



DANS L'AFFAIRE DES
articles 63 et 65 de la *Loi sur les juges*,
L. R., 1985, ch. J-1, et du
comité d'enquête constitué par le
Conseil canadien de la magistrature
pour examiner la conduite de
l'honorable Michel Girouard de la
Cour supérieure du Québec :

En vertu du mandat que lui confère la
Loi sur les juges, et après avoir enquêté
sur la conduite du juge Girouard, le
Conseil canadien de la magistrature
recommande par la présente à la ministre
de la Justice, aux termes de l'article 65
de la *Loi sur les juges*, la révocation de
l'honorable Michel Girouard.

Présenté à Ottawa,
le 20 février 2018

IN THE MATTER OF
Sections 63 and 65 of the *Judges Act*,
R.S., 1985, c. J-1, and of the
Inquiry Committee convened
by the Canadian Judicial Council
to review the conduct of
the Honourable Michel Girouard
of the Québec Superior Court:

Pursuant to its mandate under the
Judges Act, and after inquiring into the
conduct of Justice Girouard, the
Canadian Judicial Council hereby
recommends to the Minister of Justice,
pursuant to section 65 of the *Judges Act*,
that the Honourable Michel Girouard be
removed from office.

Presented in Ottawa,
20 February 2018



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IN THE MATTER OF
SECTIONS 63 AND 65 OF THE *JUDGES ACT*, R.S., 1985, c. J-1

CANADIAN JUDICIAL COUNCIL INQUIRY
INTO THE CONDUCT OF THE HONOURABLE MICHEL GIROUARD

REPORT TO THE MINISTER OF JUSTICE

20 February 2018

I. INTRODUCTION

[1] The integrity of Canada's judges is fundamental to the administration of justice and to public confidence in the judiciary. Judges must strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.

[2] The Inquiry Committee (the "Committee") established by the Canadian Judicial Council ("Council") found that Justice Michel Girouard (the "Judge") attempted to mislead a previous Inquiry Committee of Council (the "First Committee") by concealing the truth. It found that this misconduct undermines the integrity of the justice system and strikes at the heart of public confidence in the judiciary.

[3] For the reasons that follow, we accept and adopt the Committee's findings of misconduct and its conclusion that the Judge has become incapacitated or disabled from the due execution of his office as a result of his misconduct. We recommend the Judge be removed from office.

[4] We have had the benefit of reading the dissenting views expressed by three members who deliberated in this matter and we address the issues they raise.

II. BACKGROUND

[5] The Judge was appointed to the Quebec Superior Court, Quebec City Division, on 30 September 2010.

[6] The conduct in question relates to the Judge's testimony before the First Committee, which inquired into an allegation, among others, that the Judge had purchased an "illicit substance" on 17 September 2010, two weeks before his appointment to the bench.

[7] While the First Committee dismissed this allegation, it rejected the Judge's explanation of the transaction. The majority found that the Judge's testimony contained "contradictions, discrepancies and improbabilities," raising "deep and serious concerns" about his credibility and integrity. The majority found that this conduct was inconsistent with his office and compromised the integrity of the judicial system. They recommended that the Judge be removed from office.

[8] The third member of the First Committee, who dissented, expressed the opinion that the committee was not entitled to base its recommendation for removal on misconduct that had not been part of the allegations against the Judge.

[9] In its report to the Minister, Council did not consider the majority's recommendation that the Judge be removed from office because the Judge was not given notice that the majority's concerns about his credibility and integrity had become a distinct allegation of misconduct.

[10] In a joint letter to Council, received 14 June 2016, the Ministers of Justice and Attorneys General for Canada and Quebec expressed concern that the First Committee's findings regarding the Judge's credibility and integrity had neither been addressed nor resolved. The Ministers stated that this could undermine public confidence in the judicial discipline process, the judiciary and the justice system as a whole. They requested, pursuant to s. 63(1) of the *Judges Act*, R.S.C. 1985, c. J-1, that an inquiry be held.

[11] The Committee was therefore constituted by Council. An allegation (the “First Allegation”) concerning the Judge’s conduct before the First Committee was drafted and notice thereof was given to the Judge. Three other allegations were later added by the Committee. A copy of the allegations, as amended (the “Allegations”), is attached to this report as Schedule “A”.

[12] The Committee held eight days of hearings in Quebec City in May, 2017, received briefs from counsel and heard closing submissions on 10 July 2017, in Montreal.

[13] The Committee issued its report dated 6 November 2017 (the “Report”). It found that the facts underlying the First Allegation had been established on a balance of probabilities, by clear and convincing evidence. It also found that, as a result, the Judge had become incapacitated or disabled from the due execution of his office, within the meaning of ss. 65(2)(b) and (c) of the *Judges Act*.

[14] Applying the *Marshall* test,¹ the Committee found that the misconduct was “so manifestly and totally destructive of the concept of the impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office.” It agreed with the opinion of the majority of the First Committee that the “compromising of a judge’s integrity through the giving [of] false and deceitful evidence before a Committee of his peers undermines the integrity of the judicial system itself and strikes at the heart of the public’s confidence in the judiciary.”

[15] The Committee unanimously recommended that the Judge be removed from office due to its findings of misconduct in relation to the First Allegation.

[16] The Committee found that the Third and Fourth Allegations had also been established. It recommended that the Judge be removed from office as a result of those findings. It found that the Second Allegation had not been established.

¹ [*Report to the Canadian Judicial Council of the Inquiry Committee established pursuant to subsection 63\(1\) of the Judges Act at the Request of the Attorney-General of Nova Scotia*](#), (August 1990) at p. 27.

[17] The Report of the Committee was presented to Council, composed of 23 members who deliberated in this matter.²

² The chairperson of the meeting of Council has no vote in such deliberations, except in the event of a tie.

III. COUNCIL DELIBERATIONS

[18] The Canadian Judicial Council Inquiries and Investigations Bylaws, 2015 (the “By-laws”) provide as follows at paragraph 11(1):

Consideration of Inquiry Committee Report by Council

Consideration of report and written submissions

11 (1) The Council must consider the Inquiry Committee’s report and any written submission made by the judge.

[19] Subsection 65(2) of the *Act* provides that where, in the opinion of Council, the judge has become incapacitated or disabled from the due execution of the office of judge by reason of any of the circumstances noted therein, it may make a recommendation to the Minister about whether or not the judge should be removed from office.

[20] In keeping with these statutory obligations, we considered the Report and the Judge’s submissions, publicly available in both official languages.

[21] In considering the Report, we gave appropriate weight to the Committee’s findings, but considered its recommendations afresh, applying our independent judgement to the facts.³

[22] Before turning to the Committee’s conclusions, we address several procedural issues raised by the Judge’s submissions.

³³ For an overview of the nature of the process before Council at this stage, see: *Majority Reasons of the Canadian Judicial Council in the Matter of an Inquiry into the Conduct of the Honourable P. Theodore Matlow, 3 December 2008*, paragraphs 51 to 57.

A. Procedural Issues

[23] The Judge raised a number of jurisdictional and procedural complaints, including some issues addressed by the Committee in three days of submissions in February, 2017. Those were dismissed in a Ruling of the Committee, rendered orally during the hearing on 22 February 2017 and contained in written reasons released on or about 5 April 2017 (the “Preliminary Ruling”). We adopt that disposition, for the reasons given, with respect to the relevant submissions made to us. Our remaining observations address the Judge’s other concerns, to the extent they are germane to our disposition of the First Allegation.

(1) **The Burden of Proof**

[24] The Judge asserts that the Committee applied a variable standard of proof. We disagree.

[25] The standard of proof applicable to this matter was the civil standard: on a balance of probabilities.⁴

[26] At paragraphs 48 to 51, inclusive of the Report, under the heading “The Applicable Standard of Proof,” the Committee identified the balance of probabilities standard as applicable to its consideration of the Allegations. It noted that to satisfy this standard the evidence must be clear and convincing. It expressly applied that standard in making its findings with respect to the First Allegation, at para. 177 of its reasons.

[27] The Committee’s mandate required that it consider the findings of the First Committee which lead to the First Allegation. It made it clear in the Report that it would conduct its own assessment of the evidence and would only accept the findings of the First Committee if they were “error free,” reasonable and withstood its independent assessment of the evidence it considered reliable.

⁴ [F.H. v. McDougall, 2008 SCC 53](#)

[28] There was no error in the Committee's application of the burden of proof.

(2) The Eligibility of Members of the Committee

[29] The Judge asserts that the composition of the Committee was flawed because two members of the Committee had been members of the Review Panel which had considered the complaint that led to the constitution of the First Committee. He claims that this was in violation of Council's inquiries and investigations by-laws.⁵

[30] This issue was raised before the Committee and was a subject of the Preliminary Ruling. The By-Law provides that a person may not sit on an inquiry committee if they participated in the deliberations of the review panel which deliberated on the necessity of constituting that inquiry committee.

[31] As noted in the Preliminary Ruling, the by-laws do not prohibit a member of a review panel from sitting on an inquiry committee relating to matters arising subsequently that are the subject of a fresh and separate allegation of misconduct.

[32] We agree with the Preliminary Ruling.

(3) The Ministers's Joint Request

[33] The Judge attacks the constitution of the Committee at the request of the Ministers of Justice. He alleges that it by-passed the legislative process. This challenge was also made before the Committee. Section 63(1) of the *Judges Act* is a complete answer. It provides that:

The Council shall, at the request of the Minister or the attorney general of a province, commence an inquiry as to whether a judge of a superior

⁵ [Canadian Judicial Council Inquiries and Investigations By-laws, 2015](#), SOR/2015-203, s. 3(4); see also [SOR/2002-371](#), which was in effect at the time of the inquiry conducted by the First Committee.

court should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

[34] The Ministers were statutorily entitled to request an inquiry and Council responded to their request. There is no requirement under the *Judges Act* or Council's *By-laws* for prior review by the Executive Director, the Judicial Conduct Committee or a Review Panel.

(4) The Presence of a Lawyer on the First Committee

[35] The Judge objects that one member of the First Committee (who formed part of the majority) was a lawyer.

[36] We dismiss this objection. The presence of a lawyer on the First Committee was statutorily authorized and did not impair the principle of judicial independence. Nor did the presence of two lawyers on the Committee, since the majority of the five-member Committee were judges.

[37] Section 63(3) of the *Judges Act* provides for the participation of members on the bar on an Inquiry Committee:

The Council may, for the purpose of conducting an inquiry or investigation under this section, designate one or more of its members who, together with such members, if any, of the bar of a province, having at least ten years standing, as may be designated by the Minister, shall constitute an Inquiry Committee.

[38] As noted in *Therrien (Re)*, 2001 SCC 35, the presence of non-judges at that stage of the process does not impair the principle of judicial independence.

(5) Role of Counsel

[39] The Judge objects that Counsel to the Committee was asked by the Committee to advance arguments in support of the Allegations.

[40] The Committee addressed the Judge's complaints about the role of Counsel. The issue is also addressed by the authorities: *Therrien (Re)*, above; *Ruffo v. Conseil de la Magistrature*, [1995] 4 S.C.R. 267. The Inquiry Committee's process is inquisitorial, not prosecutorial. Counsel is not a prosecutor. Just as counsel is entitled to examine and cross-examine witnesses in order to assist the Committee in its search for the truth, so are they entitled to marshal the evidence and the arguments and to answer those advanced by the Judge, to assist the Committee in that regard.

[41] We see no error in the Committee's request to counsel.

(6) The Use of Lawyers

[42] The Judge objects to the Committee's use of lawyers as "Advisory Counsel and Legal Drafters." He submits, in particular, that this was a breach of the rule that "he who decides must hear."⁶

[43] The Judge points to a reference in the Report, which states:

We have carefully considered both the documentary and the testimonial evidence. That process involved the review, either personally or through our advisory counsel and legal drafters, of 4,000 pages of stenographic notes reporting the 14 days of hearing before the First Committee.

[44] Section 4 of Council's *By-laws* provides that: "The Inquiry Committee may engage legal counsel and other persons to provide advice and to assist in the conduct of the inquiry." Sections 3.2 and 3.3 of Council's *Handbook of Practice and Procedure* provide:

3.2 The Committee may engage one or more legal counsel to assist in marshalling the evidence; interview persons believed to have information or evidence bearing on the subject-matter of the Inquiry; assist in the Committee's deliberations; conduct legal research; provide advice to Committee members on matters of procedure and on any measures necessary to ensure the impartiality and fairness of the hearing.

⁶ See David Phillip Jones and Anne S. de Villars, *Principles of Administrative Law*, 2d ed. Carswell, Toronto, 1994 at page. 228.

3.3 Legal counsel and other persons engaged by the Committee have no authority independent of the Committee and are bound at all times by the authority and rulings of the Committee.

[45] The Committee heard all the evidence. Staff lawyers reviewing and summarizing that evidence is not objectionable provided the ultimate decision-making rested with the Committee. There is no suggestion and no evidence that the Committee delegated its decision-making responsibilities to non-members. We therefore reject this submission.

[46] We now turn to the Committee's conclusions.

B. The Committee's Conclusions

[47] For the reasons set out below, the Committee's conclusions with respect to the First Allegation, which we endorse, are sufficient to warrant a recommendation that the Judge be removed from office. We find it unnecessary to examine the Committee's findings concerning the Third and Fourth Allegations.

[48] The evidence, analysis, findings and conclusions of the Committee with respect to the First Allegation are set out in paragraphs 70 to 179, inclusive, of the Report.

[49] The critical evidence underlying the First Allegation was the Judge's testimony concerning a video recording of a meeting on 17 September 2010 between the Judge and his then client, a drug trafficker. The video had been seized by police in the course of a search of the client's premises. The client was subsequently convicted of drug trafficking and gangsterism and sentenced to nine years' imprisonment. The video recording had no sound.

[50] The content of the video recording is described in the Report at paragraphs 76 to 85.

[51] In brief summary, and to put the video recording in context, the events in question took place in the client's office in his video rental store. There was evidence that the client used his office to traffic drugs. About one hour before meeting with the Judge, the

client completed a drug transaction, in his office, with a major distributor of cocaine in the Abitibi Region.

[52] About thirty minutes before the Judge arrived in his office, the client, who was sitting at his desk, took a “Post-it” note from a pad on his desk, took a small object from the right pocket of his pants, rolled the object three or four times in the “Post-it” note, folded the two corners, and then placed the small package in his right pants pocket.

[53] Thirty minutes or so later, the Judge entered the client’s office. Immediately, and before sitting down, he tucked some bank notes under the corner of a pad on the client’s desk. The client withdrew a small object from his right pants pocket and slid the object across the desk to the Judge, who was by this time sitting across from the client, at the desk. The Judge took the object in his hand and immediately placed it in his pocket, without opening it. The client took the money that had been placed under the pad. The entire transaction took about 17 seconds.

[54] Although the video recording had no sound, the transaction can fairly be described as “surreptitious.” Indeed, the Judge himself acknowledged that it looked suspicious.

[55] It was the Judge’s inconsistent, illogical and evolving attempts to explain this transaction that led the majority of the First Committee to express “deep and serious concerns” about his credibility and to find that he deliberately attempted to mislead the committee by concealing the truth.

[56] The Judge testified before the Committee over the course of three days. The Committee examined the concerns about the Judge’s evidence identified by the First Committee. In each case, the Committee rejected the Judge’s evidence as inconsistent, contradictory, implausible or in conflict with other evidence.

[57] The Committee heard and observed the Judge’s evidence, both in chief and under cross-examination. It found that his explanations were not credible. His explanations were objectively implausible, a conclusion that was fortified by his testimonial

demeanour. The Committee found the Judge to be an “uncooperative and obstinate witness, who was often disinclined to answer promptly and fully questions put to him.”

[58] Nowhere in the Judge’s 116-page submission to Council does he challenge the Committee’s description of what took place during his meeting with his client on 17 September 2010.

[59] We find it telling, and compelling, that nowhere in the Judge’s submission or in the Report is there a simple, rational, coherent, all-encompassing or satisfying explanation of what takes place in the 17 second video. After being afforded natural justice – notice of the Allegations, the assistance of counsel and an opportunity to be heard by an impartial tribunal – the Judge was unable to give any credible explanation of his conduct which was consistent with and justified his testimony before the First Committee. We conclude he is simply unwilling to provide a truthful explanation. He failed to do so before the Committee and he failed to do so in his written submissions to Council.

[60] For the reasons given by the Committee, we agree that the First Allegation has been established.

C. Procedural Fairness Issue

[61] We wish to respectfully address the concerns raised by our dissenting colleagues.

[62] We are of the view that the Judge was afforded all the benefits of procedural fairness, in keeping with the seriousness of the allegations against him, and that his language rights were fully respected, in all material respects.

[63] The Judge was entitled to make representations and introduce evidence, in the language of his choice, to the Committee. All members of the Committee were proficient in both official languages.

[64] The Committee presented Council with its Report, in both official languages, summarizing its proceedings, setting out its findings, and providing comprehensive

reasons for its recommendations. The Report, 80 pages in length (85 pages in French), set out in detail the entire case and afforded the Judge an unqualified opportunity to respond.

[65] The Judge was entitled to provide Council with written representations, in the language of his choice, about the Report. He chose to make those in French. An English translation was prepared under the authority of Council. Before Council members began their deliberations, the translation was provided to counsel to the judge and immediately thereafter made public. No objection was taken to the translation.

[66] The Judge's representations to us are extensive: 114 pages (116 pages in English) containing numerous references to the proceedings of the Inquiry Committee, to other proceedings and to case law. We have no doubt that the Judge, represented by two senior members of the Quebec Bar, raised every issue that he thought important. Where the transcript of proceedings of the Committee or of the First Committee is quoted, those passages were available to all members in both official languages.

[67] When considering the report of an Inquiry Committee, Council applies its independent judgement to the facts. This does not mean conducting a *de novo* hearing into the matter. Council does not hear witnesses and does not consider new evidence. A proper review does not require members to read each and every page of the transcript of the previous proceedings (in this case, over 4,000 pages in respect of the proceeding before the First Committee alone). If that were required in any similar proceeding, every Court of Appeal in Canada would come to a standstill.

[68] As noted above, Council's obligation is to review the Report of the Committee and the Judge's written submissions. In the event that there are any issues that require clarification and cannot be addressed by Council, the By-laws provide that:

Clarification

12 If the Council is of the opinion that the Inquiry Committee's report requires a clarification or that a supplementary inquiry or investigation is necessary, it may refer all or part of the matter back to the Inquiry Committee with directions.

[69] The dissenting members express the view that the Judge "was entitled to the informed views of all the members of Council tasked with deliberating on his future."

[70] We agree with that statement but draw a different conclusion than that of the dissenting members. We are of the view that the Judge did in fact benefit from the informed, independent and thoughtful views of all members who deliberated in this matter and recommend that he be removed from office.

[71] The dissenting members also express the view that "all members were entitled to consider the same information." In our respectful view, all members had available in both official languages the same relevant aspects of the proceedings before the Committee: either through the detailed summaries of the evidence contained in the Report and the Judge's written representations or through the excerpts from the transcript quoted in the Judge's submissions.

[72] As the members who recommend the removal of the Judge, we are satisfied that we had access to all materials necessary to permit us to deliberate in this matter in a fully informed, independent and thoughtful manner.

IV. CONCLUSION

[73] Having considered the Committee's Report and the Judge's submissions, as well as all information we deemed relevant to the issues (including the soundless video recording of 17 September 2010), we find that the Judge has been guilty of misconduct. The Judge's integrity has been fatally compromised, public confidence in the judiciary has been undermined and the Judge has become incapacitated or disabled from the due execution of his office of judge. For that reason, we recommend that the Judge be removed from office.

CORAM:

The Honourable J. Michael MacDonald (Chair)
The Honourable Catherine A. Fraser
The Honourable Heather J. Smith
The Honourable Joseph P. Kennedy
The Honourable David D. Smith
The Honourable Ronald Veale
The Honourable Deborah K. Smith
The Honourable Robert J. Bauman
The Honourable John D. Rooke
The Honourable Lawrence I. O'Neil
The Honourable Nicole Duval Hesler
The Honourable Austin F. Cullen
The Honourable Martel D. Popescul
The Honourable Shane I. Perlmutter
The Honourable Alexandra Hoy
The Honourable Frank N. Marrocco
The Honourable Robert G. Richards
The Honourable Christopher E. Hinkson
The Honourable George R. Strathy
The Honourable Raymond P. Whalen
The Honourable B. Richard Bell
The Honourable Mary T. Moreau
The Honourable Tracey L. Clements

*The following members expressed their dissent with respect to this Report:
the Hon. David Smith, the Hon. Lawrence O'Neil, the Hon. Richard Bell.*

APPENDIX

AMENDED NOTICE OF ALLEGATIONS - 17 MAY 2017

Judge Girouard is the subject of these following allegations:

(1) Judge Girouard has become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct during the inquiry conducted by the First Committee, which misconduct is more fully set out in the findings of the majority reproduced at paragraphs 223 to 242 of its Report:

(a) Judge Girouard failed to cooperate with transparency and forthrightness in the First Committee's inquiry;

(b) Judge Girouard failed to testify with transparency and integrity during the First Committee's inquiry;

(c) Judge Girouard attempted to mislead the First Committee by concealing the truth.

(2) Judge Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason his misconduct and his failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the Judges Act), by falsely stating before the First Committee that:

(a) he never used drugs;

(b) he never obtained drugs.

(3) Judge Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the Judges Act), by falsely stating before this Inquiry Committee that he never used cocaine when he was a lawyer.

(4) Judge Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of his misconduct and failure in the due execution of the office of judge (ss. 65(2)(b) and (c) of the Judges Act), by falsely stating before this Inquiry Committee that he never became acquainted with and was never provided a copy of Volume 3 of the Doray Report before May 8, 2017, his testimony on point being:

"A. That is... that is... I was never shown Volume 3, even in the first inquiry, never; I saw it for the first time on Monday, May 8, this week; O.K.? That is...

Q. But...

A. ...the truth!"

Signed 17 May 2017