



Inquiry Committee
concerning
the Hon. Lori Douglas

Comité d'enquête
au sujet de
l'hon. Lori Douglas

**Transcript
of the hearing of
19 May 2012**

**Procès-verbal
de l'audition du
19 mai 2012**

(v. originale en anglais)

1 immediate left; Mr. Barry Adams, member of the
2 Law Society of Upper Canada, seated to the far
3 left; and Madame Marie-Claude Landry, member of
4 the Barreau du Québec, seated to the far right.
5 The original Committee included Chief Justice
6 Warren Winkler of Ontario, but other work
7 obligations required him to resign from the
8 Committee, and Chief Justice Green took his place
9 on December 2nd, 2011.

10 Now, the Canadian Judicial
11 Council includes the Chief Justice of Canada and
12 the Chief Justices of the Appeal Courts and the
13 Senior Trial Courts across Canada. The precise
14 membership of the Council is set out in section
15 59 of the Judges Act. Counsel for the Inquiry
16 Committee is George Macintosh, Q.C., from
17 Vancouver, who is seated over here to my right in
18 the witness box. And independent counsel for the
19 Inquiry is Guy Pratte -- good morning,
20 Mr. Pratte -- who is based in Ottawa.

21 MR. PRATTE: Good morning.

22 THE CHAIR: And Mr. Pratte is
23 assisted by Kirsten Crain. Good morning.

24 Sheila Block, from Toronto, is
25 counsel for the Associate Chief Justice

1 Douglas -- good morning, Ms. Block -- and
2 Ms. Block is assisted by Molly Reynolds. Good
3 morning.

4 Mr. Ed Ratushny, Q.C., is
5 consultant to this Committee, and he is seated to
6 the right of Mr. Macintosh. Thank you.

7 Now, all counsel are in
8 attendance today, as you have seen.

9 One thing I should make a point
10 about right now is that this Inquiry is open to
11 the public. However, under the Judges Act, which
12 governs this Inquiry, this Committee is deemed to
13 be a Superior Court and in keeping with the
14 practice normally employed by Superior Courts in
15 this country, no cameras, photographs, recordings
16 or other electronic communications, including the
17 use of Twitter, will be permitted unless an
18 application permitting them is first brought and
19 the Committee so orders.

20 The mandate of this Committee is
21 perhaps best explained, with the least potential
22 for error in explaining it, by quoting directly
23 from sections 5 to 8 of the applicable By-Laws of
24 the Canadian Judicial Council, and I will read
25 those sections:

1 "5. (1) The Inquiry Committee
2 may consider any relevant
3 complaint or allegation
4 pertaining to the judge that
5 is brought to its attention.
6 (2) The independent counsel
7 shall give the judge
8 sufficient notice of all
9 complaints or allegations
10 that are being considered by
11 the Inquiry Committee to
12 enable the judge to respond
13 fully to them.

14 6. (1) Any hearing of the
15 Inquiry Committee shall be
16 conducted in public unless,
17 subject to subsection 63(6)
18 of the Judges Act, the
19 Inquiry Committee determines
20 that the public interest and
21 the due administration of
22 justice require that all or
23 any part of a hearing be
24 conducted in private."
25 I'm just pausing a moment because

1 we appear to have a problem with the recording
2 equipment.

3 (Adjustment of amplifying microphones)

4 Thank you. If I may continue.

5 "6. (2) The Inquiry
6 Committee may prohibit the
7 publication of any
8 information or documents
9 placed before it if it
10 determines that publication
11 is not in the public
12 interest.

13 7. The Inquiry Committee
14 shall conduct its inquiry or
15 investigation in accordance
16 with the principle of
17 fairness.

18 8. (1) The Inquiry Committee
19 shall submit a report to the
20 Council setting out its
21 findings and its conclusions
22 in respect of whether or not
23 a recommendation should be
24 made for the removal of the
25 judge from office."

1 And that, ladies and gentlemen,
2 is a brief and general description of the mandate
3 of this Committee.

4 An agenda for today's hearing has
5 been circulated and, in accordance with the
6 agenda, the topics we anticipate addressing today
7 include applications for standing and for counsel
8 appointed to represent Mr. Alex Chapman as well
9 as applications to intervene. We will also be
10 hearing submissions regarding the venue for the
11 continuation of the hearing. We also want to
12 address scheduling dates for the rest of the
13 hearing. And if there are any other applications
14 that are to be made today, we will entertain them
15 later or when we assemble again.

16 Now, before we proceed with this
17 agenda, because this is the first day of hearing
18 for this Inquiry, I want to summarize the steps
19 in the process to this point.

20 On September 27th, 2011,
21 Ms. Block asked to make written submissions on the
22 question of venue for the hearing. The parties
23 agreed that she would provide submissions on
24 venue by October 12th with Mr. Pratte responding
25 by October 19th. Later, on October 4th, the

1 Committee formally asked counsel to address
2 whether the Committee could see the complaints
3 giving rise to the initial investigation.
4 Ms. Block filed her written submissions on venue on
5 October 12th and, in those submissions, she also
6 expressed her view that no substantive materials
7 should be placed in front of the Inquiry
8 Committee at that stage. These materials
9 included the complaint filed by Mr. Alex Chapman
10 and two disks sent to the Council, apparently
11 anonymously. Ms. Block's submission was that she
12 objected to the provision of materials to the
13 Inquiry Committee before Mr. Pratte had provided
14 a Notice of Allegations under subsection 5(2) of
15 the By-Laws disclosing the nature of the matters
16 to be put before the Inquiry Committee and before
17 the Committee had considered any preliminary
18 objections to the disclosure of that material.
19 Mr. Pratte expressed the same view to the
20 Committee on October 17th.

21 I should point out, for those not
22 familiar with the process, that Mr. Pratte and
23 Ms. Block have dealt with the Committee to this
24 point entirely through the offices of
25 Mr. Macintosh, whom I introduced earlier as a

1 lawyer for the Committee, with the exception of
2 one procedural meeting, which I will refer to
3 later, where Mr. Pratte and Ms. Block with
4 Ms. Crain and Ms. Reynolds appeared before me in
5 person.

6 Early in October, Mr. Pratte had
7 alerted the Committee that he would probably
8 require subpoenas in order to obtain certain
9 evidence necessary to his investigation of the
10 complaint. Mr. Pratte raised this issue again
11 with the Committee on October 17th. Some
12 witnesses were reluctant to fully discuss matters
13 with him if they were not subpoenaed. It was
14 important for Mr. Pratte, in conducting his
15 investigation, that he interview some witnesses
16 who had considered Associate Chief Justice
17 Douglas' application to become a judge.

18 Mr. Pratte addressed the venue
19 question for us in written submissions on October
20 19th. Ms. Block replied in writing on venue on
21 October 27th. The Committee met by telephone on
22 November 8th and reserved judgement on the
23 question of venue at that point. Ms. Block, in
24 written submissions to the Committee on October
25 27th, contended that it was premature for this

1 Committee to address venue before the Notice of
2 Allegations was received.

3 On November 16th, at the request
4 of the Committee, Mr. Macintosh met by telephone
5 with Mr. Pratte and Ms. Block to discuss the
6 progress of Notice of Allegations. Mr. Pratte
7 advised that he had arranged witness interviews
8 in Winnipeg for December 1st and December 2nd.
9 The same day, November 16th, Mr. Pratte expressed
10 his view to the Committee in writing that he
11 lacked the power to subpoena witnesses for the
12 purpose of conducting his investigation, and his
13 further view that the Committee itself did have
14 such power, therefore he requested the Committee
15 to address its subpoena power and issue
16 subpoenas. Ms. Block consented to that approach.

17 On November 18th, the Committee
18 considered and accepted Mr. Pratte's position and
19 determined that it had the power to issue
20 subpoenas. The Committee, however, required
21 certain particulars from Mr. Pratte in order to
22 perfect and justify the issuance of the
23 subpoenas. By November 24th, the Committee had
24 addressed its concerns regarding the content of
25 the subpoenas and had secured the agreement of

1 Mr. Pratte and Ms. Block as to how the subpoenas
2 would read. The same day, November 24th, the
3 Committee issued nine subpoenas for witnesses to
4 attend before independent counsel in Winnipeg on
5 December 1st and December 2nd. On November 28th,
6 Mr. Pratte advised that he anticipated also
7 requiring five further subpoenas known as
8 subpoenas duces tecum, which simply means
9 subpoenas requiring the recipient to produce
10 documents.

11 Also at that time, Mr. Pratte and
12 Ms. Block advised the Committee that they were
13 attempting to involve the Committee as little as
14 possible in the investigation stage of the case.
15 As I noted earlier, on December 2nd of last year,
16 Chief Justice Green replaced Chief Justice
17 Winkler as a member of this Committee and that
18 same day, December 2nd, Mr. Pratte pursued his
19 request for the five document subpoenas.

20 Ms. Block consented to those subpoenas on the basis
21 that they were to be issued only for the purpose
22 of facilitating Mr. Pratte's investigation. The
23 Committee issued the five document subpoenas with
24 some amendments on December 5th.

25 Mr. Pratte wrote a procedural

1 update for the Committee on December 7th. He
2 identified the three potential conduct issues he
3 was focusing upon in his investigation and
4 advised that he had interviewed 28 witnesses and
5 anticipated concluding witness interviews by the
6 end of January of 2012. He hoped by early
7 February to submit a draft of Notice of
8 Allegations for the Committee's consideration or
9 recommend why no allegations should go forward.

10 On December 19th, in an effort to
11 enable the Committee to determine the scope of
12 this Inquiry and to proceed to a hearing as soon
13 as possible, the Committee sought to crystallize
14 the issue of its access not only to the
15 complaints, but also the Review Panel decision.
16 Thus, the Committee asked Mr. Pratte and
17 Ms. Block to address the following question in
18 written submissions: Does the Committee have the
19 jurisdiction to receive and review the complaints
20 or all or any part of the Review Panel's decision
21 or both at the same time as or before it receives
22 the Notice of Allegations? If so, is there any
23 reason why the Committee should not receive and
24 review those materials?

25 Counsel submissions from both

1 Ms. Block and Mr. Pratte were received in January of
2 this year; Ms. Block's on January 11th and
3 Mr. Pratte on January 26th.

4 On February 20th, Mr. Pratte
5 advised the Committee that he was very close to
6 concluding his investigation and anticipated
7 giving a detailed report to the Committee by
8 March 23rd.

9 The Committee met in person in
10 Ottawa on February 29th to review the written
11 submissions and consider the status and timing of
12 Notice of Allegations. The Committee decided
13 that there would be a case management meeting
14 with counsel to discuss certain procedural
15 issues, including Notice of Allegations. The
16 meeting was held in Ottawa on Saturday, March 10th,
17 attended by myself with Mr. Macintosh,
18 together with Mr. Pratte and Ms. Block, assisted
19 respectively by Ms. Crain and Ms. Reynolds.
20 During that case management meeting, I raised the
21 question of timing of the issuance of Notice of
22 Allegations. Mr. Pratte indicated that he
23 intended to issue the report that I had referred
24 to earlier. That course of action was supported,
25 in large measure, by Ms. Block. This approach

1 raised, in turn, a general issue as to the role
2 of independent counsel in the Inquiry process.
3 The Committee formulated four questions to be
4 addressed by counsel, which were sent to counsel
5 on March 14th, and those questions are as
6 follows:

7 Number 1: In issuing Notice of
8 Allegations under subsection 5(2) of the By-Laws,
9 does independent counsel have the jurisdiction or
10 authority to delete from that Notice any
11 complaints, allegations or matters the Review
12 Panel has referred on for inquiry by the Inquiry
13 Committee?

14 Number 2: Does independent
15 counsel have the jurisdiction or authority to
16 recommend not proceeding with any complaints,
17 allegations or matters the Review Panel has
18 referred on for inquiry by the Inquiry Committee
19 without calling evidence relating to that
20 recommendation?

21 Number 3: If the answer to
22 question 2 is yes, does the Inquiry Committee
23 have the discretion to reject that recommendation
24 and, if so, to what extent? If the discretion is
25 limited, then what are the parameters or

1 governing principles for the exercise of that
2 discretion by the Inquiry Committee?

3 Number 4: If the Inquiry
4 Committee declines to accept a recommendation by
5 independent counsel not to proceed with the
6 particular complaint, allegation or matter, is
7 the independent counsel's ability to continue to
8 fulfill the obligations imposed on independent
9 counsel with respect to that complaint,
10 allegation or matter then compromised in fact or
11 in appearance?

12 Counsel provided their written
13 submissions addressing these questions on April
14 4th and April 11th. Counsel had also been asked
15 at the case management meeting to provide any
16 further submissions on other issues: Venue and
17 whether the Complaints and Review Panel decision
18 should be disclosed to this Committee. Those
19 issues, too, were addressed in the written
20 submissions which we received on April 4th and
21 April the 11th.

22 On April 1st, in the meantime,
23 Mr. Chapman, the complainant in this case, wrote
24 to the Committee asking to be provided with a
25 lawyer to assist him in this proceeding.

1 Mr. Clare Pieuk wrote to the Committee on April
2 12th asking to become an intervener. The
3 Committee sent Mr. Chapman's application to
4 counsel, who provided their responses to the
5 Committee on April 20th and these, in turn, were
6 forwarded to Mr. Chapman for his consideration.
7 Our counsel, Mr. Macintosh, wrote to Mr. Pieuk on
8 April 25th, advising that he had until May 9th to
9 put in further written submissions. Mr. Pieuk
10 responded the same day that he would be making no
11 further written submissions. Mr. Pratte and
12 Ms. Block sent in written submissions on May 9th
13 regarding whether Mr. Pieuk should have the right
14 to intervene and these, in turn, were forwarded
15 to Mr. Pieuk.

16 Now, earlier this week, the
17 Committee, in response to the written submissions
18 received, issued a ruling dated May 15th, which
19 addressed a number of matters. First, it dealt
20 with issues relating to the respective roles of
21 independent counsel and Inquiry Committees
22 established under the authority of section 63(3)
23 of the Judges Act. Second, the ruling also
24 ordered that Mr. Chapman's complaint and the
25 Review Panel decision that led to the

1 constitution of this Committee were to be
2 disclosed to the Committee forthwith. It ordered
3 that independent counsel issue the Notice of
4 Allegations by Friday, May 18th. Finally, the
5 ruling also dealt with the timing for written
6 submissions to be filed concerning whether the
7 second complaint -- that is the two disks --
8 should be disclosed to the Committee. That
9 ruling has been posted on the Canadian Judicial
10 Council website and is publicly available.

11 Now, I pause at this point to
12 note that an issue has arisen with respect to the
13 Notice of Allegations, which we will be
14 discussing further today. Now, since releasing
15 this ruling, independent counsel has raised a
16 concern as to whether his role includes
17 presenting evidence that is favourable as well as
18 unfavourable to the judge. The Committee agrees
19 fully that independent counsel has the
20 responsibility to present the evidence that is
21 both favourable and unfavourable in keeping with
22 his obligation to act fairly and impartially.
23 And paragraph 83 of the Ruling states, in part:

24 "What the Committee requires
25 from independent counsel is

1 that he present in a fair
2 and impartial manner the
3 strongest case possible in
4 support of the allegations
5 against the judge based on
6 the gathering, marshalling
7 and presentation of evidence
8 and the related
9 submissions."

10 And in paragraph 56 of that
11 ruling, we wrote that:

12 "The 'case,' essentially,
13 means 'the case against the
14 judge,' but it also must be
15 presented fairly.
16 Subsection 3(3) provides
17 that the presentation must
18 be done 'impartially'. This
19 merely reflects the ordinary
20 role that any Inquiry
21 Committee would expect from
22 counsel who is presenting
23 the evidence that is the
24 subject of its mandate."

25 And in paragraph 64, the ruling

1 quotes the following passage from the Canadian
2 Judicial Council's policy on independent counsel:

3 "The public interest
4 requires that all of the
5 evidence adverse to the
6 judge, as well as that which
7 is favourable, be presented.
8 This also may require that
9 evidence, including that of
10 the judge, be tested by
11 cross-examination,
12 contradictory evidence or
13 both."

14 In sum, the core of the
15 obligation of independent counsel is to act
16 fairly and impartially.

17 That brings us to the present
18 time. From what you've heard to this point, you
19 will know that the Committee has received various
20 submissions from the lawyers, both last fall and
21 in 2012. I have asked that these be assembled in
22 order to have a full public record of this case.
23 However, counsel have expressed concerns that
24 certain portions of their submissions to this
25 stage should be redacted. Any further

1 submissions from Mr. Pratte or Ms. Block or any
2 other interested party on this topic must be
3 received in writing by the Committee on or before
4 June 15th. The Committee will consider those
5 submissions, determine what portions should
6 properly be redacted and subject thereto file as
7 an exhibit a compilation of counsel's submissions
8 at the beginning of the evidentiary phase of this
9 Inquiry.

10 We also confirm that within the
11 last 48 hours, we have now received a copy of
12 Mr. Chapman's original complaint and the Review
13 Panel decision. We have not yet had an
14 opportunity to review the complaint and Review
15 Panel decision in light of the Notice of
16 Allegations, given that there is also an issue
17 relating to the Notice of Allegations, and must
18 do so before taking further steps.

19 That I believe is a summary then
20 of what the steps have been that have been taken
21 to date. And at this stage, we are now prepared
22 to turn to today's agenda. And at this time,
23 before we do so, I would like to know whether
24 anyone present has any other application that
25 they intend to make today and, if so, I would ask

1 that you identify yourself and let us know what
2 the nature of that application is. So is there
3 anyone here who wishes to make any application?

4 MS. HAZEN: I did make an
5 application to CJC, but I didn't -- I didn't
6 receive any notice that I would be able to speak
7 to you.

8 THE CHAIR: I'm sorry, could you
9 tell us who you are first?

10 MS. HAZEN: My name is Cher
11 Hazen, H-A-Z-E-N. I had -- the last I sat was in
12 front of --

13 THE CHAIR: Could I perhaps ask
14 you to come up further. It's a little difficult
15 to hear you and if you would like to come up to
16 one of the areas here to speak, please, and could
17 you tell us again what your name is for the
18 record?

19 MS. HAZEN: Cher Hazen, C-H-E-R
20 H-A-Z-E-N. I last sat in front of Justice
21 Douglas. It was my -- I don't feel all that
22 terribly prepared. I sent a letter to the CJC
23 asking for my case to be looked into as I felt I
24 had been sexually discriminated against in her
25 courtroom, that her -- she did not view our

1 evidence impartially or use the judgement that is
2 imposed on her to make a clear and concise ruling
3 in my case at all, and I presented the CJC why I
4 believed that. I haven't heard anything in
5 response that I was to be presenting today. I
6 don't have anything written in front of me and,
7 unfortunately, with all the stress and everything
8 that goes on, I have a really hard time
9 articulating on my own and I'd be happy to read
10 what I read or what I wrote to the CJC if I'm
11 allowed to do that. It's in an e-mail format on
12 my cell phone, though. That would need to be on.

13 THE CHAIR: Have you received a
14 letter from the CJC, Canadian Judicial Council,
15 with respect to this matter that you've raised
16 with them?

17 MS. HAZEN: No. No, not that I'm
18 aware of. I haven't received anything in the
19 mail or e-mail from the CJC since my initial
20 complaints, which would have been in 2009, 2010,
21 where they -- CJC informed me that it wasn't up
22 to them to do this review, that it was up to the
23 Court House here in Winnipeg, and the Court House
24 here in Winnipeg was the ones who had told me to
25 go speak to the CJC in the first place because

1 they didn't take care of that business.

2 THE CHAIR: Okay, but what you're
3 saying is you did receive a letter from the
4 Canadian Judicial Council?

5 MS. HAZEN: In 2010 before this
6 business came out about -- I was told to -- that
7 I couldn't challenge her judgement because she was
8 (inaudible).

9 COURT REPORTER: Because she was?

10 MS. HAZEN: Solid. Like, she was
11 a solid -- a solid judge, that her ethics, et
12 cetera, were unquestionable and it seems very
13 clear that that is not so.

14 THE CHAIR: Okay, one moment.
15 You mentioned the fact that you did receive a
16 letter from the Canadian Judicial Council. Do
17 you have a copy of that letter?

18 MS. HAZEN: I don't. I was not
19 informed in any means at all that I would be able
20 to present anything here today. I did not bring
21 anything, not -- I'm sorry, like, I've been
22 through this process, through the judicial system
23 for many years now, but I -- I'm advocating for
24 myself and it's -- I am uncertain as to what it
25 is that I required further than what I wrote to

1 you in the first place. I asked specifically
2 what it is that I needed to bring. I gave that
3 to you or sent that to the CJC before the May
4 15th deadline, which I understood was the
5 deadline in the paper that I'd read the week
6 before and only find that information out the
7 week before through the Winnipeg Sun newspaper.
8 I had tried to e-mail for several days in a row,
9 not knowing that the e-mail address given in the
10 Winnipeg Sun was actually incomplete, an
11 incorrect e-mail address to contact the CJC. But
12 I hadn't -- I hadn't received anything in return
13 from you. I'm certain that you have received my
14 letters of May 15th and prior to that, but I have
15 not received anything, knowing what it is that I
16 should bring here to present other than my
17 testimony.

18 THE CHAIR: Okay, you're saying
19 two different things then. You say that you
20 wrote a letter sometime after 2009 --

21 MS. HAZEN: Yes.

22 THE CHAIR: -- expressing
23 concerns about the Judge's conduct --

24 MS. HAZEN: Yes, that's right.

25 THE CHAIR: -- of a case that you

1 were involved in, a family case?

2 MS. HAZEN: Yes, that's right,
3 mmhmm.

4 THE CHAIR: And you received a
5 letter from the Canadian Judicial Council, but
6 you don't have that letter with you?

7 MS. HAZEN: That's right.

8 THE CHAIR: Okay. So let's set
9 that aside. And I assume that that letter
10 indicated to you --

11 MS. HAZEN: All it indicated to
12 me was that you don't deal with that --

13 THE CHAIR: I assume --

14 MS. HAZEN: -- that it's not --
15 it's not up to you.

16 THE CHAIR: I assume the letter
17 indicated that if you had disagreed with the
18 judgement, that you had a right to appeal the
19 decision to the Court of Appeal.

20 MS. HAZEN: Which I did and it's
21 my understanding that she's also my appeal judge.

22 THE CHAIR: You did appeal your
23 decision --

24 MS. HAZEN: I did.

25 THE CHAIR: -- in accordance with

1 the advice you got from the Council, and I take
2 it that the matter has been disposed of?

3 MS. HAZEN: Yeah, it was prior to
4 the advice that I got from the CJC, actually.

5 THE CHAIR: But in any event,
6 that was the way in which the initial concern was
7 dealt with; it was to suggest to you that your
8 remedy was to appeal the decision to the Court of
9 Appeal, that you've done, and that matter is at
10 an end. So that's one issue. You now are saying
11 that you tried to e-mail on May 15th of this
12 year?

13 MS. HAZEN: Yeah. Yes, just
14 prior to May 15th.

15 THE CHAIR: All right. In order
16 to make an application to do what? What is your
17 application?

18 MS. HAZEN: To -- the initial
19 appeal application that I had made did
20 indicate -- or in my complaint about being
21 discriminated against, but that my application
22 would not be looked at because the appeal judge,
23 which I'm understanding is her, said that I
24 wouldn't -- I was told by the Appeal Board that I
25 wouldn't win. That was my -- that was what I was

1 told by the Appeal Board. So my second
2 application -- after all this came out in the
3 press about Mr. Chapman and subsequent
4 complaints, I again tried to appeal to the CJC.
5 Having read in the paper possibly two weeks ago
6 that this appeal -- that this Appeal Board
7 meeting would be happening on the 19th and that
8 submissions needed to be in by the 15th, I tried
9 to resubmit under those circumstances. I'm not
10 articulating well.

11 THE CHAIR: You're trying to
12 resubmit your appeal of your decision is what
13 you're essentially saying?

14 MS. HAZEN: Yes, ma'am.

15 THE CHAIR: Mr. Macintosh?

16 MR. MACINTOSH: Chief Justice
17 Fraser, thank you. Excuse me, Ms. Hazen, for
18 just a moment. What I was going to suggest,
19 Chief Justice Fraser, is perhaps I could speak
20 with Ms. Hazen during the morning break and see
21 if I can assist in determining whether it's
22 useful to proceed here today with her concerns or
23 whether some alternative process is better. And
24 so if Ms. Hazen could wait for the morning break,
25 I could speak with her off the record just

1 privately and see if we can achieve something.

2 THE CHAIR: I think that that
3 would be useful and, indeed, I would suggest that
4 perhaps you might wish to do that now because I
5 propose that we take a break of about 10 minutes.
6 We will come back and proceed with the -- subject
7 to what Mr. Pratte and Ms. Block may have, if
8 they have any issues they wish to raise or anyone
9 else does. Sorry, there is somebody else. Okay.
10 Well, thank you then, Ms. Hazen, and we'll have
11 Mr. Macintosh meet with you. Ms. Block?

12 MS. BLOCK: May I just make one
13 comment in response to Ms. Hazen. She said that
14 she was told that the Associate Chief Justice's
15 ethics were unquestionable. It seems very clear
16 that was not so. I know I don't have to say this
17 to this Tribunal, but a complaint is only an
18 allegation. I'm quoting Justice Sopinka in
19 Ruffo. It's wrong to deal with a complaint as
20 evidence, not merely as an allegation. The fact
21 that Ms. Hazen has read things in the newspaper
22 does not make them so and, as I say, I know I
23 don't have to say it to you. But as you have
24 probably already seen, this case is attracting a
25 great deal of media attention and if a quote like

1 that got picked up and put in the paper, it would
2 be very damaging and very unfair. And I want to,
3 at least to you, say that publicly and perhaps
4 the Committee will assist me in that regard.

5 THE CHAIR: Thank you, Ms. Block.
6 Anything you wish to add, Mr. Pratte?

7 MR. PRATTE: Not on this. I may
8 have a comment on your ruling when we resume, but
9 not on this, Chief Justice. Thank you.

10 THE CHAIR: Now, I'm sorry, there
11 is someone else who wishes to speak?

12 MS. DRAGANI: I'm Marisa Dragani
13 with CBC National Television News, and we are
14 going to consider putting forth an application
15 with respect to what you mentioned about using
16 electronic devices, namely Twitter, and I just
17 need to contact our legal counsel.

18 THE CHAIR: All right. And
19 what's your name again?

20 MS. DRAGANI: Marisa Dragani.

21 THE CHAIR: Jordani (ph)?

22 MS. DRAGANI: Dragani,

23 D-R-A-G-A-N-I.

24 THE CHAIR: Any other
25 applications that anyone is going to propose to

1 make today?

2 MS. LINTZ: Your Honour, I'm not
3 prepared either because I thought I needed, like
4 this lady, a confirmation that I could speak.
5 And I am here as a member of the public who is
6 very, very concerned about the moral integrity of
7 judges, of the judiciary, and --

8 THE CHAIR: I'm sorry, could you
9 please tell us your name?

10 MS. LINTZ: Yes, my name is
11 Tannis Lintz, L-I-N-T-Z.

12 THE CHAIR: Tammy Lintz?

13 MS. LINTZ: Tannis, T-A-N-N-I-S.
14 So I have not prepared anything in writing and I
15 would be happy to speak after the break in terms
16 of what my interest in being here is today. So I
17 could prepare a little bit if we are allowed to
18 make a submission today, which I believe I've
19 missed the deadline, so I thought I would just be
20 an observer, but I would like to speak.

21 THE CHAIR: I should probably
22 clarify the fact that what we're asking is
23 whether anyone has a formal application that they
24 wish to make that would fall within the
25 parameters of something that we would consider.

1 So, for example, individuals -- anyone has the
2 right, for example, to make an application for
3 standing in order to make presentations and
4 submissions, but this is not an open mike session
5 where we hear from individuals generally about
6 any concerns that they have about the justice
7 system or, indeed, about the judge whose conduct
8 we're inquiring into. This inquiry follows a
9 certain procedure and that includes hearing from
10 people who have formal applications to make. If
11 standing is granted for some purpose, then we
12 hear representations from individuals. But
13 otherwise, it has to be within the confines of
14 that structure because we have as independent
15 counsel, Mr. Pratte, who is here to present the
16 case in accordance with the public interest and
17 he is an extremely experienced, capable counsel
18 who will have -- who has the ability to do so in
19 accordance with the By-laws and provisions of the
20 Act.

21 So what I need to ask you is if
22 you're making an application for standing, you
23 would have to then tell us that that's what it is
24 and make submissions in accordance with that. If
25 you're not making an application for standing,

1 which would then give you the ability, arguably,
2 to make submissions, then are you making any
3 other application, because I think it sounds to
4 me as if you simply want to make submissions?

5 MS. LINTZ: No, I've been
6 extremely traumatized by the legal system. And
7 my ex had Jack King going right up into the trial
8 and, like this lady, I lost complete relationship
9 with my children, stripped of all my rights as a
10 woman, and I was a very good mother, and it is
11 very concerning to me that there are people in
12 this position of power, like Lori Douglas, with
13 this -- these allegations of, to me, immorality
14 that are judging over other mothers, like myself,
15 and children's lives and that is where I am a
16 concerned -- based on my own lived experience --
17 member of the public. I'm not sure if that
18 constitutes standing, but I have had the same
19 experience as this lady where I have written to
20 the Judicial Council. A prominent former member
21 of the Government, a former Attorney General
22 wrote to the Judicial Council about my case and
23 that extreme injustice and prejudice,
24 discrimination. I've had two appeals, one with a
25 lawyer I paid \$30,000 to, and the other I just

1 did this week myself with absolutely no recourse
2 left for me.

3 THE CHAIR: Thank you.

4 Mr. Macintosh, if I may?

5 MR. MACINTOSH: Excuse me, Ms.
6 Lintz. I'm going to make the same submission if
7 I may, Chief Justice Fraser, that during the
8 break I speak with Ms. Lintz and see if I can
9 assist her with respect to where she may direct
10 her energies with her concerns and to determine
11 whether or not that is properly part of this
12 process. So I'll speak with Ms. Lintz, if that's
13 all right, during the break. Thank you.

14 THE CHAIR: Thank you. Anything
15 further that Mr. Pratte or Ms. Block wish to say
16 because if not, I think at this stage I don't see
17 anyone else indicating that they have an
18 application to make and that being the case,
19 we're going to adjourn for 10 minutes and we'll
20 reconvene at that time. Thank you. In fact,
21 let's make it 15 minutes, please. Thank you.

22 --- Recess at 9:45 a.m.

23 --- Upon resuming at 10:05 a.m.

24 THE CHAIR: Mr. Macintosh?

25 MR. MACINTOSH: Chief Justice

1 Fraser, thank you. I was able to have a
2 conversation with Ms. Lintz and with Ms. Hazen
3 during the break and was able to discuss with
4 them and I think explain to them the fact that
5 this Committee's jurisdiction and powers are
6 limited to and focused upon the complaint which
7 has been brought forward against Associate Chief
8 Justice Douglas and that their concerns, although
9 they may certainly be understandable or
10 legitimate concerns, are not linked to this
11 process, to this hearing. And I believe that
12 both Ms. Hazen and Ms. Lintz understand that and
13 if they have concerns, they will proceed with
14 them elsewhere. And I believe both of them are
15 still present -- I see Ms. Hazen -- and I would
16 ask if they have any further questions, they can
17 talk to me again off the record. That's where
18 that stands. Thank you. And I'm advised also
19 that any application that the CBC may bring with
20 respect to access in any manner will certainly
21 not be before the Tribunal today.

22 THE CHAIR: Thank you,
23 Mr. Macintosh, and thank you, Ms. Hazen and Ms.
24 Lintz, thank you for coming and you are welcome
25 to stay for the hearing. Thank you. Mr. Pratte,

1 you had indicated that you wish to make a
2 comment?

3 MR. PRATTE: Thank you, Madam
4 Chief Justice, members of the Committee. I just
5 wanted to express gratitude for the Committee's
6 confirmation of the parameters of my role. I
7 know that kept you busier last night than you had
8 hoped and, as I advised Mr. Macintosh, I assume
9 and I'm sure it's self-evident to you that that
10 would include not only the evidence, but also any
11 submissions I may deem appropriate in an
12 impartial way, both favourable and unfavourable,
13 so that you have the full picture. But, again,
14 I'm grateful, Madam.

15 THE CHAIR: Thank you, Mr.
16 Pratte, for that. That takes us then to the
17 first item on the agenda this morning and that we
18 propose to deal with unless there are concerns in
19 terms of the order, but I think logistically it
20 makes sense to first deal with Mr. Chapman's
21 application for funding for counsel, and we take
22 that application to include a request for
23 standing before this hearing. Mr. Chapman? And
24 you may come right up to the podium here and
25 speak from the podium if you wish. Thank you.

1 MR. CHAPMAN: Thank you. Thank
2 you all for coming. I'm here to ask for
3 personally as well as make my submission to ask
4 to have legal representation. Ever since I've
5 complained or filed my complaint regarding Lori
6 Douglas, my whole world has been turned upside
7 down. There have been slanders and defamation.
8 This took away everything I have. I lost my job.
9 They wrote stuff in the paper by this guy, Billy
10 Gange, said I lied about Lori Douglas and Jack
11 King, and I made up all this story. I told the
12 truth all the way and I never changed my story.
13 I don't have much left. But the road has been
14 long and that's why I'm able to stand here today
15 because I was able to make it here.

16 I've been diagnosed with chronic
17 stress as a result of what had happened to me. I
18 have the report here from the psychologist. I've
19 been to a lot of lawyers in the city here, in
20 Winnipeg. Bear with me a second, okay, because
21 I've been through lots. The lawyers in Winnipeg
22 will not stand up against the system because
23 they're afraid. One lawyer said to me he will
24 not represent me because I go up against a
25 lawyer. Jack King took everything from me. All

1 I wanted was a divorce. There isn't a lawyer in
2 this town that will touch my case and if they
3 were here, you could ask them. They are afraid
4 of the repercussion. I don't know what kind of
5 oath they took when they became lawyers.

6 I'm asking you, Council, that I
7 believe I earned the right as a citizen of Canada
8 under the Canadian Charter of Rights that
9 everyone has the right to have legal
10 representation. I'm not going to be subject to
11 anyone badgering me on the stand either as a
12 witness or as anything. I complained about the
13 wrongdoings of one of your own. It was terrible
14 what they did to me. I was going through a
15 divorce. It was right in the front of the Court
16 House that Lori Douglas selected me with Jack
17 King. Minutes later Jack King solicited me. And
18 I told the story exactly the way I remembered it
19 and they paid me hush money to keep quiet about
20 it. I used to live in a bubble until I decided
21 to come out and talk about it. Today I'm asking
22 you to help me, give me a lawyer who can protect
23 my rights, help protect my rights in this
24 country. I believe I earned that. I was a
25 taxpayer until they took my job away. I never

1 asked for nothing. I worked hard. Took a lot to
2 stand -- a lot of guts to come here today, to
3 stand up before you and ask for this simple
4 request. I just need a lawyer to help me. Like
5 I said, I've been diagnosed, I've been put
6 through a lot, and that's all I could ask for.
7 If there is any questions, I would be happy to --

8 THE CHAIR: Okay. Your request
9 for a lawyer is tied into the concept that you
10 would have standing before the Committee and that
11 means what special interest is it that you would
12 have, because before you get to the question of
13 appointing whether we could order a lawyer, the
14 first question we have to address is whether you
15 have standing or should be granted standing to
16 make representations or in some fashion to make
17 submissions before this Inquiry Committee.
18 Mr. Pratte is the independent counsel who has been
19 appointed to protect, to advance, to represent
20 the public interest. He represents the public
21 interest. So in a sense he's representing the
22 public interest in proceeding forward with the
23 matters that are the subject of the inquiry. And
24 the question then is whether you, as the person
25 who filed the original complaint, should be

1 granted standing for some purpose before this
2 Inquiry Committee today. So I appreciate you're
3 not a lawyer, but I'll just explain that
4 generally we are looking to see whether there is
5 some direct and substantial interest that you
6 would have above the interests of the members of
7 the public generally that would warrant your
8 being granted standing. So what is it -- why do
9 you -- because what you're really saying is, I
10 want standing before this Committee and I want a
11 lawyer to represent my interests. What I'm
12 asking you is why do you believe that you should
13 be granted standing? What is it about your
14 position that you say is different from other
15 members of the public and justifies being granted
16 standing here today?

17 MR. CHAPMAN: Madam Justice,
18 there is a lot of information you just explained
19 that I don't fully put together. I want justice
20 for the wrongdoings of what they did. I want to
21 be able to tell what happened to me. I want to
22 ensure that this doesn't happen again. I want to
23 ensure that there is a remedy for what I've been
24 through. I want my remedy.

25 THE CHAIR: You want your --

1 MR. CHAPMAN: I want to get
2 remedy for what happened to me.

3 THE CHAIR: You've received a
4 copy of the submissions that Ms. Block and
5 Mr. Pratte have filed in response to your request
6 for appointment of counsel. Do you have anything
7 to say about their submissions?

8 MR. CHAPMAN: I did receive two
9 documents and I responded back and I indicated
10 that I did not understand -- understand what
11 they're talking about because, like, I don't have
12 the legal capacity to -- like, I don't even know
13 what all the stuff there they were rambling
14 about. I don't understand and, again, I wrote
15 back and I said I do not understand. I don't
16 have access to Mr. Pratte to explain that to me
17 or anyone that I think I need someone to protect
18 my rights.

19 THE CHAIR: Okay. Now,
20 ordinarily what we would do is having heard from
21 you, if you have nothing further to add at this
22 time, I would ask you to be seated at the counsel
23 table. Right behind there in the second row, you
24 can sit there, and then I'm going to ask to hear
25 from Ms. Block and Mr. Pratte and then after

1 they've spoken, you will have a chance to reply
2 in response to anything that they might say.
3 Okay? And do you have -- if you want to take
4 notes or anything, do you have some paper or
5 anything there to help you?

6 MR. CHAPMAN: Yes, I do.

7 THE CHAIR: You do? Okay, good.
8 Thank you. Now, from the point of view of order,
9 have you discussed who wishes to go first?
10 Mr. Pratte?

11 MR. PRATTE: We have not, but Ms.
12 Block pointed to me. I think she decided for me.
13 I just make one point in addition to the
14 submissions that you have. Generally Ms. Crain
15 is going to be dealing with the intervener or
16 standing applications. But at this stage, Chief
17 Justice, the Notice of Allegations is not yet
18 public. Its form or its content may inform
19 further whether or not Mr. Chapman should get
20 standing and what may follow from that. So my
21 suggestion would be that you've heard from him
22 based on the information he has, that you defer
23 that decision until the Notice is public and he
24 be given an opportunity to add to whatever he's
25 told you this morning and, upon that, that you

1 make a decision. And at that stage, too, I may
2 have something more to say, as would Ms. Block,
3 but I don't think I can assist the Committee much
4 more than that at this stage on this issue, Chief
5 Justice, because I think we're in a bit of a
6 vacuum. As I say, Mr. Chapman has told you why
7 he thinks he should have counsel. I think he
8 should be given an opportunity to add to that if
9 he has more to say when the Notice goes out and
10 then you could decide. Undoubtedly, this will be
11 in plenty of time before the hearing starts.
12 That's the submission I would have for you.

13 THE CHAIR: And what you're
14 suggesting is when he makes his further
15 submissions, that you would then have an
16 opportunity to respond to those further
17 submissions?

18 MR. PRATTE: Yes, and I'm sure a
19 very short delay would be ample, Chief Justice.

20 THE CHAIR: Ms. Block?

21 MS. BLOCK: I have also made my
22 submissions in writing and they're complete. I'm
23 not going to repeat them for the Panel. I just
24 reference Mr. Chapman's comments today that he's
25 looking for a remedy. He has civil suits for

1 that purpose and, indeed, has brought civil suits
2 which have been dismissed or withdrawn with
3 prejudice. His written submissions list a number
4 of issues as to why he wants to be before the
5 Committee, which have nothing to do with the
6 jurisdiction and purpose of the Committee, so I
7 can't add to what I've already said in opposition
8 to this. And I'm content with Mr. Pratte's
9 proposal that if there should be further
10 submissions, we would quickly respond to them and
11 it would be up to the Committee.

12 THE CHAIR: Mr. Chapman, what
13 Mr. Pratte and Ms. Block -- you can come back up here
14 to the podium -- what Mr. Pratte and Ms. Block
15 have said essentially is that they've heard your
16 submissions today. At this stage, the proposal
17 is from Mr. Pratte that we not make a decision on
18 your application for standing today, that we wait
19 until he has issued a Notice of Allegations in a
20 form that everyone is generally content with and
21 then at that stage, you be at liberty -- you be
22 able to make any further submissions once you see
23 the Notice of Allegations and how it affects you
24 personally, okay? In other words, whether you
25 have some direct and substantial connection with

1 the case once you see the Notice of Allegations,
2 you can renew your application for standing, make
3 any further submissions that you want -- not
4 renew it -- make any further submissions you want
5 and that we defer our decision on that until
6 after we've heard from you and from Mr. Pratte
7 and from Ms. Block on those further submissions.
8 But he's saying wait till the Notice of
9 Allegations comes out, then Mr. Chapman should be
10 able to add to his request that he's made if he
11 feels that there is a reason to have standing and
12 counsel, and then Mr. Pratte and Ms. Block will
13 respond to your further submissions. That's his
14 proposal. So he's saying don't make a decision
15 today. Wait till the Notice of Allegations comes
16 out. Let Mr. Chapman make further supplementary
17 submissions, we will respond and then you, as the
18 Inquiry Committee, should decide what to do.
19 Now, does that make sense to you?

20 MR. CHAPMAN: Well, generally,
21 from experience in the Court system, I would say
22 I would like to consult with my lawyer to see if
23 it makes sense, right? And I don't have no one,
24 as you can see, for me to consult with to see if
25 it makes sense. So, I mean, damned if you do,

1 damned if you don't, right? So I don't have a
2 choice, right; that's what you're saying?

3 THE CHAIR: Okay, that's fine,
4 and I take your position and I do understand it
5 and I have -- so I'm going to ask you to be
6 seated because I have a question to ask of both
7 counsel.

8 MR. CHAPMAN: Thank you.

9 THE CHAIR: Okay, thank you.
10 Mr. Pratte and Ms. Block, what we would like to know
11 is whether or not we should order that counsel be
12 appointed for Mr. Chapman for the purpose of
13 allowing him to make an application for standing
14 and funding once the Notice of Allegations has
15 been issued?

16 MR. PRATTE: Can I have 30
17 seconds to think about that, Chief Justice?

18 THE CHAIR: Absolutely.

19 MR. PRATTE: I'm sorry, Chief
20 Justice, just a clarification. You said whether
21 you should order that counsel be appointed for
22 him for the purposes of this stage of the
23 standing application, right? My position on that
24 is that it's totally up to you. I can't object
25 to -- if you are so inclined to recommend that

1 someone should be represented, I can't, in the
2 public interest, object to that.

3 THE CHAIR: Thank you,
4 Mr. Pratte. Now, before we go further, I should have
5 asked one other question of you, Mr. Chapman. If
6 you could come back up to the microphone before I
7 ask Ms. Block for her submissions. One of the
8 justifications for appointing counsel is that the
9 person who is applying can't afford it. Is there
10 anything that you have to say on that issue?

11 MR. CHAPMAN: Well, I'm not
12 working, ma'am. I'm basically living on what I
13 have left. And as a result of me complaining,
14 they took everything from me. I mean, you guys
15 read in the paper. This man right there,
16 defamation of character in the paper, saying I --
17 like I described earlier, I have been looking for
18 work. No company will hire me of my capacity
19 because it's -- this is a small town. This is a
20 very small town. Unless I move out of town or go
21 somewhere, I'm standing before you and I'm
22 asking. I need to have good representation
23 because I'm not just going up against ordinary
24 people. Ms. Douglas could afford two lawyers. I
25 can't afford one. I got a lawyer from Toronto.

1 He charged me \$25,000 just to fly to Winnipeg,
2 put himself on the thing and convinced me to drop
3 my lawsuit against Justice Douglas in five
4 minutes. He's colluding with the other parties.
5 Ms. Block talked about remedy? I was almost put
6 to my knees so I can throw those cases out
7 because I have nothing left. That was the
8 strategy.

9 THE CHAIR: Okay, your point is
10 that you don't have the funds. You're not
11 working and haven't been for how long now?

12 MR. CHAPMAN: Since this started,
13 since 2010.

14 HON. GREEN: Just to put it
15 another way, you said that no lawyer in Winnipeg
16 will represent you. If there were a lawyer in
17 Winnipeg to represent you, would you be able
18 afford to pay that lawyer?

19 MR. CHAPMAN: No.

20 HON. GREEN: So it's a question
21 of cost that's the real issue?

22 MR. CHAPMAN: It's a question of
23 cost and a question of is a lawyer willing to
24 represent me in Winnipeg?

25 THE CHAIR: All right, thank you.

1 I'd ask you to be seated and at this time I'm
2 going to ask Ms. Block if she has any submissions
3 she'd like to make on the narrow point of whether
4 or not we should appoint counsel for the limited
5 purpose of allowing Mr. Chapman to make an
6 application for standing and funding?

7 MS. BLOCK: As you know from my
8 submissions, at best, assuming Mr. Chapman's
9 complaint is a matter that is part of the Notice
10 of Allegations, he is a witness. Mr. Pratte,
11 impartial counsel who has to act in the public
12 interest, is the lawyer.

13 THE CHAIR: Thank you, Ms. Block.
14 Anything further you wish to add?

15 MR. PRATTE: Not from me.

16 THE CHAIR: Thank you. And
17 nothing further, I take it, Mr. Chapman, from
18 you? Nothing further to add on this?

19 MR. CHAPMAN: From what I just
20 understand from what she just mentioned, is she
21 saying that Mr. Pratte is acting for me?

22 THE CHAIR: She's saying that
23 Mr. Pratte is acting in the public interest and
24 you're a member of the public and a potential
25 witness and he is representing the public

1 interest in carrying the case forward. Okay?

2 MR. CHAPMAN: But he's not
3 representing -- he's there for the public
4 interest and not for Alex Chapman?

5 THE CHAIR: He's not there for
6 individual witnesses. Thank you.

7 MR. CHAPMAN: Thank you very
8 much.

9 THE CHAIR: Thank you. All
10 right. Thank you so much, counsel, for your
11 submissions on that and thank you, Mr. Chapman,
12 and what we're going to do is retire at this time
13 to consider this matter and we will return in
14 approximately 15 minutes. Thank you.

15 --- Recess at 10:30 a.m.

16 --- Upon resuming at 11:05 a.m.

17 THE CHAIR: Thank you, everyone.
18 Please be seated. Thank you then for giving us a
19 chance to consider this, counsel and Mr. Chapman.
20 We are all agreed that Mr. Chapman's application
21 for standing and for funding for appointment of
22 counsel will be deferred pending issuance of the
23 Notice of Allegations. However, we are also
24 agreed that it is appropriate, given
25 Mr. Chapman's circumstances, that we appoint

1 counsel for the limited purpose of allowing him
2 to make further submissions addressing his
3 application for standing and associated funding.
4 That appointment of counsel for Mr. Chapman is
5 subject to the following conditions: First, the
6 fees payable to counsel must be in accordance
7 with the guidelines of the Department of Justice
8 of Canada with respect to payments for outside
9 counsel; second, the administrative arrangements
10 are to be established by the Executive Director
11 of the Canadian Judicial Council; and, third, the
12 further submissions on behalf of Mr. Chapman must
13 be made in writing one week before the date for
14 resumption of the hearing, at which time counsel
15 may also make oral submissions. So that is our
16 decision.

17 Now, that being the case,
18 Mr. Chapman, we would urge you to take the steps
19 necessary to find counsel to assist you for that
20 limited purpose. There is an extremely limited
21 window of time here because the hearings could
22 resume before the end of June. We have yet to
23 sort that out today and we will be dealing with
24 that later today and you, of course, are free to
25 remain to hear what we do decide in terms of

1 timing. But I just want to forewarn you that
2 it's quite likely that they will resume before
3 the end of June and possibly as early as June
4 25th. And then I would also urge you to have
5 your counsel contact Mr. Sabourin, who is the
6 Executive Director of the Canadian Judicial
7 Council, as soon as possible to put in place the
8 administrative arrangements that we referred to.
9 And I also want to stress that obviously in
10 selecting counsel, you are not limited to
11 selecting counsel from the City of Winnipeg.

12 MR. CHAPMAN: Thank you.

13 THE CHAIR: Okay. Thank you.

14 MR. CHAPMAN: May I say
15 something, please? I just want to clarify, the
16 gentleman that asked me -- Mr. Derek Green, you
17 had asked me about jobs and stuff. After I lost
18 my job, I started -- I did some odds and ends. I
19 just want to make sure for the record no one
20 can -- but I don't have anything that could
21 afford a lawyer. I'm just trying to find a
22 permanent job.

23 THE CHAIR: Okay, you're just
24 clarifying that following the loss of your job,
25 you had some limited employment in the meantime?

1 MR. CHAPMAN: Yeah, but nothing
2 too -- yeah, thank you very much.

3 THE CHAIR: Thank you. All
4 right. Well, then that concludes, at least for
5 today, Mr. Chapman's application on standing and
6 appointment of counsel. We now wish to turn to
7 the next matter before us and that is the
8 application by Mr. Pieuk for intervener status,
9 and I would ask Mr. Pieuk to come forward and
10 also I should ask you to confirm whether I'm
11 pronouncing your name properly as well.

12 MR. PIEUK: Good morning,
13 honourable ladies and gentlemen, counsel, members
14 of the media. My name -- think of one of those
15 single passenger boats, I guess you would call
16 them a kayak. It rhymes with kayak. Pieuk.

17 Before I begin, I'd like to give
18 those present a very brief background of who I
19 am. I can do it in 30 seconds or less. I'm a
20 law-abiding -- you won't find so much as a
21 parking ticket against me -- tax-paying citizen/
22 media citizen journalist/blog master and, hence,
23 I have an interest, I believe, in representing
24 the public interest.

25 I've come with two presentations.

1 The first one is about 90 seconds, the second one
2 maybe 20 minutes. The 90-second one, I'm here to
3 request leave to resubmit my application, and I
4 can cite two or three reasons. One is the letter
5 from counsel for the Defence, which I received
6 through Mr. Macintosh. The first paragraph --

7 THE CHAIR: I'm sorry, who are
8 you speaking of? Counsel? Are you talking about
9 independent counsel?

10 MR. PIEUK: No, this letter was,
11 to which I'm referring --

12 THE CHAIR: Are you talking about
13 Ms. Block?

14 MR. PIEUK: -- dated May 9th,
15 2012 was from Ms. Block and Ms. Reynolds, and it
16 had been sent to Mr. Macintosh in response to my
17 request for standing. Second paragraph --

18 MR. PRATTE: Madam --

19 THE CHAIR: Sorry, one moment.

20 MR. PRATTE: -- I don't want to
21 interrupt, but I think the terminology of
22 Defence -- and I'm sure that was not intended --
23 is probably not appropriate, and maybe if he
24 wants to just refer to counsel for Justice
25 Douglas, that we would all know who he's talking

1 about because there is no Defence, Plaintiff,
2 Accused or anything in this hearing.

3 THE CHAIR: Thank you so much for
4 that, Mr. Pratte. Yes, it's just helpful.
5 Independent counsel and counsel for the Judge, so
6 you can refer to Judge's counsel and independent
7 counsel and then it would be helpful for
8 everybody in the audience to know what you're
9 referring to, and us too.

10 MR. PIEUK: Okay, thank you. The
11 second paragraph of the aforementioned letter
12 says, "Request for intervener status is premature
13 as the scope of the hearing is not known." Also
14 in Mr. Pratte's letter of May 9th -- again, Mr.
15 Pratte sent it to Mr. Macintosh -- it makes the
16 same argument. I would also point out when I
17 began this process several months ago, shortly
18 after the names of the panel and the public
19 prosecutor were announced, I wrote to Mr.
20 Pratte's office, inquiring as to would there be
21 interveners allowed. The letter I received at
22 that time -- and it was from Ms. Crain -- said,
23 "Your letter should set out what you are seeking
24 and the reasons you feel your request should be
25 granted." As we've heard this morning, not all

1 of us are lawyers. I certainly am not, have no
2 formal legal training other than what I've picked
3 up observing Queen's Bench and Provincial Court
4 hearings, but I would say or suggest that there
5 should have been some directions, guidelines.
6 Based on that letter, I did the best I could in
7 preparing my submission. And on that basis, I'm
8 asking for the opportunity to resubmit once the
9 terms of reference have been announced. Failing
10 that, I will go into a more detailed presentation
11 of why I believe cybersmokeblog should be granted
12 status at the Inquiry.

13 THE CHAIR: Okay, thank you. I
14 think we understand you've made your submissions
15 initially. We have heard from both counsel and,
16 by the way, again you referred to a prosecutor.
17 There is no prosecutor here. This is an inquiry
18 and we are inquiring into the conduct of a judge
19 in this case. There is no prosecutor and no
20 Defence. So that terminology, if you could try
21 to keep that in mind as you proceed with your
22 submissions, it would be helpful.

23 Now, just give me a moment while
24 I consult with my colleagues as to how best to
25 deal with this now.

1 As I understand it, you want to
2 resubmit your application, and my understanding
3 is that you have what you said was a 20-minute
4 presentation that you wish to make. Are you
5 prepared to go ahead with that today?

6 MR. PIEUK: If the request to
7 resubmit is denied, yes.

8 THE CHAIR: Okay, your proposal
9 then is to resubmit your application in writing
10 after the Notice of Allegations is issued; is
11 that what you're saying?

12 MR. PIEUK: Yes, I'm assuming the
13 Notice of Allegations and Terms of Reference are
14 one and the same.

15 THE CHAIR: I think that's a fair
16 equivalency to say that. I don't think either
17 Ms. Block or Mr. Pratte would disagree with that
18 in terms of the concept. So is that your
19 proposal then, you want to be able to make
20 written submissions after the Notice of
21 Allegations has been issued?

22 MR. PIEUK: Yes, and to save time
23 today, if leave is granted for that, then there
24 is no need for my more detailed presentation.

25 THE CHAIR: All right, thank you

1 so much, Mr. Pieuk. I'm going to now ask if you
2 could be seated for Mr. Pratte to comment on
3 whether he considers that to be appropriate or
4 whether there is some other course of action we
5 should deal with today.

6 MR. PRATTE: I have no objection
7 to proceeding that way. As long as the
8 representations are limited to being in writing,
9 I don't think that -- any opportunity to address
10 this further orally would be warranted in this
11 particular case. So whenever the Notice goes
12 out, whatever time frame you believe the
13 Committee is required for him to add anything to
14 what has been said, that's fine, and then we may
15 have an opportunity to respond. Thank you.

16 THE CHAIR: Thank you. Ms.
17 Block?

18 MS. BLOCK: I have nothing to
19 add. Thank you.

20 THE CHAIR: Okay. Well, then
21 thank you so much, Mr. Pieuk, for your
22 submissions on this issue and we're now going to
23 retire to consider your proposal. Thank you.

24 --- Recess at 11:20 a.m.

25 --- Upon resuming at 11:35 a.m.

1 THE CHAIR: Okay, thank you. You
2 can be seated, Mr. Pieuk, thank you.

3 We've considered this matter and
4 we are all agreed, Mr. Pieuk, that you may
5 resubmit your application for standing in writing
6 within 10 days following issuance of the Notice
7 of Allegations. Those will be e-mailed to you at
8 the address that you have provided to our counsel
9 and to -- Mr. Pratte, I believe, has a copy of
10 your e-mail address as well. Mr. Pratte and
11 Ms. Block will have five days to respond to your
12 submission in writing. The Committee will then
13 issue its decision based on those written
14 submissions, either in writing or at the
15 commencement of the resumed hearings. Thank you.

16 MR. PIEUK: If I may, Your
17 Lordship, I'd quickly like to address the inquiry
18 and thank them and compliment them on opening
19 this process to lay people. Thank you.

20 THE CHAIR: Thank you. That
21 takes us now to the issue of venue, and we would
22 like to proceed with that matter if we may.
23 Mr. Pratte?

24 MR. PRATTE: Yes, Chief Justice.
25 I'm not sure in what order you want to deal with

1 this. I think the paper trail suggests that
2 Ms. Block started that, but I'm in your hands. I
3 have very brief submissions on that point and I
4 can -- I'll deal with it in the order that you
5 see fit.

6 MS. BLOCK: Mine are even
7 briefer. I've submitted my points in writing and
8 I have nothing further to add.

9 MR. PRATTE: Well, I can leave
10 mine at that as well. I just thought, Chief
11 Justice, that not everyone here may have read the
12 written submissions, and I would have summarized
13 mine in about two minutes, if that's helpful.

14 THE CHAIR: I think that would be
15 very helpful. Thank you so much, Mr. Pratte.

16 MR. PRATTE: Thank you, Chief
17 Justice. So the issue is where would the
18 hearings on the substance of the Notice or the
19 matters raised in the Notice of Allegations
20 should take place, whether Winnipeg or somewhere
21 else. And in our written submissions, dated
22 October 19th, 2001 [sic], which I believe you
23 referred to, Chief Justice, when you did the
24 chronology, independent counsel submitted that
25 the factors favouring Winnipeg -- heavily

1 the practice, as you know, to hold the hearings,
2 although there have been very few, but typically
3 the practice is that the hearings are held in the
4 place where the judge sits.

5 Thirdly, there is an issue of
6 access to the hearings, and notwithstanding the
7 media interest and coverage that this is likely
8 to provoke wherever its held, one thing that it
9 cannot do is afford physical access to people
10 rooted in the Winnipeg community if it's held
11 elsewhere. And we saw today that there is some
12 members of the public that want to come and are
13 likely to want to hear these hearings live rather
14 than as reported through the newspapers and
15 television. So that factor, in my respectful
16 submission, also weighs in favour of holding the
17 hearings here.

18 Fourthly, most witnesses we
19 expect that we would want to call will be from
20 this community.

21 And fifthly, in terms of
22 convenience or practicality to Committee members
23 or the lawyers involved, I think this is a
24 neutral factor because it appears as to wherever
25 we have this, a lot of people will have to

1 travel. So I would submit that that factor does
2 not really -- is no more than neutral at best.

3 So overall, in my respectful
4 submission, the factors favouring Winnipeg as the
5 venue are overwhelming.

6 So I'd like to turn very briefly
7 to the -- based on what Ms. Block's submissions
8 had been to you in writing, seems to be the
9 serious, the most serious and important
10 countervailing factor. And I do not want to in
11 any way minimize its importance, but I can do no
12 better than to read from our submissions, and
13 that is largely related to the Judge's family and
14 her son and the concerns. And maybe I'll just
15 refer you to page 3 of our submissions of
16 October -- if I've got that right -- 21st -- no,
17 October 19th -- and say, as independent counsel,
18 that I sympathize and empathize sincerely with
19 the Judge's concerns about the potential impact
20 on her son of these hearings. You'd have to be
21 bloodless not to take that extremely seriously.

22 However, in my respectful
23 submission, the impact of the publicity, it is
24 likely to be more or less the same wherever this
25 is held. It's unfortunate, but unavoidable.

1 It's unimaginable that if the hearings were held
2 in Toronto, Ottawa, or elsewhere, the
3 Winnipeg-based media would not -- would somehow
4 have a lesser interest in the matter. I don't
5 think that that's likely.

6 So in my respectful submission,
7 the overwhelming public interest is that these
8 hearings, as difficult as they may turn out to be
9 for Ms. Block's client and her family, the
10 overwhelming public interest still favours them
11 to be heard -- held here, Chief Justice, that is
12 in the City of Winnipeg, for the remainder of the
13 proceedings unless there could be procedural
14 matters that could be held over the phone, but
15 the actual hearings should be in this city.

16 Those are my representations and
17 unless you have any questions, I'll just sit
18 down.

19 THE CHAIR: Thank you, Mr.
20 Pratte, and any questions that the panel has
21 of Mr. Pratte? Ms. Block, anything that you wish
22 to add?

23 MS. BLOCK: I would just say,
24 Chief Justice and members of the panel, in the
25 words as well put by Sopinka as anyone else in

1 the Ruffo case that a disciplinary hearing --
2 that an inquiry like this is what he called a
3 traumatic ordeal for a judge. And wherever it's
4 going to be held, it's going to be an ordeal,
5 it's going to be traumatic, and it has already
6 been traumatic. And whatever decision you make
7 on venue, I expect that from the Council table
8 forward, there is a concern and an interest in
9 trying to address and minimize that to the extent
10 that it's possible.

11 THE CHAIR: Thank you. Any
12 questions of Ms. Block? Anything by way of
13 reply, Mr. Pratte?

14 MR. PRATTE: Nothing to add,
15 thank you, Chief Justice.

16 THE CHAIR: Thank you. Then we
17 propose to retire to consider this matter as
18 well, and I think we'll adjourn for at least 20
19 minutes and see if we're able to deal with this
20 today and, if so, we will and, if not, we'll let
21 you know. Thank you.

22 --- Recess at 11:45 a.m.

23 --- Upon resuming at 11:55 a.m.

24 MR. MACINTOSH: Madam Chair, as
25 you can see, we're missing four lawyers, and I'll

1 snoop around in the hall for a minute or two and
2 ask -- I would suggest that the Committee stay
3 and then if there is no sign of them, we'll have
4 to adjourn until they show up.

5 THE CHAIR: All right.

6 MR. MACINTOSH: We have four
7 lawyers, Madam Chair.

8 MS. BLOCK: Very sorry --

9 THE CHAIR: Well, we did say -- I
10 think we said 20 minutes and we were early.
11 Sorry.

12 MR. PRATTE: Any contempt orders
13 reserved from Ms. Block.

14 THE CHAIR: Well, thank you so
15 much, counsel and ladies and gentlemen. We have
16 been asked to rule on the question of venue,
17 which is the question of where the hearing will
18 be held when it proceeds after today and, in our
19 view, we are unanimous that Winnipeg is the
20 appropriate venue. As a practical matter, it's
21 very likely that almost all, if not all, of the
22 witnesses will be from the Winnipeg area.
23 Furthermore, because this case examines the
24 conduct of a judge from this province, Manitoba
25 is bound to be the place in Canada where the

1 public interest is greatest. The Committee
2 believes that if the hearing were held outside of
3 Manitoba, where all five members of this
4 Committee come from and all of the five
5 participating lawyers come from, there could be a
6 perception that the Committee would be
7 insensitive to the interests of the community
8 where everything took place.

9 The Judge would prefer to have
10 the hearing away from Winnipeg because of the
11 anticipated adverse effect of publicity on her
12 family. That is, of course, a concern which the
13 Committee understand fully. But in all the
14 circumstances, it is not enough to justify
15 relocating the hearing from where it properly
16 belongs on every other analysis. Given the
17 nature of the case, it's likely that there will
18 be extensive coverage of it in the Winnipeg media
19 no matter where it is held and, in light of this,
20 the reality is that the impact on the Judge and
21 her family is likely to be substantially the same
22 whatever venue is selected for the hearing.
23 Those are our reasons for having determined that
24 the venue will, therefore, be Winnipeg. Thank
25 you.

1 We propose to adjourn now until
2 1:00 p.m. if that's enough time. I hope an hour
3 is enough unless you would like longer, counsel,
4 and if you do, please just let me know now
5 because we could make it till 1:30 if that's more
6 convenient for you. We will discuss -- after
7 lunch, we will move to the issue of the Notice of
8 Allegations, so I just wasn't sure whether an
9 hour in terms of finding some place in the area
10 is sufficient for you or whether you'd prefer an
11 hour and a half.

12 MS. BLOCK: I'd be content just
13 to go through if we -- rather than stop for
14 lunch, but it's up -- obviously up to the Panel.

15 THE CHAIR: So 1:00 then?

16 MR. PRATTE: Yes, Chief Justice.

17 THE CHAIR: All right, thank you.
18 We'll adjourn till then.

19 --- Luncheon recess at 12:00 noon

20 --- Upon resuming at 1:10 p.m.

21 THE CHAIR: Thank you. Please be
22 seated, everyone. Now, the next item on our
23 agenda is the matter of the Notice of
24 Allegations, and let me begin by simply saying
25 that we have received a form of Notice of

1 Allegations that requires further discussion.
2 The Committee has some ideas with respect to the
3 format of the Notice of Allegations. Under
4 subsection 5(2) of the By-laws, "The independent
5 counsel shall give the judge sufficient notice of
6 all complaints or allegations that are being
7 considered by the Inquiry Committee to enable the
8 judge to respond fully to them."

9 And, counsel, with respect to the
10 format of the Notice of Allegations, we would
11 like your comments on this proposal. First, we
12 suggest that a Notice be issued that briefly
13 summarizes the essential core of the allegations
14 or complaints against the Judge. The objective
15 is to allow the Judge to respond to these
16 allegations. Her response is not properly
17 included in the Notice of Allegations, and we are
18 proposing that this be provided to the Committee
19 by Friday, May 25th. So that's the first
20 suggestion.

21 Second, the related evidentiary
22 base for those allegations or complaints should
23 be provided to the Judge and this Committee in
24 accordance with the Council policy on Inquiry
25 Committees, which states in the second paragraph,

1 first sentence: "Prior to the hearings,
2 independent counsel should advise the Committee
3 and the Judge of the case counsel intends to
4 present, including the evidence and witnesses to
5 be called." That being so, we would ask that the
6 related evidentiary foundation be provided by the
7 same date, that is May 25th.

8 Third: In making these
9 recommendations, the suggested proposal, this
10 would in no way -- is in no way intended to limit
11 the independent counsel's ability to continue
12 with his investigations and develop the case or
13 to relieve him of his disclosure obligations
14 under the policy and By-Laws. So, in essence,
15 what we are proposing is a Notice that briefly
16 summarizes the essential core of the allegations
17 or complaints against the Judge, plus the
18 disclosure of the related evidentiary base for
19 those allegations or complaints and that would be
20 provided in a separate document. Mr. Pratte?

21 MR. PRATTE: Yes, thank you,
22 Chief Justice. I have no difficulty with the
23 first part and I'm not necessarily implying I
24 have with the second, but maybe I have a couple
25 of questions. I wasn't exactly sure I

1 captured -- and it may be my French getting in
2 way of the English -- but when you said with
3 nothing -- I'm not quite sure what words you
4 used -- in the Notice reflecting the position of
5 the judge or something like that. So that it
6 would simply be the case or the main allegations,
7 the core of the case against the Judge, if I can
8 use and limit it to that? Okay. I think we can
9 live with that.

10 The second, point 2, we would
11 ready to -- the concern I had is whether or not
12 we could advise Ms. Block by Friday next -- I
13 guess the 25th of May -- of the names of all the
14 witnesses we intend to call. And I would come --
15 if that's part of what -- pursuant to the policy,
16 we could certainly set out for her, and I -- if
17 we have forgotten something, I imagine there
18 would be room to add to it, but we could
19 certainly give her the particulars in a separate
20 document, more or less in the form that you have
21 them now, although they're incorporated by that
22 time, with no problem. You said you wanted that
23 as well, the Committee? I mean, we also were
24 obviously intended to provide disclosure, which I
25 assume the Committee would not be getting. For

1 example, summaries of witnesses, interviews
2 we've -- that would be led before you at the full
3 hearing. We would give that to Ms. Block, but we
4 wouldn't give you that, I'm assuming. I mean,
5 I'm in your discretion, but --

6 So in other words, I thought we
7 would have the shorter version of the Notice of
8 Allegations. We would provide particulars
9 severed in a separate document, but more or less
10 resembling what you've seen, provide that to Ms.
11 Block and to the Committee. No difficulty there.
12 I'm duty bound to give effectively all the
13 results of my investigation with disclosure to
14 Ms. Block, but only to her because it will depend
15 how the evidence unfolds before you. And also
16 any documentary evidence I think needs to be
17 treated the same way because if there are
18 objections of admissibility, she has to have them
19 and then we'll see how it goes at the hearing.

20 I will not be in a position, I
21 don't think by the 24th -- for reasons I can get
22 to when we talk about timing and exactly how it
23 will unfold in June and July -- to finally advise
24 Ms. Block of what witnesses we intend to call.
25 We have an idea, obviously, and what I was going

1 to -- not to anticipate too far beyond the topic
2 you've raised, but I thought it would be helpful
3 or hoped it would be helpful to the Committee if
4 we could provide a road map for the hearing once
5 we've set the dates, here's what we think we can
6 do on that date, this witness. We have some
7 Agreed Statement of Facts. I know you want to
8 retain some oversight over that, but I'd like to
9 give you a road map, both substantively and
10 procedurally, including the names of the
11 witnesses. I'm just not in a position to do that
12 by next Friday.

13 THE CHAIR: Now, I think it's
14 fair to say that what you're proposing in terms
15 of providing the related evidentiary base in
16 terms of simply the evidence and not a full list
17 of witnesses and everything else is exactly what
18 we had in mind. In other words, we weren't
19 intending that you had to provide everything else
20 that you would be doing before the hearing
21 commenced. So if I've caused some confusion, I
22 certainly didn't intend to. We're looking for
23 the related evidentiary base for those
24 allegations or complaints against the Judge
25 should be provided just in a separate document in

1 order to separate it from the Notice of
2 Allegations. That was the thought.

3 MR. PRATTE: No, I don't think
4 there is -- that's a helpful suggestion, Chief
5 Justice, and I think we can comply on those dates
6 with those two separate documents.

7 THE CHAIR: And the issue of the
8 disclosure and whether we get it, too, we have
9 not considered. The issue of the road map
10 obviously seems to make considerable sense and
11 obviously you're not going to be in a position to
12 finalize your witness list until sometime further
13 along, and we weren't intending that you had to
14 provide us all of that at that time. It was
15 simply an effort to -- the proposal was to try to
16 better crystallize the allegations and then, in a
17 separate document, provide the related
18 evidentiary foundation for those allegations or
19 complaints.

20 MR. PRATTE: I think independent
21 counsel is comfortable with that approach, Chief
22 Justice.

23 THE CHAIR: Ms. Block?

24 MS. BLOCK: Thank you, Chief
25 Justice. The core allegations would be in the

1 first Notice --

2 THE CHAIR: Mhmm.

3 MS. BLOCK: -- and as I
4 understand it, your assumption is there would be
5 a response from the Judge to those core
6 allegations?

7 THE CHAIR: I think at this
8 stage, the thought was under the By-Laws, the
9 Notice of Allegations has to be provided, and the
10 Judge obviously has a chance to respond to them.
11 Typically that would happen at the hearing. Our
12 thought was that at the opening of the hearing,
13 there should be opening statements from both
14 counsel to set the framework for the hearing that
15 would then unfold.

16 MS. BLOCK: Yes. You had
17 mentioned, however, that there would be the core
18 allegations and then, by May 25th, the response
19 by the Judge. That was the note I took, in any
20 event, which makes sense to me in the
21 circumstances of the -- I see Chief Justice
22 Matheson maybe thinks I've misunderstood.

23 THE CHAIR: I think you did
24 misunderstand because the -- what we're trying to
25 do is follow the prescribed procedure under the

1 Council framework, which is that under subsection
2 5(2), a Notice of Allegations is issued by the
3 independent counsel to allow the judge to respond
4 to the allegations, but respond to the
5 allegations is to respond in a hearing. There is
6 no separate -- we don't have Pleadings that are
7 filed here, and so the hearing is where the
8 response would be provided and that's why we
9 thought in order to set that framework, an
10 opening statement by both counsel at the hearing
11 would be appropriate.

12 MS. BLOCK: I agree entirely
13 about the opening statement. I have concerns
14 that if there are only the allegations out there
15 without the other side of the story, in view of
16 the nature of this case and the damage that that
17 causes, that there should be an opportunity to
18 respond. And once I get particulars, I may or
19 may not choose, but I expect I would want to
20 frame those allegations with the other side of
21 the story so that it's not the one-sided story
22 that is out there. And the reason for that
23 obviously is because of the -- it would be in the
24 interest of the Judge and, in my submission, not
25 only the Judge, but the independence of the

1 judiciary. And warnings have been made in cases
2 like this that the process itself can be very
3 damaging, so to the extent that we can mitigate
4 that by having a more balanced view than the core
5 allegations. So that's why I thought when you
6 were saying -- allowing the Judge to respond and
7 propose that that be provided by Friday, May
8 25th, that response, that that made sense. The
9 timing issue that I was concerned about was that
10 the related evidentiary base wouldn't be coming
11 until the 25th, so it would be a little tight to
12 respond.

13 And the other issue that I have
14 is the publication of the Notice of Allegations
15 before the response is out there, that both
16 should go out at the same time. So if the Notice
17 of Allegations is sent to the Committee and to
18 Judge's counsel -- the particulars are sent to
19 the Committee and Judge's counsel -- the Judge's
20 counsel has the opportunity to respond and then
21 there is disclosure of the Notice of Allegations
22 and the response. And that would ameliorate to
23 some extent this issue of damage that comes from
24 the fact of the allegation, even though everyone
25 here, legally trained, understands that an

1 allegation is just an allegation, it hasn't been
2 proved yet. But as you can see from the coverage
3 that's already happened, that you can expect will
4 happen, that that will -- that the public
5 perception, and if we're worried about the public
6 perception of the system of justice and we're
7 worried about the independence of the judiciary
8 as a whole or this particular Judge, her ability
9 to function after this process, then we have to
10 take regard for that issue, and that's where the
11 timing and the ability to respond becomes
12 important.

13 THE CHAIR: So as I understand
14 it, what you're saying is you would like to see
15 the Notice of Allegations and the particulars,
16 the evidentiary base, being provided by, say, a
17 certain time, but build into that framework an
18 opportunity for the Judge to do something which
19 is not expressly provided for in the By-laws or
20 policies, and that is file a written response of
21 some kind?

22 MS. BLOCK: Yes.

23 THE CHAIR: And then those
24 documents would be released thereafter?

25 MS. BLOCK: Yes.

1 THE CHAIR: All right. I'm going
2 to ask then, Mr. Pratte, if you have any
3 submissions that you wish to make on this
4 refinement to the proposal?

5 MR. PRATTE: Thank you, Chief
6 Justice. I see nothing that precludes you from
7 allowing that to happen. As long as we satisfy
8 the minimum -- the requirements of section 5(2),
9 I see nothing inconsistent with the public
10 interest in that. And at the very minimum,
11 certainly the Notice on its face should expressly
12 say that these are merely allegations, but --
13 those are my submissions.

14 THE CHAIR: Thank you so much,
15 Mr. Pratte. I'm going to ask the Panel if any of
16 the members have any questions that they wish to
17 ask of either counsel? All right. Well, then
18 thank you so much for that. If you'll allow us
19 an opportunity to consider the amended proposal
20 which you're proposing, we will retire again and
21 be back as soon as possible. Thank you.

22 --- Recess at 1:25 p.m.

23 --- Upon resuming at 2:00 p.m.

24 THE COURT: Thank you, counsel,
25 for giving us a chance to consider this matter.

1 We have concluded that under the current
2 procedures, a Judge has no right to file a
3 response as part of the inquisitorial process.
4 However, in the special circumstances of this
5 case, we will allow the Judge to file a response
6 to the Notice of Allegations only by June 1st, at
7 which time both the Notice of Allegations by the
8 independent counsel and the response by the Judge
9 will be made public. It must be stressed that
10 the response must be confined to replying to the
11 allegations or complaints in the Notice of
12 Allegations and not the related evidentiary base
13 contained in the second document prepared by the
14 independent counsel. So that being the case
15 then, we take it and I think we're all agreed, I
16 believe, that the Notice that will be provided --
17 the Notice of Allegations will be provided then
18 by independent counsel by Friday, May 25th?

19 MR. PRATTE: Yes.

20 THE CHAIR: And the related
21 evidentiary base or, as you've summarized it, the
22 particulars relating thereto will also be
23 provided by that same date. And the Judge will
24 provide, through her counsel, a response to the
25 Notice of Allegations by June 1st.

1 MR. PRATTE: Thank you, Chief
2 Justice.

3 THE CHAIR: And does that all
4 make sense now and, as we said earlier, that does
5 not in any way constrain you in your obligations
6 or rights as independent counsel to proceed as
7 you see fit, Mr. Pratte.

8 MR. PRATTE: Thank you, Chief
9 Justice.

10 THE CHAIR: And Ms. Block?

11 MS. BLOCK: Yes. I mean, the
12 devil -- the devil's a bit in the detail, Chief
13 Justice, but I'm sure with Mr. Pratte's help and
14 Mr. Macintosh's help, I can figure it out and
15 stay within the lines. I hope to do so.

16 THE CHAIR: Thank you so much,
17 Ms. Block. Now, I think that then takes us to
18 the final matter -- unless there is any other
19 issues we've overlooked -- and that is the issue
20 of scheduling. And I'd just like to confirm that
21 we've alerted counsel, through Mr. Macintosh, to
22 the fact that we had a number of dates set aside,
23 potential hearing dates, and that included the
24 week of June 25th, the week of July 16th to the
25 20th, the week of July 23rd to the 27th. And

1 we're not certain because we haven't yet heard
2 from either of you or both of you on the
3 estimated length of the hearing, so we've simply
4 obviously picked certain dates in order to ensure
5 that everyone is going to be available, and you
6 might let us know whether you think that that
7 time frame would be adequate for purposes of the
8 hearing or more than adequate. We also have
9 dates that you've been advised of, as you know,
10 in September and October that have been
11 tentatively set aside, and that's September 24th
12 and 25th as well as October 29th to the 31st,
13 inclusive. So that is a time frame that
14 encompasses more -- almost four -- well, four
15 weeks in total. So how little or how much of
16 that we will require we're not certain, and the
17 scheduling is something on which we would just
18 simply like your comments and advice if you think
19 these dates work generally. Mr. Pratte?

20 MR. PRATTE: Yes, thank you.
21 Just on the week of June, for some reason, all of
22 us seem to have the first three days, 25, 26, 27,
23 not the other two days, for what it's worth. And
24 then in July, the last two weeks that you
25 mentioned is fine with me. Let me start perhaps

1 at the end, Chief Justice. At the moment,
2 consulting with Ms. Block to a degree, but
3 obviously until the Notice of Allegations is out
4 there, and the particulars, it's a bit difficult.
5 But from our canvassing of these issues
6 yesterday -- and I mean mainly Ms. Crain and I --
7 we were thinking that we would need approximately
8 six days of evidence based on the current
9 framework of the Notice. Now, obviously that
10 does not mean -- I'm not sure who Ms. Block might
11 want to call, but we tried to roughly estimate.
12 But certainly I would submit that 10 days should
13 be ample time. That would assume, though, that
14 there would be -- in matters that appear to be
15 suited for Agreed Statement of Facts, there would
16 be certain Agreed Statement of Facts which we'd
17 of course submit to you for your oversight,
18 bearing in mind the policy, that you don't
19 necessarily want to be given an Agreed Statement
20 of Facts when you may choose or believe that you
21 should hear from the person, so we'd have to
22 manage that. But obviously if there is some
23 pieces of the evidence that do not appear to be
24 controversial or require a witness, we'd like to
25 do that.

1 So my suggestion -- and I've
2 discussed that with Ms. Block and
3 Mr. Macintosh -- is I at the moment can't
4 conceive we couldn't conclude this by the end of
5 July, subject to maybe some witness
6 availabilities, it being the summer. I'll have
7 to contact the witnesses we anticipate
8 effectively as early as next week. But I would
9 suggest we start on the week of the 25th and I
10 had, as I said, three days. I think Ms. Crain
11 did, too. And obviously there would be opening
12 statements and there may be some procedural
13 issues that we need to deal with. And as I said
14 to you, Chief Justice and members of the
15 Committee, I would plan to provide the Committee,
16 through Mr. Macintosh, with a road map of the
17 witnesses in question, the time estimated,
18 including the time Ms. Block may require in
19 cross-examination. And I can't give you a date
20 now, but I'm keenly aware of the Committee's
21 intention to proceed expeditiously, though
22 fairly, and to know what you're going to be doing
23 as much as you can, as early as you can. So I'm
24 hoping that perhaps in the next four weeks we
25 could have a detailed road map. There may be

1 some procedural issues having to do with the
2 confidentiality undertakings that were given to
3 some witnesses and, as you know, that has been
4 slightly problematic in the past and we're going
5 to be working on that very keenly.

6 So that's the plan. So this is a
7 very long speech, but in essence, we would be
8 prepared to start on June the 25th. I'm not
9 exactly sure of what to tell you would be -- what
10 that start would be except opening statements,
11 but maybe there could be some evidence dealt with
12 in those three days. And then I thought that if
13 we get at least some evidence, if only the Agreed
14 Statement of Facts or something, we might be able
15 to complete the hearing portion or, sorry, the
16 evidence portion in the second week of -- third
17 week of July, the first of the two weeks or, at
18 worst, if it goes over.

19 After that, Chief Justice, if the
20 evidentiary part is concluded, I assumed --
21 though I have not discussed this with
22 Mr. Macintosh -- that in terms of argument, you
23 would want written argument, followed by oral
24 submissions. That certainly would be my
25 preference, and I believe also Ms. Block. Should

1 the hearing conclude sometime in July, the
2 evidentiary portion, I don't have a date, but
3 maybe we could make written submissions, let's
4 say by the first week of September, because there
5 are holidays there that people have to have.

6 And scheduling the hearing days,
7 there, Chief Justice, I'd like to be a bit -- or
8 have the indulgence of the Committee to be a bit
9 flexible because I resume a very long trial on
10 August the 20th and that whole period is, let's
11 say, pretty well occupied, and the dates that we
12 were provided with all conflicted with that
13 trial. So I would have thought, however, Chief
14 Justice, and I would do everything I could to
15 accommodate the Committee's own constraints,
16 which I know you have to have five people
17 together, it's not easy, but I think Ms. Block
18 and I would agree that if we had two days of oral
19 argument, that should be -- who knows where we'll
20 be, but if we could find two days and maybe we'll
21 only need a day, I don't know, but two days,
22 presumably consecutive, at some point in the fall
23 that works with your schedule. And perhaps not
24 to waste this Committee's time, if we could have
25 discussions with Mr. Macintosh subsequently to

1 settle the dates of argument, assuming we can
2 finish in July on the evidentiary phase.

3 I hope that's helpful, Chief
4 Justice. If you want, I can get -- in terms of
5 the time for other steps we have to do, but I
6 think we could live within those parameters and
7 be helpful to the Committee. I don't know if
8 Ms. Block has submissions.

9 THE CHAIR: That's very helpful.
10 Thank you so much, Mr. Pratte, and I'm sure we
11 can work around the dates. If possible, we'll be
12 in Winnipeg on another weekend sometime in
13 September. So anything, Ms. Block, that you wish
14 to add?

15 MS. BLOCK: No, that sounds like
16 a rational plan.

17 THE CHAIR: All right. And just
18 in terms of the Agreed Statement of Facts, I
19 certainly hope that nothing that we've said would
20 let you think that you weren't at liberty to try
21 to do the best you could from that perspective as
22 well and we would certainly encourage you to work
23 together on that.

24 MS. BLOCK: That's very helpful.
25 Thank you.

1 THE CHAIR: Okay. Is there
2 anything else that we need to deal with as
3 Council? Anything we've overlooked, Mr. Pratte?

4 MR. PRATTE: Nothing you've
5 overlooked. Something I overlooked, Chief
6 Justice. In terms of the disclosure we discussed
7 a little earlier to Ms. Block, there are -- what
8 we plan to do is simply turn over, effectively,
9 witness notes of interviews, but there are some
10 of those witnesses, as you're aware, that have
11 confidentiality issues around them and so that
12 may take some time to work out. So I'm just,
13 through you, telling Ms. Block that she may not
14 get 100 percent of what we can till we've worked
15 that out, and of course we'll keep her advised.
16 But hopefully that can all be resolved in good
17 time so that she has timely total disclosure, and
18 we've worked through these issues before and I
19 trust we can do that again for the purposes of
20 divulging what we know to her. And we may need
21 at some point your assistance to work through
22 these issues which are not -- you're generally I
23 think aware of that, what we had to face, so we
24 may need to have your assistance and, in that
25 event, we'll go through Mr. Macintosh.

1 THE CHAIR: Okay. Again, that
2 seems to make sense. And on the disclosure side,
3 we've not addressed any of the issues relating to
4 the extent to which it would be appropriate or
5 you consider it appropriate to make disclosure to
6 the Committee. At this point, that's an issue
7 that we need not, I think, address today. We'll
8 allow you to work together to try to sort that
9 out. The road map we look forward to receiving
10 at some stage, along with the witness statement
11 as it gets closer to the date of the hearing. Do
12 we need to set a time frame for that or would you
13 prefer --

14 MR. PRATTE: I'd be grateful,
15 being Saturday, if you could grant me the
16 indulgence of not fixing that date, and I will of
17 course work very hard with Ms. Crain and
18 Mr. Macintosh to provide you something useful as
19 soon as possible -- I mean, weeks before we would
20 actually start the trial, if I could possibly do
21 it. And if at some point, any point,
22 Mr. Macintosh or you believe that you need it
23 now, as it were, and we haven't yet provided it,
24 then of course we'll respond to any requests as
25 best we can. I'm keenly aware that if I were in

1 your shoes -- not that I ever would be -- but I
2 would want to know where I'm going to be going in
3 this hearing as soon as I can. So if we can
4 leave it a bit in flux, Chief Justice, for now,
5 I'd be grateful.

6 THE CHAIR: All right. That
7 seems to make sense. Now, look, I am just going
8 to ask you if you would be kind enough to allow
9 us another break and if there is anything further
10 that we need to come back to speak to you about,
11 we'll do so in the next 10 minutes, okay? Thank
12 you.

13 --- Recess at 2:15 p.m.

14 (ON BEHALF OF THE COMMITTEE AT 2:40,
15 MR. MACINTOSH ADVISED THE COURT REPORTER THAT THE
16 PROCEEDINGS FOR MAY 19TH ARE CONCLUDED AND
17 MR. MACINTOSH ADVISED THE COUNSEL IN THE ROOM
18 ACCORDINGLY.)

19 --- Whereupon the hearing adjourned at 2:40 p.m.

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OFFICIAL COURT REPORTER'S CERTIFICATE

I, RUTH LEDGERWOOD, Official Court Reporter,
hereby certify that the foregoing pages contain a
true and correct transcription of the recorded
proceedings taken herein to the best of my
knowledge, skill and ability.

RUTH LEDGERWOOD

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