



Inquiry Committee
concerning
the Hon. F.J.C. Newbould

Comité d'enquête
au sujet de
l'hon. F.J.C. Newbould

**Report of the Inquiry Committee
to the Canadian Judicial
Council**

**Rapport du Comité d'enquête
au Conseil canadien de la
magistrature**

1 June 2017

Le 1 juin 2017

CANADIAN JUDICIAL COUNCIL

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 63 OF THE *JUDGES ACT* REGARDING THE HONOURABLE F.J.C. NEWBOULD,

Report of the Inquiry Committee to the Canadian Judicial Council

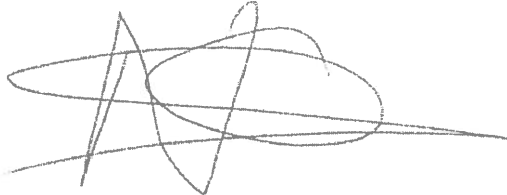
June 1, 2017

1. On February 8, 2017, a Review Panel of the Canadian Judicial Council concluded that an Inquiry Committee should be appointed to inquire into a complaint filed by the Indigenous Bar Association against the Honourable Mr. Justice Frank Newbould [“Justice Newbould”] of the Superior Court of Ontario. Justice Newbould formally apologized for his actions and two days later, on February 10, 2017, he gave notice to the Minister of Justice and the Attorney General of Canada of his decision to retire as a judge of the Superior Court, effective June 1, 2017.
2. On February 15, 2017, counsel for Justice Newbould applied for judicial review of the Review Panel's decision seeking, amongst other things, an order prohibiting the Canadian Judicial Council from taking further steps concerning the inquiry into Justice Newbould's conduct. On March 29, 2017, the Federal Court of Canada dismissed the application.
3. On March 31, 2017, the Canadian Judicial Council announced the establishment of our Inquiry Committee to review Justice Newbould's alleged conduct.
4. It was evident from the outset to the members of this Committee that it would likely be impossible to complete the inquiry process by the date of Justice Newbould's announced retirement. Nevertheless, the Committee attempted to move the matter forward as diligently as was possible in the circumstances, retaining counsel, reviewing the materials, considering the preliminary legal issues (disclosure and jurisdictional issues), preparing a Notice of Allegations and communicating with counsel for Justice Newbould. On May 8, 2017, the Committee issued a Notice of Allegations pursuant to s. 64 of the *Judges Act* and s. 5(2) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*.

5. The Committee was advised by counsel for Justice Newbould that he had numerous pre-existing obligations to clients during the months of April and May, that he was occupied in a long trial, and that he had taken appeal proceedings before the Federal Court of Appeal seeking a stay of our process on the basis that the Review Panel decision, which resulted in our appointment, was illegal. That appeal was heard on May 16, 2017 and dismissed on May 19, 2017.
6. Our Committee considered scheduling dates in June 2017 for a hearing on the question whether the inquiry could, or should, continue after Justice Newbould's retirement. However, we note that the Canadian Judicial Council's past practice has been to treat a judge's retirement or resignation as causing an Inquiry Committee's jurisdiction to lapse. Moreover, to date all the communications from interested parties in this inquiry have indicated that they understand that these proceedings will not continue after Justice Newbould's retirement, whether because of a lack of jurisdiction or because the matter will be rendered moot.
7. The Inquiry Committee has confirmed that as of June 1, 2017, the Honourable Frank Newbould has retired and is no longer a judge. Thus, whether the issue is framed as one of jurisdiction or one of mootness, this Inquiry Committee finds that there would be no public interest benefit in proceeding with this inquiry.
8. The only possible consequence of a finding of misconduct and a recommendation to the Canadian Judicial Council during inquiry proceedings under the *Judges Act* is that the judge in question could ultimately be removed from the bench. In the present circumstances, even if the Committee were to conclude that such a recommendation would be justified (on which we make no pronouncement), given Justice Newbould's retirement, any possible recommendation of this Committee would simply be without any consequence.
9. The members of this Inquiry Committee thus consider that it is not in the public interest to proceed any further with this inquiry. We therefore recommend that these proceedings be permanently stayed.

June 1, 2017

Signed:

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The Honourable Richard J. Chartier, Chief Justice of Manitoba (Chair)

A handwritten signature in black ink, appearing as 'M. Popescul' with a small 'C.J.' to the right, all on a horizontal line.

The Honourable Martel D. Popescul, Chief Justice of the Court of Queen’s Bench for Saskatchewan

A handwritten signature in black ink, featuring a large, stylized initial 'C' followed by several loops and a long horizontal stroke.

Ms. Clarine Ostrove