

**INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL
REGARDING THE CONDUCT OF
THE HONOURABLE MICHEL GIROUARD, S.C.J.**

Members of the Inquiry Committee:

The Honourable J. Ernest Drapeau (Chairperson), Chief Justice of New Brunswick

The Honourable Glenn D. Joyal, Chief Justice of the Court of Queen's Bench of Manitoba

The Honourable Marianne Rivoalen, Associate Chief Justice (Family Division) of the Court of Queen's Bench of Manitoba

Bâtonnier M^c Bernard Synnott, Ad. E.

M^e Paule Veilleux

Counsel of record

Counsel for Justice Girouard:

Bâtonnier M^c Louis Masson, Ad. E., Jolicoeur Lacasse

Bâtonnier M^c Gérald R. Tremblay, Ad. E., McCarthy Tétrault

M^e Bénédicte Dupuis, Jolicoeur Lacasse

Counsel for the Inquiry Committee:

M^c Marc-André Gravel, Gravel Bernier Vaillancourt

M^e Emmanuelle Rolland, Audren Rolland

M^e Élie Tremblay, Gravel Bernier Vaillancourt

Directions to counsel

[1] The Inquiry Committee was constituted following a joint request from the Minister of Justice and Attorney General of Canada and the Minister of Justice and Attorney General of Quebec pursuant to subsection 63(3) of the *Judges Act*, R.S.C., 1985, c. J-1.

[2] The inquiry relates to the following allegations:

First allegation

Justice Girouard has become incapacitated or disabled from the due execution of the office of judge by reason of having been guilty of misconduct and having failed in the due execution of the office of judge (paragraphs 65(2)(b) and (c) of the *Judges Act*) during the inquiry held by the First Committee, particulars of which are as follows:

- a) Justice Girouard failed to cooperate with transparency and forthrightness in the First Committee's inquiry;
- b) Justice Girouard failed to testify with transparency and integrity during the First Committee's inquiry;
- c) Justice Girouard attempted to mislead the First Committee by concealing the truth.

Second allegation:

Justice Girouard has also become incapacitated or disabled from the due execution of the office of judge by reason of having been guilty of misconduct and having failed in the due execution of the office of judge, by falsely stating before the First Committee that:

- a) he never used drugs;
- b) he never obtained drugs.

[3] (*Note from translator: there is no paragraph 3 in the original French version*).

[4] The Committee is obviously not a disciplinary tribunal, its mandate being to conduct the aforementioned inquiry and submit a report to the Council setting out its findings and its conclusions about whether to recommend the removal of Justice Girouard from office. That being said, the Committee is master of proceedings related to its activities, subject to its duty to carry them out in accordance with the principle of procedural fairness.

[5] In 2015, the Canadian Judicial Council adopted the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203. Section 4 of the *By-laws* provides that the Committee "may engage legal counsel and other persons to provide advice and to assist in the conduct of the inquiry." The Council also adopted the *Handbook of Practice and*

Procedure of CJC Inquiry Committees (September 17, 2015). Although the *Handbook* does not have the effect of compelling inquiry committees to comply with its provisions, it constitutes a very helpful guide in carrying out their duties.

[6] With regard to engaging legal counsel, sections 3.2 and 3.3 of the *Handbook* provide as follows:

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.

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.

[7] It follows from the above that the Committee may determine the role of counsel under its authority, subject to respecting the principle of procedural fairness.

[8] As indicated in the heading, the Committee engaged Me Marc-André Gravel (and one of his associates) and Me Emmanuelle Rolland as counsel, in accordance with section 4 of the *By-laws*.

[9] The Committee has not yet held a hearing on the merits of the matter. Until now, the Committee's work has focused on preliminary issues, including preparing the Notice of Allegations, which reflects the content of the Ministerial request (the first allegation) and of a complaint subsequently brought to its attention (the second allegation), as well as the merits of various motions opposing the hearing on the merits of the matter. After dealing with preliminary motions submitted by Justice Girouard, the Committee decided that the hearing on the merits of the matter will take place during the week of May 8 and will continue, if necessary, the following week.

[10] Given the principle of procedural fairness and the imminence of the hearing on the merits of the matter, the Committee considers it appropriate to provide the following directions:

a) At the hearing on the merits of the matter, Me Gravel will introduce the evidence relevant to the aforementioned allegations, conduct the direct examination, cross-examination and re-examination of witnesses, and make any submissions that he considers appropriate regarding the issues raised, without being directly involved in drafting the report that the Committee is required to prepare after its inquiry. Me Gravel will carry out his mandate within the following parameters: (1) the hearing on the merits of the matter is part of an inquiry dedicated to the search for truth and conducted in accordance with procedural fairness; (2) it is important, at all times, to maintain public confidence in the administration of justice; and (3) subject to these directions, Me Gravel remains bound by the authority and rulings of the Committee.

b) Except for communications regarding an application for judicial review, until and during the hearing on the merits of the matter, there will be no *ex parte* communication between counsel for the Committee, counsel for Justice Girouard and the Committee. Any communication intended for the Committee from counsel for Justice Girouard must be shared beforehand with Me Gravel, and *vice versa* with regard to any communication from Me Gravel's firm.

c) Me Rolland will provide legal services required by the Committee, including developing and drafting the reasons for any decision that the Committee may need to issue, as well as the final report to Council. Me Rolland will also act as clerk of the Committee. Me Rolland may communicate collectively with counsel for the Committee and counsel for Justice Girouard, according to the Committee's directions.

d) The Inquiry Committee reserves the right to amend these directions and issue additional directions, according to what it considers appropriate for the orderly conduct of its activities.

Signed:

March 20, 2017

March 17, 2017

The Honourable J. Ernest Drapeau

The Honourable Glenn D. Joyal

March 16, 2017

March 17, 2017

The Honourable Marianne Rivoalen

Me Bernard Synnott, Ad.E.

March 17, 2017

Me Paule Veilleux