committee (copied to you), Council's long-standing position is that Council, including its Inquiry Committees, does not have the jurisdiction to inquire into retired judges. That being the case, I am of the view that the issues you raise do not require further action by Council.

That said, I would be pleased to publish your letter of 6 June 2017 on Council's website; should you so request, a note would be appended that no conclusions or inferences should be drawn about Council's position in respect of the issues you raise.

Yours sincerely,

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

Norman Sabourin  
Executive Director and Senior General Counsel

June 13, 2017

**VIA EMAIL**

Norman Sabourin  
Executive Director and Senior General Counsel  
Canadian Judicial Council  
150 Metcalfe Street, 15th Floor  
Ottawa, ON K1A 0W8

Dear Mr. Sabourin:

**Re: The Honourable F.J.C. Newbould**  
**CJC File: 15-0171**

I am in receipt of your letter and email dated June 9, 2017.

In furtherance of your letter, I request that you publish on the Council's website my correspondence to the Inquiry Committee members of June 6, 2017 together with my letter of June 9, 2017. As you have informed me, I understand that a note would be appended that no conclusions or inferences should be drawn about the Council's position regarding the issues I raise in my letters.

Further, in the circumstances, it would seem to be appropriate for your letter and email of June 9, 2017 to also be posted on the Council's website, alongside my correspondence. I can advise that neither my client nor I would have any objection to this.

Yours truly,



Brian Gover

BG/

c. The Honourable F.J.C. Newbould (*via email*)