

Court File No: A-562-05

**FEDERAL COURT OF APPEAL**

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	NOV 22 2005
L. RODRIGUES	
OTTAWA, ON	/

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA**

Appellant

and

**THE HONOURABLE MR. JUSTICE PAUL COSGROVE  
THE CANADIAN JUDICIAL COUNCIL**

Respondents

**NOTICE OF APPEAL**

TO THE Respondents:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

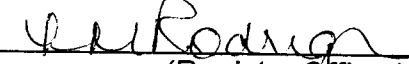
IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Court Rules, 1998* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341

prescribed by the *Federal Court Rules, 1998*, instead of serving and filing a notice of appearance.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date): Nov. 22/05 Issued by:   
(Registry Officer)  
**Lisa Rodriguez**  
**Registry Officer**  
**Agent du greffe**

Address of Local office:

**90 rue Elgin Street**  
**Ottawa, Ontario**  
**K1A 0H9**

TO: **Chris G. Paliare**  
**Richard P. Stephenson**  
Paliare Roland Rosenberg Rothstein LLP  
Barristers  
Suite 501, 250 University Avenue  
Toronto, Ontario  
M5H 3E5

AND TO: **Earl A. Cherniak**  
**Christine Snow**  
Lerners LLP  
Barristers & Solicitors  
130 Adelaide Street West, Suite 2400  
Toronto, Ontario  
M5H 3P5

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgment of the Federal Court dated October 26, 2005 in which the following orders were made:

1. The application for judicial review is allowed;
2. The Decision of the Inquiry Committee appointed by the Canadian Judicial Council dated December 16, 2004 is set aside;
3. The Court declares that to the extent that sub-section 63(1) of the *Judges Act* confers the right on a provincial attorney general to compel the Canadian Judicial Council to inquire into the conduct of a judge, the provision does not meet the minimal standards required to ensure respect for the principle of judicial independence, and is thus invalid;
4. The Court further declares that the Inquiry Committee is without jurisdiction to proceed with this inquiry;
5. Costs were not sought nor were they ordered.

THE APPELLANT ASKS that the Judgment of Madam Justice Mactavish be reversed and the decision of the Inquiry Committee of the Canadian Judicial Council be restored.

THE GROUNDS OF APPEAL are as follows:

1. The applications judge erred in the interpretation of sub-section 63(1) and section 63 of the *Judges Act*.
2. The applications judge erred in holding that sub-section 63(1) of the *Judges Act* creates in the mind of a reasonable person an apprehension that judicial independence is threatened. In reaching her conclusion, the applications judge erred in failing to give proper, or any, consideration or weight to the governing legal principles and applicable factual context of the inquiries and investigation process established by Part II of the *Judges Act*. In particular:
  - a. the purposes underlying the principle of judicial independence;

- b. the public's interest in an open and public mechanism to ensure judicial accountability and restore public confidence in the judiciary;
  - c. the role of the Attorney General in our constitutional structure;
  - d. the history and purposes underlying creation of the Canadian Judicial Council and Part II of the *Judges Act*;
  - e. the procedural safeguards provided by Part II of the *Judges Act* and the jurisprudence and practice of the Council; and
  - f. the function served by lay members on an Inquiry Committee.
3. The applications judge erred in misapprehending, misconstruing and in failing to consider the evidence before her, and in making findings without any evidence to support those findings, in her determination of the constitutional validity of sub-section 63(1) of the *Judges Act*.
  4. The applications judge further erred in determining that the appropriate remedy for the infringement of the principle of judicial independence was a declaration of invalidity pursuant to section 52(1) of the *Constitution Act, 1867* and that the Inquiry Committee lacks jurisdiction to proceed with the complaint.
  5. Such further grounds as counsel may advise and this Honourable Court may permit.

November 22, 2005



John H. Sims, Q.C.  
Deputy Attorney General of Canada

Per: **Donald J. Rennie**  
Department of Justice Canada  
Civil Litigation Section  
234 Wellington Street, East  
Tower, Rm 1112  
Ottawa, Ontario  
K1A 0H8

Tel: (613) 957-4863  
Fax: (613) 954-1920  
File: 2-541669-1

Solicitors for the Appellant, Attorney  
General of Canada

INDEXED I.L.  
DATE 11/24/05

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 22 day of Nov A.D. 2005  
dated this 1 day of Dec 2005  
[Signature]

**Elise A. Benoit**  
Registry Officer  
Agente du Greffe