

Federal Court



Cour fédérale

**Date: 20130923**

**Docket: T-1567-12**

**Ottawa, Ontario, September 23, 2013**

**PRESENT: Madam Prothonotary Tabib**

**BETWEEN:**

**THE HONOURABLE LORI DOUGLAS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**and**

**CANADIAN JUDICIAL COUNCIL  
AND  
INDEPENDENT COUNSEL TO THE  
INQUIRY COMMITTEE REGARDING  
THE HONOURABLE LORI DOUGLAS**

**Interveners**

**ORDER**

**UPON** a case management telephone conference held September 19, 2013.

Prior to the conference, counsel for the Canadian Judicial Council had indicated its intention to seek to broaden the subject matters on which it could intervene to include two “threshold” issues, being the prematurity of the application and the absence of jurisdiction of the Court. I heard the representations of all counsel on this request. The Respondent Attorney General advised that, having considered the matter, the Attorney General had determined that it would not argue that the application is premature. Counsel for the Applicant, for the Attorney General and for the Independent Counsel did not, in the circumstances, object to the Canadian Judicial Council being allowed to raise that issue.

On the issue of the Court’s jurisdiction to review the ruling of the Inquiry Committee or other aspects of the Canadian Judicial Council process, Counsel for the Attorney General advised that it would need to further reflect on the matter and seek instructions, but was of the view that the argument the Canadian Judicial Council intended to pursue was not plainly and obviously devoid of any chance of success. Counsel for the Independent Counsel agreed with that assessment and advises that she would, however, not be speaking to that issue.

Counsel for the Applicant objected to the Canadian Judicial Council being granted leave to raise the issue of the Federal Court’s jurisdiction, on the basis that the issue is not reasonably arguable, this Court having already asserted and exercised its supervisory jurisdiction over the Canadian Judicial Council in several cases (*Cosgrove*, *Gratton*) and that it is, in any event, too late for the Canadian Judicial Council to raise this issue.

The issue of this Court's jurisdiction, when it is in doubt, can and should be raised and considered at any time, even on the Court's own motion (*Chavali v Canada*, 2001 FCT 268, aff'd 2002 FCA 209). I am satisfied that the Canadian Judicial Council's proposed argument is not plainly and obviously devoid of any merit whatsoever, and that it was never directly raised before or determined by the Court. As such, it is the Court's duty to invite and consider representations on that issue. Counsel for the Attorney General confirmed that it would make representations on that issue, however it could not, without further consideration, address whether it would support or oppose the jurisdictional argument.

In view of the short timelines before the hearing of this matter on the merits, it is clearly impractical to require the Canadian Judicial Council to make a formal motion or to wait until the Attorney General has determined the position it will take. In the circumstances, I entertained the Canadian Judicial Council's informal request as an oral motion, and granted it. I realise that this Order was made with almost no notice to the Applicant, and over its objections, but am satisfied that it serves the interests of justice. The Applicant's right to appeal this Order are, of course, preserved.

**IT IS ORDERED THAT:**

1. This judicial review application will be heard in Ottawa, in the East Courtroom of the Supreme Court building, beginning at 9:30 a.m., on November 27, 2013, for a duration not exceeding three days.

2. The Canadian Judicial Council is granted leave to intervene on the additional issues of the prematurity of the judicial review and of the Federal Court's jurisdiction.
3. To the extent the parties and interveners consent or do not object to the Applicant serving and filing an amended notice of application, the Applicant may do so without requiring a further order of the Court; to the extent any party or intervener objects to the amendments proposed by the Applicant, a case management telephone conference will be held, beginning at 8:30 a.m., on October 4, 2013, to discuss the amendments and, as necessary, determine how leave to amend is to be dealt with.
4. The Applicant's record may include, without the need to be introduced by way of affidavits, excerpts of the recording of the Inquiry Committee's proceedings or transcripts thereof, as well as the evidentiary record that was before the Court for the purposes of the Rule 318 motion.
5. The Canadian Judicial Council may serve its evidence, if any, no later than October 1, 2013.
6. Cross-examination on affidavits, if any, will be conducted no later than October 11, 2013.
7. The Applicant's record shall be served and filed no later than October 24, 2013.
8. The Canadian Judicial Council shall serve and file a memorandum of fact and law on the issues of prematurity and jurisdiction of the Court, no later than October 28, 2013.

9. The Respondent and the Independent Counsel's application records, and the Canadian Judicial Council's record and memorandum of fact and law on issues other than prematurity and the jurisdiction of the Court shall be served and filed no later than November 14, 2013.
10. The Applicant may serve and file a supplementary memorandum of fact and law in reply on the issues of prematurity and of the jurisdiction of the Court by no later than November 18, 2013.

“Mireille Tabib”

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Prothonotary