

**INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL
IN THE MATTER OF THE CONDUCT OF THE HONOURABLE GÉRARD DUGRÉ J.S.C.**

MEMBERS OF THE INQUIRY COMMITTEE:

The Honourable J.C. Marc Richard (Chairperson), Chief Justice of New Brunswick

The Honourable Louise A.M. Charbonneau, Chief Justice of the Supreme Court of the Northwest Territories

Me Audrey Boctor, IMK

COUNSEL:

For Justice Dugré:

Me Magali Fournier, Ad. E., Fournier Avocat
Me Gérald Tremblay, Ad. E., McCarthy Tétrault

For the Inquiry Committee:

Me Giuseppe Battista, Ad. E., Battista Turcot Israel
Me Emmanuelle Rolland, Audren Rolland

**REASONS FOR THE RULING ON THE APPLICATION
FOR THE HEARING ON PRELIMINARY ARGUMENTS SCHEDULED FOR JULY 7 AND 8, 2020
TO BE HELD IN CAMERA**

[1] Under ss. 60(2)(d), 63(2) and 63(3) of the *Judges Act*, R.S.C. 1985, c. J-1, the Canadian Judicial Council (“CJC”) may investigate “any complaint or allegation made in respect of a judge of a superior court” and may, for this purpose, designate one or more of its members who, together with such members of the bar having at least ten years standing as may be designated by the Minister, if any, shall constitute an Inquiry Committee.

[2] On August 30, 2019, a Judicial Conduct Review Panel, composed of the Honourable Mary Moreau, Richard Chartier, Brigitte Robichaud, André Dulude and Alexandra Hoy, made two rulings, finding that an Inquiry Committee was to be constituted with respect to the conduct of the Honourable Gérard Dugré J.S.C. subject to complaints in files CJC-18-0301 and CJC-18-0318.

[3] In addition to the above-mentioned matters, the CJC was seized with five other complaints (CJC-19-0014, CJC-19-0358, CJC-19-0372, CJC-19-0374 and CJC-19-0392), which were referred to this Inquiry Committee without having been previously examined by a Review Panel.

[4] On March 4, 2020, in accordance with s. 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203 (“*By-laws, 2015*”), the Inquiry Committee sent Justice Dugré a detailed Notice of Allegations, informing him of the allegations that it intended to investigate. These allegations relate to six of the aforementioned complaints¹.

[5] Prior to the hearing on the merits, Justice Dugré raised five preliminary arguments, some of which are alternative arguments, that will be heard on July 7 and 8, 2020². Some of these arguments seek to remove from the inquiry, allegations relating to complaints that were referred to the Inquiry Committee without having been first examined by a Review Panel.

[6] Justice Dugré requested that the hearing on the preliminary arguments be held in camera. Counsel for the Inquiry Committee, Me Giuseppe Battista, does not object.

[7] On June 16, 2020, the Inquiry Committee published a notice inviting any person interested in presenting his or her point of view on this application for a private hearing.

[8] On June 22, 2020, the Inquiry Committee received written comments from two third parties (“**the interested parties**”), the weekly publication *The Lawyer’s Daily* and professors Richard Devlin and Sheila Wildeman of Dalhousie University’s Schulich School of Law, objecting to the application for a private hearing.

[9] On June 26, 2020, counsel for Justice Dugré sent their written comments in support of the application for a hearing in camera to the Inquiry Committee.

[10] For the reasons set out below, the Inquiry Committee, having considered the comments of the interested parties and of counsel for Justice Dugré, is of the view that, under the particular circumstances of this matter, it is in the public interest to conduct the hearing on the preliminary arguments in camera.

[11] With respect to the publication of the CJC’s work, s. 63(6) of the *Judges Act* provides merely that:

63 (6) An inquiry or investigation under this section may be held in public or in private, unless the Minister requires that it be held in public.

[12] Parliament has thus enabled the CJC to make its own decision as to what extent its hearings will be public, the only limit being the power given to the Minister of Justice to order a public hearing. No such order has been issued in this case.

[13] Moreover, in subsection 6(1) of *By-laws, 2015*, the CJC has set out, as a general principle, that the hearings of its inquiry committees are to be conducted in public, while reserving the possibility of ordering that a hearing be conducted in private, in whole or in part:

¹ According to the Notice of Allegations, the complaints made in CJC-19-0374 will be taken into account in conjunction with one of the allegations made in CJC-18-0301.

² These preliminary arguments are applications (1) for a stay of the inquiry and, alternatively, for a partial striking out of allegations, (2) for the disqualification of the members of the Inquiry Committees, (3) for the separation of the inquiries (alternative argument), (4) for a suspension of the inquiry (alternative argument) and (5) pertaining to the evidence (alternative argument).

6 (1) Subject to subsection 63(6) of the Act, hearings of the Inquiry Committee must be conducted in public unless, the Inquiry Committee determines that the public interest and the due administration of justice require that all or any part of a hearing be conducted in private.

[14] *By-laws, 2015* and the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges (“Review Procedures, 2015”)* also set out a process for screening complaints prior to constituting an Inquiry Committee under s. 63(3) of the *Judges Act*.

[15] This early screening process is not conducted in public. Also, no provision of *By-laws, 2015* nor of the *Review Procedures, 2015* requires that the CJC publish complaints where their early screening does not lead to the constitution of an Inquiry Committee.

[16] In fact, in his concurring reasons in *Slansky v. Canada (Attorney General)*, Mainville J. identified four reasons for preserving the confidentiality of the process at the early screening stage:

[148] [...] In light of its statutory mandate, which is closely related to the preservation of both judicial independence and judicial integrity, it is the responsibility of the Canadian Judicial Council to determine in which circumstances and to what extent it is in the public interest not to disclose information arising out of an investigation or inquiry concerning a judge.

[...]

[151] The Supreme Court of Canada has referred to international instruments to flesh out the content of the principle of judicial independence: *Beauregard* at pp. 74-75; *R. v. Lippé*, above, at p. 153. With this in mind, I note that the United Nations General Assembly has endorsed the *Basic Principles on the Independence of the Judiciary*: UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Those basic principles were specifically referred to approvingly by Lamer C.J. in *Reference re Remuneration* at para. 194. As a fundamental component of judicial independence, these principles call for the confidentiality of the disciplinary process, at least at the initial stage:

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at the initial stage shall be kept confidential, unless otherwise requested by the judge. [Emphasis added].

[152] As this basic principle emphasizes, confidentiality is particularly important at the investigation stage of a complaint made against a judge. This is so for many reasons: (a) disclosure of information surrounding unsubstantiated complaints could risk undermining a judge’s authority in carrying out his or her judicial functions: *Guardian News & Media Limited v. Information Commissioner*; [2009] Information Tribunal, EA/2008/0084; (b) the effectiveness of the investigation process itself may be affected, since without the capability to ensure some form of confidentiality, the ability to obtain full and frank disclosures at the investigation stage may be compromised, thus affecting in the long term the public’s confidence in the process; moreover, without an effective screening process, more complaints would end up before a hearing panel leading to additional delays and expenditures without any obvious additional benefit; (c) the judge who is the subject of an investigation may have legitimate privacy

concerns over the information; and (d) most compelling, in my view, is the overriding need to protect judicial independence.³

[17] In this case, as previously mentioned, some of the preliminary arguments pertain to allegations relating to complaints that did not follow all of the steps of the early screening process. Without going into detail, Justice Dugré basically argues that these allegations should not be included in the inquiry before this Committee. He requests that the hearing on the preliminary arguments be conducted in camera, in order to preserve the confidentiality of the information relating to these complaints, at least until this Committee renders its decision on these arguments. These preliminary arguments are difficult to separate from the preliminary arguments as a whole.

[18] Under these circumstances, and after having considered all of the interests that must be weighed in the context of an application for a private hearing, we are of the view that it is in the public interest to order that the hearing on the preliminary arguments be conducted in camera.

CONCLUSIONS

IT IS ORDERED that the hearing on the preliminary arguments scheduled for July 7 and 8, 2020 be conducted in camera.

Signed:

June 29, 2020

June 29, 2020

Original signed

Original signed

The Honourable J.C. Marc Richard

The Honourable Louise A.M. Charbonneau

June 29, 2020

Original signed

Me Audrey Boctor

³ *Slansky v. Canada (Attorney General)*, 2013 FCA 199, at paras. 148, 151 and 152, leave to appeal refused, 2014 CanLII 5977 (SCC).