Federal Court Cour fédérale

Date: 20170504

Dockets: T-414-17 to T-419-17 and
T-422-17 to T-435-17

Citation: 2017 FC 449

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 4, 2017

PRESENT: The Honourable Mr. Justice Noël

BETWEEN:

THE HONOURABLE MICHEL GIROUARD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

INQUIRY COMMITTEE CONCERNING
THE HONOURABLE MICHEL GIROUARD

Mis-en-cause

CANADIAN JUDICIAL COUNCIL

Mis-en-cause

THE HONOURABLE STÉPHANIE VALLÉE

Mis-en-cause

JUDGMENT AND REASONS

I. PRELIMINARY REMARKS

[1] Given the Chief Justice of the Federal Court's involvement on the first Inquiry Committee, I assume, as senior justice on the Court, his responsibilities with regard to how to proceed in these cases and to the summonses to issue under the circumstances. As such, I am acting as case manager. The second Inquiry Committee's decision, which led to the filing of 20 applications for judicial review, is dated April 5, 2017. This interlocutory application for a stay of the inquiry process, which was to have begun on May 8, was not filed until April 26, which left little time to complete the interlocutory application. On April 27, I presided over a telephone conference hearing with counsel for the applicant and the respondent. At this hearing I said that given the short time frame and the problems finding another justice (Mr. Justice Paul Rouleau of the Ontario Court of Appeal, who, as deputy judge, would be responsible for looking further into any substantive issues raised in the applications for judicial review), I was going to organize my schedule to hear this case on May 2, 2017 in order to meet the deadline of May 8 (the scheduled hearing start date). After the April 27 telephone conference hearing, I signed an order stating a deadline for the Attorney General of Canada to file his reply motion record, setting the hearing date, and authorizing electronic service of proceedings.

II. OVERVIEW

[2] Mr. Justice Girouard, the applicant, through an interlocutory application, is seeking a stay of his inquiry process and to reserve his remedies to amend his applications for judicial review depending on the result of this interlocutory application.

[3] The 20 applications for judicial review that underlie the interlocutory application for a stay of the inquiry currently before the Court concern many decisions rendered by the Canadian Judicial Council Inquiry Committee at a hearing on February 22, 2017. Reasons follow. The reasons were rendered on April 5, 2017.

[4] I find as follows: Firstly, the 20 applications for judicial review of the second Inquiry Committee's preliminary decisions are premature. Secondly, the applicant does not meet the test of irreparable harm or of the balance of inconvenience as stated in *RJR-MacDonald Inc. v. Canada (Attorney General)* [*RJR-MacDonald*], [1994] 1 SCR 311. My findings will be discussed further in these reasons. Therefore, I cannot grant the application for a stay of the inquiry process regarding the applicant and I deny the request to amend the applications for judicial review. Consequently, I grant a stay of the proceedings in the 20 application for judicial review files.

III. FACTS

[5] The following facts underlie the application for a stay, but to provide more information, the respondent presents a clear history of the proceedings and the investigative mechanism into the judicial conduct in paragraphs 5 to 41 of his "Written representations."

[6] Girouard J. has been a Superior Court of Quebec judge since September 30, 2010. In the fall of 2012, the Directeur des poursuites criminelles et pénales told Mr. Chief Justice François Rolland of the Superior Court of Quebec that, through the "Écrevisse" inquiry, a drug trafficker who became an informant identified Girouard J. as being his client many years

ago. The Directeur also told the Chief Justice that the police were in possession of a video recording that seemed to show Girouard J. buying cocaine from an individual. On November 30, 2012, Rolland C.J. wrote to the Canadian Judicial Council to request a review of Girouard J.'s conduct. He has been suspended with pay since January 2013.

[7] In brief, after a complaint is reviewed, if it is deemed admissible, the complaint process is as follows: (1) An inquiry committee is put in charge of hearing the evidence, noting the facts, and drawing its own conclusions; (2) The Canadian Judicial Council reviews the inquiry committee's recommendations and gives an independent ruling on the facts therein; (3) The Canadian Judicial Council shares its recommendation to the Minister of Justice to remove or keep the judge.

[8] In November 2015, the first Inquiry Committee concluded that it could not find on a balance of probabilities that the allegation against Girouard J. had been proven. However, the majority of the Inquiry Committee determined that his testimony lacked frankness, honesty and integrity. The Inquiry Committee was of the opinion that Girouard J. placed himself in a situation of incompatibility with his judicial office and that his testimony compromised the integrity of the judicial system. Therefore, the majority of this first Inquiry Committee recommended that Girouard J. be removed from office.

[9] On April 20, 2016, after reviewing the Inquiry Committee's recommendations, the Canadian Judicial Council recommended to the Minister of Justice that Girouard J. not be relieved of his judicial duties.

[10] On June 14, 2016, the Minister of Justice Canada and the Attorney General of Quebec ordered the Canadian Judicial Council to initiate, under subsection 63(1) of the *Judges Act*, a new inquiry regarding the findings of the majority of the Inquiry Committee that led it to recommend Girouard J.'s removal from office. After receiving this letter, the Canadian Judicial Council formed a new Inquiry Committee. It prepared a notice of allegation that included the ministers' complaint and that of another person. At the end of February 2017, Girouard J. submitted to the Inquiry Committee preliminary objections and a request for a stay of proceedings. These objections and this request were denied on February 22, 2017 and the reasons were rendered on April 5, 2017. On March 21, 2017, the Inquiry Committee announced that the inquiry would begin on May 8, 2017 and would last that entire week (and the following week, if necessary).

[11] These are preliminary decisions in connection with the 20 applications for judicial review in this case. The applicant is therefore asking the Court to postpone the May 8, 2017 inquiry proceedings.

[12] It is my opinion that the respondent usefully categorized the preliminary objections and the Inquiry Committee's decisions regarding the applications for judicial review in paragraphs 42 to 61 of his "written representations":

i. [TRANSLATION] "Motion to strike the joint ministerial application to hold an inquiry and grounds based on the concept of estoppel.

ii. Grounds regarding the Inquiry Committee's jurisdiction beyond requesting a departmental investigation.

iii. Grounds regarding the nature and purpose of the Inquiry Committee's investigation.

iv. Grounds based on reasonable apprehension of structural or institutional bias that may offend judicial independence.

v. Grounds based on the constitutionality of the enabling regulatory provisions and the inquiry process.

vi. Requests for case management measures."

[13] In an April 27, 2017 order, I instructed Girouard J.'s counsel to file a motion to consolidate under Rule 105 of the *Federal Courts Rules* while taking this categorization into consideration. Before identifying the issues, let us take a brief look at the parties' submissions.

IV. SUMMARY OF SUBMISSIONS

A. *The applicant's submissions*

(1) Prematurity

[14] Not until oral submissions were heard did the applicant argue that the Canadian Judicial Council's decision not to accept the allegations against Girouard J. was a final judgment equivalent to that of a higher court. Therefore, the applicant contends that he followed the principle of non-interference to the letter as stated in *Canada (Border Services Agency) v. C.B. Powell Limited* [*Powell*], 2010 FCA 61, because the administrative proceedings were completed.

[15] Proper procedure dictates that the ministers should have applied for judicial review of this decision, not an “inquiry on an inquiry” digressing from the procedure established by the *Judges Act*, RSC 1985, c J-1, and the principles of inquiry into judicial conduct described in *Ruffo v. Conseil de la magistrature* [*Ruffo*], [1995] 4 SCR 267. This motion is also in a class of its own because the applicant is of the opinion that the ministers interfered in the disciplinary process.

[16] In addition, during oral submissions, the applicant argued that the decisions made by the Inquiry Committee in February 2017 are final and as a result, they differ from interlocutory decisions.

[17] The applicant also argues that because the composition of the panel was disputed, a decision on the panel’s ability to proceed must without question be made before the inquiry starts.

(2) The *RJR-MacDonald* test

[18] The applicant contends that his request for interlocutory relief in the context of a judicial review is consistent with the tests stated in *RJR-MacDonald* above.

[19] With regard to the first component (i.e. the existence of a serious issue on the merits), the applicant essentially argues that some questions of procedural fairness related to the process followed by the Canadian Judicial Council and by the justice ministers warrant the interlocutory intervention of the Court because some of his rights are affected. The applicant also argues that

these proceedings are a violation of broader principles such as substantive rights and judicial independence.

[20] With regard to the second component (i.e. Girouard J. suffering irreparable harm if the interlocutory application is denied), the applicant argues that the whole process he faces is a grave injustice. To that effect, he argues that the proceedings are an attack on his reputation and that some of his rights were infringed upon, as stated above

[21] Among other things, the applicant argues that there was bias when the second committee was appointed because two of its members sat on the committee reviewing the first complaint and recommended that an inquiry be conducted into it. He argues that this breach of procedural protections contravenes section 23 of the Quebec *Charter of Human Rights and Freedoms*.

[22] With regard to the third component (i.e. the balance of inconvenience favouring Girouard J.), the applicant suggests that delaying the inquiry is not an inconvenience to the respondent because the inquiry will continue at a later date. Therefore, that puts the balance in his favour because the consequences for him could be serious and irreparable. He also argues that it is in the public interest for the ministers to comply with the judicial discipline process set out by the legislation and with the underlying principles of judicial independence.

B. *The respondent's response*

(1) Prematurity

[23] On the issue of the prematurity of the applications, the respondent argues that the applications for judicial review are premature because the Girouard J. inquiry process continues and there are no exceptional circumstances allowing the Court to analyze the three components of the *RJR-MacDonald* test. The concerns raised by the applicant (i.e. that they were related to procedural fairness, bias and a constitutional issue) do not meet the strict exceptional circumstances test clearly established in *Powell* above.

[24] In response to the applicant's argument that the Canadian Judicial Council's decision is final, the respondent contends that *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)* [*Halifax*], 2012 SCC 10, at paragraph 36, establishes that even when a final decision concerns jurisdiction, the parties must await the result of the full administrative process. It is also stated that the Inquiry Committee's decisions are in large part interlocutory because they can be amended based on the evidence and on the progress of the inquiry. Because the inquiry is still in progress, the administrative process is not exhausted and the principle of non-interference in *Powell* applies. The respondent adds that the applicant's concerns are premature and hypothetical because neither the new Inquiry Committee nor subsequently the Canadian Judicial Council recommended his removal from office.

(2) The *RJR-MacDonald* test

[25] Although he explicitly disputes only the second and third component of the *RJR-MacDonald* test, the respondent still argues that neither the applications for a stay nor the underlying applications for judicial review present serious issues that are specific enough to allow the Court to conduct a proper preliminary review.

[26] With regard to the irreparable harm component, the respondent states that the onus is on the applicant to provide convincing proof of the harm that he would suffer. He argues that the applicant did not prove that he would suffer irreparable harm if the Inquiry Committee conducted its inquiry on the scheduled date.

[27] The respondent contends that, in some circumstances, an attack on someone's reputation may constitute valid harm, like in *Douglas v. Canada (Attorney General)* [*Douglas*], 2014 FC 1115, at paragraphs 25 and 28. However, this is not the case here because the disciplinary proceedings against Girouard J. have been in the public domain for several years. Instead, *Newbould v. Canada (Attorney General)* [*Newbould*], 2017 FC 326 (notice of appeal filed March 31, 2017) and *Camp v. Canada (Attorney General)* [*Camp*], 2017 FC 240, where allegations of attack on reputation were not upheld, are the decisions that are similar to the case currently before the Court.

[28] The respondent adds that it is in the public interest for judicial inquiry proceedings to be accessible so that Canadians know whether or not the judges that are the subject of an inquiry will continue to perform their duties. Lastly, the respondent suggests that non-interference by the Court in the inquiry process complies with the statutory framework governing inquiries that was put in place by Parliament.

V. ISSUES

[29] To decide this matter, the Court must answer two questions:

1. Are the applications for judicial review premature given that the proceedings are still in progress?

2. Have the three tests in *RJR-MacDonald* regarding interlocutory stays of proceedings been met?

VI. ANALYSIS

A. *Prematurity and the principle of non-interference*

[30] To begin with, it is important to give a brief reminder of the principles associated with an interlocutory proceeding when a legislative and regulatory framework sets out a judicial discipline process for inquiry committees formed by the Canadian Judicial Council. (See the *Judges Act*, RSC 1985, c J-1, the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015*, SOR/2015-203, the *Handbook of Practice and Procedure of CJC Inquiry Committees*.).

[31] *Groupe Archambault Inc. v. CMRRA/SODRAC Inc.* [*Groupe Archambault*], 2005 FCA 330 at paragraph 7, rendered by the Federal Court of Appeal, gives a reminder of an important principle concerning this:

> [7] If judicial review of an interlocutory judgement is rarely warranted, the granting of a stay of proceedings pending the outcome of the review should be even rarer. Before addressing the conditions for issuing an interlocutory stay of proceedings, the Court must be satisfied that its intervention is warranted under the circumstances. …

[32] In addition, the general rule, clearly stated by the Federal Court of Appeal in *Powell* at paragraph 30, is that parties can "proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted." This is the principle of non-intervention, also known under several other names, as explained by the Federal Court of Appeal at paragraph 31 of this decision:

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, <u>the rule against interlocutory judicial reviews</u> and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they <u>proceed to court. Put another way, absent exceptional</u> circumstances, courts should not interfere with ongoing administrative processes until after they are <u>completed, or until the available, effective remedies are exhausted.</u>
>
> [Emphasis added.].

[33] *Powell* confirms that the principle of non-interference is almost absolute. There can be no exceptions to the principle except where exceptional circumstances warrant. To grant exceptions, the Federal Court of Appeal describes the standard of reaching the threshold of "exceptional circumstances" and gives several examples of situations that do not reach this threshold in paragraph 33.

> [33] Courts across Canada have enforced the general principle of non-interference with ongoing administrative processes vigorously. This is shown by the narrowness of the "exceptional

> circumstances" exception. Suffice to say, the authorities show that very few circumstances qualify as "exceptional" and the threshold for exceptionality is high …. Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision-makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted …
>
> [Emphasis added.].

[34] The Court of Appeal also states in *Powell*, at paragraphs 39 to 46, that the existence of an issue related to the administrative tribunal's jurisdiction is not in and of itself an "exceptional circumstance" allowing an application for judicial review to be filed before the administrative process is completed.

[35] The Federal Court of Appeal, in *Groupe Archambault* at paragraph 10, confirms that the analysis of an application for a stay consists of two steps. Firstly, the Court must determine whether the issues are premature. Secondly, assuming that the first issue permits, the Court must review whether the conditions for granting an interlocutory stay (i.e. the existence of "exceptional circumstances" as stated in *RJR MacDonald*) are met.

[36] Quite recently, in *Camp*, at paragraph 13, following an overview of the relevant case law, Mr. Justice Robertson confirms that from that point forward, it is well established in law that "interlocutory decisions of administrative decision-makers are not subject to judicial review until a final decision issues."

[37] I agree with the principles established by the Federal Court of Appeal in *Groupe Archambault* and *Powell* and with Robertson J. in *Camp*.

[38] To depart from these principles, the applicant must prove exceptional circumstances. I thoroughly read the application, the memoranda, the affidavits, Girouard J.'s amended affidavit, and the evidence submitted, and I cannot find any facts therein that could be equivalent to exceptional circumstances. The minimum test for associating facts with exceptional circumstances is "high," as required by the case law.. In his submission, the applicant raises issues of procedural fairness, possibilities of bias on the part of some members of the Inquiry Committee because of their prior involvement, as well as constitutional issues regarding the legislation, the inquiry procedure, the lack of independent counsel, etc. …. According to the case law, these issues are not exceptional circumstances.

[39] It is well known that in his written representations, the applicant did not really deal with this aspect of prematurity or the principle of non-interference by the courts. Only during the submissions did he discuss these.

[40] The applicant submitted that the Canadian Judicial Council's decision was final and that as such, it differs from an interlocutory decision. The applicant also argued that the Inquiry Committee's decisions and reasons were final and non-interlocutory. Neither case warrants interference from the Court. Whether the decision is final or interlocutory, the principle of non-interference takes precedence. (See *Halifax* at paragraph 36.). It must also be added that Inquiry Committee decisions are not generally final. Several decisions in the 20 applications for judicial

review can be amended and adjusted depending on how the inquiry goes. In any case, at this stage no further comments are required. The applicant can, if appropriate, submit his representations on their merits at the hearing.

[41] I add here that I agree with the respondent's submissions that the applicant's concerns are hypothetical and intended to guard against a negative decision. Had the new Inquiry Committee or, subsequently, the Canadian Judicial Council ruled in favour of Girouard J. by not recommending his removal from office, the judicial reviews would no longer have a purpose and would be merely hypothetical. This factor leans in favour of a finding that the applicant's concerns are hypothetical. Mr. Justice Mosley, in *Douglas* at paragraph 39, says that in his view, an application for judicial review to prevent a negative decision on the merits is manifestly premature. I concur. As seen above, the applicant can, through a disciplinary process, use other remedies. As an example, I think of the possibility of submitting written representations to the Canadian Judicial Council, if appropriate. He can raise his concerns and the Canadian Judicial Council will rule on them. As this case shows, the Canadian Judicial Council does not automatically follow an inquiry committee's recommendations.

[42] As seen above, the case law referring to prematurity and the "exceptional circumstances" exception is clear: issues of bias, jurisdiction, procedural fairness, and constitutionality do not have to be placed in a vacuum; without decisive evidence to support them, they do not warrant judicial intervention. Paragraph 33 of *Powell* is clear.

> [33] Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process,

> as long as that process allows the issues to be raised and an effective remedy to be granted …

[43] Examples of applying the principle to specific circumstances stated by the respondent in paragraph 75 are also helpful. *Camp*, *Douglas* and *Newbould* confirm that the facts in this case do not establish the existence of exceptional circumstances that allow us to move on to the second stage of the analysis: determining whether or not a stay should be granted by applying the test in *RJR-MacDonald*.

[44] Therefore, it is my opinion that the application for a stay of the inquiry into the applicant's conduct should be denied at this stage. The interlocutory applications for judicial review submitted by the applicant are premature; the inquiry proceeding must run its full course. If necessary, any applications for judicial review may be decided upon.

[45] I must point out an important similar principle. Although a disciplinary process is long, it still follows an established legislative framework in accordance with the application of the rule of law. It is inappropriate to short-circuit a process for any reason (political or otherwise) before the person who is the subject of the disciplinary proceedings has completely exhausted his or her administrative and judicial remedies. Therefore, the principle of non-interference applies as much to the course of justice and to the person who is the subject of the proceedings as it does to the other parties taking part in any way in administering these proceedings. Therefore, this principle is violated if a person tries to speed up the outcome of a disciplinary proceeding before the last appeal limitation period has passed.

[46] In principle, the Court's analysis could end here but, out of concern for sufficiency and doing justice in the interests of justice and the parties, I will briefly analyze the three steps in the *RJR-MacDonald* test on the existence of exceptional circumstances allowing the Court to grant a stay.

B. *Test to apply according to* RJR MacDonald

[47] As a reminder, to determine whether a motion to stay should be granted, the Court must be of the opinion that the conjunctive test criteria stated in paragraph 48 of *RJR-MacDonald* are met. It must be satisfied that:

1. A preliminary assessment of the merits of the case establishes that there is a serious issue to rule upon;
2. The applicant would suffer irreparable harm if his application were denied;
3. The balance of inconvenience leans in favour of the applicant pending a decision on the merits.

[48] To succeed, the applicant must satisfy the Court that the facts submitted into evidence ensure that the three tests are met.

(1) Serious issue

[49] With regard to the first test (the existence of a serious issue to rule upon), the Supreme Court states in *RJR-MacDonald* at paragraph 55 that the threshold for establishing a serious issue is relatively low.

> [55] Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[50] Having read the alleged facts with regard to the reasons for the Inquiry Committee's decision rendered on February 22, 2017, I assert as given that the test of serious issue is fully met.

(2) Irreparable harm

[51] The second test in *RJR-MacDonald* requires evidence on a balance of probabilities that the applicant would suffer irreparable harm were his motion for a stay of the inquiry to be denied. The onus rests on him. In paragraph 59 of *RJR-MacDonald*, the Supreme Court states that irreparable harm is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[52] The Federal Court of Appeal adds the following in paragraphs 6 and 7 of *United States Steel Corp. v. Canada (Attorney General)*, 2010 FCA 200:

> [6] *RJR* described the central question regarding irreparable harm as "whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result

> of the interlocutory application": paragraph 63. Irreparable harm refers to the nature of the harm, not the magnitude. The nature of the harm must be such that it cannot be quantified in monetary terms or cannot be cured: paragraph 64.
>
> [7] The jurisprudence of this Court holds that the party seeking the stay must adduce clear and non-speculative evidence that irreparable harm will follow if the motion for a stay is denied. It is not sufficient to demonstrate that irreparable harm is "likely" to be suffered. This alleged irreparable harm may not be amply based on assertions: *Syntex Inc. v. Novopharm Ltd.* (1991), 36 C.P.R. (3d) 129, 126 N.R. 114 (F.C.A.), leave to appeal refused 39 C.P.R. (3d) v, 137 N.R. 391n; *Centre Ice Ltd. v. National Hockey League* (1994), 53 C.P.R. (3d)-34 (F.C.A.); *Canada (Attorney General) v. Canada (Information Commissioner)*, 2001 FCA 25 (CanLII).

[53] Mosley J. states clearly in *Douglas,* at paragraph 25, that irreparable harm "cannot be substantiated through speculation as to the potential outcome or effects of an administrative decision …" Madam Justice Mactavish, in *Canada (Attorney General) v. Amnesty International Canada*, 2009 FC 426 at paragraph 29, adds "The burden is on the party seeking the stay to adduce clear and non-speculative evidence that irreparable harm will follow if their motion is denied …"

[54] Paragraph 22 of Girouard J.'s affidavit is succinct with regard to the facts associated with harm because it limits itself to listing the questions of law related to the inquiry process, security of tenure of judges, bias in the inquiry process, and constitutional issues. There is also the fact that he previously went through an inquiry; then there is non-compliance with certain procedural fairness standards. This is not what the case law requires; legal arguments are not enough. However, though it is not well developed, I retain for discussion his concern for his reputation. I note that during submissions, one of the applicant's counsel said that there was still no harm

done to him, but there was a "serious risk." Again, I note that this is not enough. A risk implies the possibility of no harm being done to Girouard J.'s reputation.

[55] The reputation associated with each of us is paramount. However, as was the case with Girouard J., when someone is subject to an inquiry proceeding (i.e. a legal process), it is a given that the evidence against a person could tarnish his or her reputation. This was the case for Girouard J. during the first inquiry and the media coverage that it received. It is in the public domain (see paragraph 22(d) of Girouard J.'s amended affidavit).

[56] In their letter of complaint, the federal and Quebec justice ministers stated allegations against Girouard J. that were in the public domain.

[57] Girouard J. again feared for his reputation. However, he was entitled to the procedural fairness that the Inquiry Committee would enforce. He could present evidence, cross-examine witnesses, etc. In other words, he would have the opportunity to be heard and to respond to any evidence that could tarnish his reputation. It is even in his interest to have a public forum to clear up these past impressions, set the justice ministers' allegations straight, and correct any other evidence that could tarnish his reputation. An inquiry process is not a one-way street. Based on the facts, it also plays in favour of the person against whom the complaint is filed. In the end, exactly the opposite could happen: the judge's reputation could be rehabilitated, allowing him to assume his duties as a Superior Court of Quebec judge with honour and dignity—in his own interest and in the interest of justice.

[58] *Douglas* is of no use to Girouard J. Mosley J. granted the stay of an interlocutory decision that allowed the Inquiry Committee to see very personal photographs of Madam Justice Douglas. However, the effect of his decision focused on the admissibility of one exhibit; he did not order a stay of the inquiry. I point out that in *Douglas*, Mosley J. granted the interlocutory application because the applicant did not use any other remedies to avoid irreparable harm. I would also note that the result of the interlocutory application did not become hypothetical, regardless of the outcome of the decision on the merits.

[59] On the basis of hypothetical, undefined and imprecise harm, the applicant cannot claim to have suffered harm as defined in the case law. According to the evidence as submitted, the applicant asked the Court for a stay of the inquiry process because if it continued, his reputation would be tarnished. This is not the harm required to meet the second test. The harm must be real, not compensable and not recoverable through monetary means. The applicant requested a discontinuance of the inquiry because he wanted his 20 applications for judicial review to be heard before the inquiry took place. This does not constitute harm. It is an attempt to change the course of the proceedings to suit his preferences. With this in mind, as stated above, this goes against the prematurity arguments, where it is clearly stated that administrative proceedings must proceed to resolution before applications for judicial review, if required, can be heard and ruled upon.

[60] Therefore, irreparable harm is not proven. With regard to harm to his reputation, the evidence is again scanty. Legal arguments in support of harm to his reputation are not enough. It was not proven to me that he suffered or will suffer irreparable harm to his reputation.

Conversely, the inquiry process may rehabilitate his reputation because he will have the opportunity to question and refute the allegations and to cross-examine witnesses.

a) *Balance of inconvenience*

[61] The balance of inconvenience is analyzed essentially on a case-by-case basis, depending on the parties. In general, the applicant's personal interests are weighed against the respondent's (a legal system favouring proper administration of justice being in the public interest). *RJR-MacDonald* provides some direction:

> "The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits. In light of the relatively low threshold of the first test and the difficulties in applying the test of irreparable harm in Charter cases, many interlocutory proceedings will be determined at this stage."
>
> [Original emphasis].

[62] The applicant suggests that the issues of law that he raises, such as judicial independence, are enough to associate the public interest with his case and not with the respondent's.

[63] The respondent also argues that the public interest in this case favours non-interference by the courts in the decision-making process. He refers the Court to *Halifax*, at paragraph 36, which states that early judicial intervention "encourages an inefficient multiplicity of proceedings in tribunals and courts, and may compromise carefully crafted, comprehensive legislative regimes."

[64] In this case, the applicant requested a discontinuance of the inquiry which was to have started next Monday, May 8, 2017 so that 20 applications for judicial review could be heard in the months to come. Does this play in favour of what he claims is the public interest that he represents? This is more like a personal interest than a public interest.

[65] It is my opinion that the inquiry arising from the allegations stated in the notice of allegation must continue, as set out in the legislation and the regulations. I believe that this is the public interest to be favoured. The allegations associated with Girouard J. must undergo the test of truth or they can be disputed. The public interest requires that these allegations be verified at that time. I will add that it is in Girouard J.'s interest for the inquiry to be held without much delay. When the disciplinary process concludes, the parties will be able to use the legal system depending on the result. The allegations may not have been true. Therefore, Girouard J. may discontinue his applications for judicial review. If this is not possible, he may take legal action. Interpreting the public interest therefore does not deprive the applicant of any of his rights. However, he still has his rights and remedies, including those before the Inquiry Committee.

VII. CONCLUSION

[66] Consequently, the application to postpone the beginning of the Inquiry Committee hearings cannot be granted as much for prematurity reasons as for the fact that two of the three tests in *RJR-MacDonald* were not met.

JUDGMENT

FOR THESE REASONS, THE COURT:

1. Denies the motion to stay the Canadian Judicial Council Inquiry Committee's investigation;

2. Stays the proceedings with regard to the 20 applications for judicial review.

3. With costs.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-414-17 to T-419-17 and T-422-17 to T-435-17
STYLE OF CAUSE:	THE HONOURABLE MICHEL GIROUARD v. THE ATTORNEY GENERAL OF CANADA ET AL.
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REASONS FOR JUDGMENT BY:	NOËL J.
DATED:	MAY 4, 2017

APPEARANCES:

Louis Masson Bénédicte Dupuis Gérald R. Tremblay	FOR THE APPLICANT
Claude Joyal Sara Gauthier	FOR THE RESPONDENT
Robert DeBlois Pierre Gingras	FOR THE CANADIAN JUDICIAL COUNCIL
Marc-André Gravel Elie Tremblay	FOR THE INQUIRY COMMITTEE CONCERNING THE HONOURABLE MICHEL GIROUARD – MIS-EN-CAUSE
Jean-Yves Bernard	FOR THE HONOURABLE STÉPHANIE VALLÉE – MIS-EN-CAUSE

SOLICITORS OF RECORD:

Joli-Cœur Lacasse Québec, Quebec	
Gérald R. Tremblay Montréal, Quebec	FOR THE APPLICANT

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT
Gravel Bernier Vaillancourt Barristers & Solicitors Québec, Quebec	FOR THE INQUIRY COMMITTEE CONCERNING THE HONOURABLE MICHEL GIROUARD – MIS-EN-CAUSE
Jean-Yves Bernard Ministère de la Justice Montréal, Quebec	FOR THE HONOURABLE STÉPHANIE VALLÉE – MIS-EN-CAUSE