

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

MEMBERS OF THE INQUIRY COMMITTEE:

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

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

Audrey Boctor, IMK LLP

COUNSEL OF RECORD

For the Honourable Justice Dugré:

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For the Inquiry Committee:

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**REASONS FOR DECISION ON THE REQUEST FOR A PARTIAL IN CAMERA
HEARING OF THE INQUIRY HEARING COMMENCING JANUARY 18, 2021**

[UNOFFICIAL TRANSLATION]

[1] On March 4, 2020, in accordance with subsection 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203 (the **2015 By-laws**), the Inquiry Committee provided Justice Dugré with a detailed Notice of Allegations informing him of the allegations that it intends to investigate. These allegations relate to six complaint files, four of which stem from judicial proceedings in family matters (CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301).

[2] The hearing before the Inquiry Committee will begin on January 18, 2021.

[3] Prior to this hearing, Justice Dugré asks the Inquiry Committee to order:

[TRANSLATION]

that the evidence taken from the files in family matters S.S. (CJC 18-0318), A. (CJC 19-0014), S.C. (CJC 19-0392) and K.S. (CJC 18-0301) be produced under seal or at least depersonalized [...] and that the investigation of these files be held in camera;

[4] On December 9, 2020, the Inquiry Committee published a notice inviting any interested person to express his or her views on this application. Following the publication of this notice, the Canadian Judicial Council (**CJC**) received submissions from two members of the public arguing that the investigation should be public.

[5] On December 17, 2020, the Inquiry Committee heard from counsel for Justice Dugré and Mr. Giuseppe Battista, counsel for the Committee.

[6] Subsection 63(5) of the *Judges Act* gives the CJC the power to prohibit the publication of information:

The Council may prohibit the publication of any information or documents placed before it in connection with, or arising out of, an inquiry or investigation under this section when it is of the opinion that the publication is not in the public interest.

[7] Similarly, subsection 6(2) of the *2015 By-laws* provides:

The Inquiry Committee may prohibit the publication of any information or documents placed before it if it determines that publication is not in the public interest and may take any measures that it considers necessary to protect the identity of persons, including persons who have received assurances of confidentiality as part of the consideration of a complaint or allegation made in respect of the judge.

[8] With respect to the public nature of investigations, subsection 63(6) of the *Judges Act* provides:

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.

[9] Thus, Parliament has empowered the CJC to decide for itself the extent to which its inquiries will be public, the only limit being the power conferred on the Minister of Justice to order that an inquiry be held in public. No such order was made in this case.

[10] Moreover, by subsection 6(1) of the *2015 By-laws*, the CJC has established as a general principle that the hearings of its inquiry committees be public, while reserving the right to order that they be held in private, in whole or in part:

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.

[11] In considering the public interest and the proper administration of justice, the Inquiry Committee may take into account local rules and practices. In Québec, special rules apply in family matters because of the highly personal and intimate nature of the issues raised in these cases. More specifically, sections 15 and 16 of the *Code of Civil Procedure* of Québec establish, among other things, that hearings in first instance in family matters are normally held in camera, that the parties and the children concerned cannot be identified, and that access to the files is restricted:

15. In family matters or in matters regarding a change of designation of sex as it appears in a minor child's act of birth, hearings of the court of first instance are held in camera; however, the court, in the interests of justice, may order that a hearing be public. Unless authorized by the court, no person attending a hearing nor any other person may disclose information that would allow the persons concerned to be identified, under pain of contempt of court.

Judgments in such matters may only be published if the anonymity of the parties and of any child whose interests are at stake in the proceeding is protected and the passages that would allow them to be identified have been deleted or redacted.

[...]

16. In family matters or in matters regarding a change of designation of sex as it appears in a minor child's act of birth, access to the court records is restricted. In all other matters, especially those relating to personal integrity or capacity, access to documents pertaining to a person's health or psychosocial situation is restricted if they have been filed in a sealed envelope.

Access-restricted records or documents may only be consulted or copied by the parties, by their representatives, by lawyers and notaries, by persons designated by law, and by any person, including journalists, who has been authorized by the court after proving a legitimate interest, subject to the access conditions and procedure determined by the court.

In adoption matters, access to the court records is restricted to the parties, their representatives and any person having proven a legitimate interest, and is subject to the authorization of the court and to the conditions and procedure it determines.

The Minister of Justice is considered, by virtue of office, to have a legitimate interest to access records or documents for research, reform or procedure evaluation purposes.

No person who has had access to a record in a family matter or in a matter regarding a change of designation of sex as it appears in a minor child's act of birth may disclose or circulate any information that would allow a party or a child whose interests are at stake in a proceeding to be identified, unless authorized by the court or by law or unless the disclosure or circulation of the information is necessary for the purpose of applying a law.

[12] However, section 13 of the *Code of Civil Procedure* specifies that journalists may attend hearings in camera, unless the court orders otherwise:

13. Lawyers, notaries, their articling students, and journalists who show proof of their status may attend a hearing held in camera; if the hearing concerns a person's personal integrity or capacity, anyone the court considers capable of assisting or reassuring the person may also attend. However, if circumstances so require, the court may exclude such persons to prevent serious prejudice to a person whose interests may be affected by the application or by the proceeding.

Persons whose presence is, in the court's opinion, required in the interests of justice may also attend.

[13] According to the case law in family matters, journalists should be excluded only if there is clear and unequivocal evidence of the prejudice suffered by the parties solely by reason of their presence at the hearing, on the understanding that section 15 of the *Code of Civil Procedure* already prohibits them from disclosing information allowing the identification of the persons concerned, on pain of contempt of court¹.

[14] Although these provisions of the *Code of Civil Procedure* do not apply to its hearings, the Inquiry Committee deems it necessary to issue orders to preserve the confidentiality of judicial proceedings in family matters so as to ensure that the persons concerned do not lose important protection in family matters in Québec because of the participation of a complainant before the CJC.

[15] Consequently, evidence that comes directly from these proceedings, including pleadings, minutes of hearings, and recordings and transcripts of hearings, will be depersonalized and filed under seal.

[16] All other evidence submitted to the Inquiry Committee, including transcripts of testimony, will be redacted in order to preserve the anonymity of the parties and children involved in the family court proceedings.

¹ See *S.G. c. L.C.*, 2005 CanLII 20139 (QC CS).

[17] The hearing of the Inquiry Committee will be held in camera only when the evidence filed under seal is submitted, in particular the recordings of the Superior Court hearings. Journalists who show proof of their status will be permitted to attend the hearing, unless it is shown that an order issued in a judicial proceeding prohibited their presence at the Superior Court hearing.

[18] Any person present at the hearing of the Inquiry Committee will be prohibited from disclosing or disseminating any information that could identify a party or a child involved in the judicial proceedings in family matters from which the complaints in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 arose.

[19] **FOR THESE REASONS, THE INQUIRY COMMITTEE:**

ORDERS that the evidence in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 be redacted so that the parties and children involved in the family court proceedings cannot be identified;

ORDERS that the evidence in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 that comes directly from the family court proceedings be filed under seal;

ORDERS that the hearing be held in camera only when the evidence filed under seal in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 is submitted;

ORDERS that the hearing be held in camera only when the evidence filed under seal in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 is submitted;

DECLARES that journalists who show proof of their status will be permitted to attend the hearing in camera;

ORDERS the persons present at the Inquiry Committee hearing not to disclose or disseminate any information that could identify a party or a child concerned by the legal proceedings in family matters from which the complaints in files CJC 18-0318, CJC 19-0014, CJC 19-0392 and CJC 18-0301 arose.

[French original signed]:

December 23, 2020

December 23, 2020

The Honourable J.C. Marc Richard

The Honourable Louise A.M. Charbonneau

December 23, 2020

Audrey Boctor