Federal Court  Cour fédérale

**Date: 20200731**

**Dockets: T-1818-19**
**T-2010-19**
**T-450-20**

**Citation: 2020 FC 789**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, July 31, 2020**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**THE HONOURABLE GÉRARD DUGRÉ**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**and**

**THE CANADIAN JUDICIAL COUNCIL**

**Third Party**

**AMENDED JUDGMENT AND REASONS**

[1] The Honourable Gérard Dugré, a judge of the Superior Court of Quebec, is the subject of complaints before the Canadian Judicial Council (CJC). He has already filed five applications for judicial review of these complaints and of the Notice of Allegations issued by the Inquiry Committee charged with reviewing the complaints. He has also sought to suspend the hearing before the CJC while his applications for judicial review proceed in the Federal Court.

[2] The application for a judicial stay of proceedings was dismissed on May 8, 2020 (2020 FC 602). As for the five applications for judicial review, two have already been struck out by my colleague, Justice Luc Martineau (2019 FC 1604). This time, the Attorney General of Canada is asking this Court to strike out the three remaining applications for judicial review, essentially because they are premature. Instead of short-circuiting the hearing of the complaints, the Attorney General argues that the CJC should be allowed to hear the case, after deciding the various objections that may be made. If necessary, the applicant may seek judicial review at the end of the process.

[3] The Court intends to consider all three motions to strike because they are all subject to the same law. The facts vary from one application for judicial review to the next. The judgment will apply to all three motions to strike.

## I. Facts

[4] It is important to set out the facts that give rise to the three motions to strike. This is because it is necessary to examine the “decisions” subject to applications for judicial review, which the Attorney General claims are premature since they have not been the subject of a final

decision by the CJC. The applicant argues that there are sufficient differences between the situations under review to distinguish them from cases that have already been struck out. In any event, striking out an application for judicial review that has been deemed premature is subject to appeal.

A. *Complaint CJC 19-0014, Federal Court T-1818-19*

[5] The complaint is summarized as follows at paragraph 4 of this Court's May 8, 2020 decision:

> [TRANSLATION]
>
> The co-ordinating judge of the Superior Court in Laval forwarded to the Associate Chief Justice of the Court the verbal complaint received from two lawyers in a family law matter. The complaint was reviewed by Chief Justice Joyal, Vice-Chairperson of the Judicial Conduct Committee of the Canadian Judicial Council. He decided to forward the allegations he had prepared himself after listening to the recording of the hearing, for the Inquiry Committee to decide what to do next.
>
> The complaint criticizes his lack of courtesy and use of inappropriate language. The applicant's multiple interventions allegedly prevented the lawyers from presenting their arguments, resulting in a disorderly hearing.

The major difference from the motions to strike already allowed is that the matter was referred directly to the Inquiry Committee without going through the Judicial Conduct Review Panel. I have attached a summary of the CJC's process as already provided in the May 8 decision. Here, it was by a letter, dated October 4, 2019, that the Executive Director and Senior General Counsel of the CJC forwarded the allegations, a detailed three-page document prepared by Chief Justice Joyal in his capacity as Vice-Chairperson of the Judicial Conduct Committee. The letter from the

Executive Director specifically states that the Inquiry Committee [TRANSLATION] “may decide how to proceed”.

B. *Complaints CCM 19-0358, CCM 19-0372, 19-0374, 19-0392, Federal Court T-2010-19*

[6] This time, four complaints were filed after the September 6, 2019 press release announcing that the two original complaints were being referred to the Inquiry Committee by the Review Panel. These complaints were referred directly from the Executive Director of the CJC as announced in his letter to the applicant on November 13, 2019. The Executive Director relied on subsection 63(2) of the *Judges Act*, RSC 1985, c J-1, and subsection 5(1) of the *Canadian Judicial Council Inquiries and Investigations By-laws, 2015* (SOR/2015-203) to refer these complaints while [TRANSLATION] “[t]he Inquiry Committee may decide what further action, if any, should be taken”. I note that the Executive Director is referring to a sentence from subsection 5(1) of the *By-laws* which reads as follows: “The Inquiry Committee may consider any complaint or allegation pertaining to the judge that is brought to its attention”. This sentence is not the full text of subsection 5(1).

[7] The four complaints are briefly described in paragraph 4 of the May 8 decision on the application for stay of proceedings (2020 FC 602). For our purposes, it will suffice to note that these complaints are similar to the others in that they allege grievances relating to hearings held by the applicant where inappropriate comments were made about a party, which may give rise to allegations of bias. One case involved an allegation that the judge took seven months to render judgment in a relatively simple case (motion to dismiss).

C. *Federal Court T-450-20*

[8] In that case, the application for judicial review relates to the Notice of Allegations issued by the Inquiry Committee on March 4, 2020. The purpose of the Notice of Allegations [TRANSLATION] "is to inform Justice Gérard Dugré of the allegations that will be examined before the Inquiry Committee and to permit him, if appropriate, to provide the Inquiry Committee with his written submissions or comments". The Notice states that it does not take into account the responses already provided by the applicant or that may be provided. The Notice states specifically that [TRANSLATION] "[t]he facts alleged in this Notice have not yet been proven".

[9] The Inquiry Committee lists the various allegations over 16 pages. The complaint (CJC 19-0374) relating to a judgment rendered after seven months of deliberation is considered not to warrant investigation as it will be considered under the allegation of a [TRANSLATION] "chronic problem in rendering judgment". All the other complaints are the subject of specific allegations.

II. Applications for judicial review

[10] Three applications for judicial review are therefore still pending before this Court, since the other two have already been struck out.

[11] In T-1818-19, the applicant relies on the following arguments to justify judicial review:

- Chief Justice Joyal exceeded his jurisdiction by not complying with the CJC's complaints process:

    - the complaint was not made in writing; and
    - a Review Panel was not established.
- Consideration was given to [TRANSLATION] "irrelevant" material, not part of the complaint, describing [TRANSLATION] "poorly explained judicial decisions", referring to a transcript of the hearing that was not provided to the applicant.
- It was unreasonable for the Vice-Chairperson of the Judicial Conduct Committee to refer his own allegations and conclusions to an Inquiry Committee that was not properly constituted.
- The allegations are not serious enough to warrant the removal of a judge from office.

[12] In T-2010-19, the applicant relies on the following arguments to justify a judicial review:

- The Executive Director exceeded his jurisdiction, as he could not refer the four complaints because he did not comply with the CJC's process for dealing with communications received:
    - the prior process for bringing complaints to the attention of the CJC was not followed and was thus short-circuited; and
    - in doing so, the Executive Director did not allow the requester to make submissions, which made the decision [TRANSLATION] "unfair" and "clearly harmful and unreasonable".
- It should have been the Review Panel, which should have been constituted beforehand, that referred the complaints to the Inquiry Committee.

- It is judicial independence that is at issue when it [TRANSLATION] “becomes too easy to set in motion a process that could lead to the removal of a judge from office” (notice of application, para 33).

[13] In T-450-20, it is the Notice of Allegations prepared by the Inquiry Committee that is being challenged. These allegations come from the various complaints that were submitted to the CJC. The reasons for the review include:

- The Notice of Allegations constitutes an excess of jurisdiction and an abuse of power because Inquiry Committees do not have the jurisdiction to issue such notices, especially since it goes beyond the mandate received from a Review Panel.

- The Notice of Allegations is [TRANSLATION] “unfair” because it makes the Inquiry Committee [TRANSLATION] “judge and party” in the absence of an independent prosecutor.

- The Notice of Allegations does not follow the process provided.

- The Notice of Allegations is unreasonable in that it lacks the requisite reasons and does not take into account factual and legal constraints.

The applicant essentially alleges that the Inquiry Committee derives its jurisdiction from the mandate received from the Review Panel. It follows that if a Review Panel did not review the matter, no one else should refer a complaint, with the result that the complaint cannot be found in the Notice of Allegations.

## III. Positions of parties

[14] The only issue that was debated before the Court was whether it was premature to file applications for judicial review when the body to which Parliament assigned the task of considering complaints that may be made against judges of a superior court (s. 63 of the *Judges Act*) has not heard the matter. In no way would it be appropriate to address the merits of the arguments advanced when the only issue is whether the application for judicial review is premature because the arguments must be heard and decided by the appropriate body, the one designated by Parliament for that purpose.

[15] The Attorney General's position in each of his motions to strike is that the applications for judicial review are premature. To dispose of a case, our administrative law requires that a hearing take place before the court chosen by Parliament. Applications for judicial review can only be made at the end of a process to which the tribunal is subject. For the applicant to bring a challenge before the tribunal has ruled on all the applicant's grounds is not in accordance with the jurisprudence of the Federal Court of Appeal and that of this Court. For the Attorney General, the applications for judicial review are attempts to short-circuit the investigative process. There may be exceptional circumstances that would make judicial review appropriate even before the conclusion of the work of the tribunal hearing a case, but no such circumstances exist in this particular case.

[16] It follows that it is clear and obvious that the applications for judicial review have no chance of success since they are premature. The challenge must take place at the end of the process, not the beginning.

[17] The applicant essentially reiterates the reasons for which the applications for judicial review were made, citing what he claims to be serious and fundamental problems affecting the investigation already begun by the Inquiry Committee.

[18] Regarding the applicant's premature proceedings, the applicant recalls that this Court can strike out proceedings under its power to control its proceedings, which adds to the burden of the person seeking to have them struck out, according to the applicant. Since the application of the rule of prematurity depends on the discretionary power of the trial judge, [TRANSLATION] "a judge sitting at the striking out stage cannot dismiss an application for judicial review on the sole ground that it is premature" (applicant's factum in file T-450-20; a similar argument appears in the applicant's facta in files T-1818-19 and T-2010-19, at paragraphs 40 and 39 respectively). To the applicant, it seems that the prematurity of the applications can only be raised before the trial judge on judicial review. He would have us understand that an independent motion to strike would be null and void. In fact, the applicant alternates between this argument and one that relates to the merits of the judicial review, according to which the alleged infringements are such that it is in the interests of justice to dismiss the motion to strike in order to hear the application for judicial review and to decide it on its merits.

[19] The memorandums of fact and law in T-1818-19 and T-2010-19 are very similar. The following argument is written at paragraphs 27 and 26, respectively:

> [TRANSLATION]
>
> 26. We are of the opinion that where there is a requirement for a multi-stage review, as in the process adopted by the CJC, there can be no premature determination with regard to the fact that the process was not followed, since the decision to come will not allow

> the review process to be resumed or prevent the formation of an Inquiry Committee, which has already been formed.

The argument seems to be that judicial review should be allowed before the matter is dealt with by a tribunal to avoid the matter being returned later if judicial review were to be granted. Judicial economy would be better served by having the reviewing court review the complaints that have been made rather than waiting until after the tribunal that Parliament has charged with hearing such cases has completed its work.

[20] Alternatively, the applicant also raises the exceptional circumstances of this case. Indeed, if the Court were to recognize that the prematurity of an application for review may justify its dismissal, the motions judge would have a discretion to dismiss the motion to strike if exceptional circumstances exist. The Attorney General agrees. The fact that the CJC did not follow its own rules is presented as making the process completely irregular. This would constitute the exceptional circumstance. Returning to the merits of the case, the applicant calls for a broad measure of procedural fairness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817) that would justify allowing judicial intervention before the Inquiry Committee has had an opportunity to consider the allegations. It is better to avoid the CJC Inquiry Committee than to wait for the CJC to make its own determination as to the quality of the process that brought these complaints before it. This would be the case, if I understand the nature of the exceptional circumstances raised, in T-1818-19 and T-2010-19. These exceptional circumstances cannot, of course, be raised in T-450-20, apart from the fact that the Notice of Allegations raised in that file stems from the process—a flawed one, according to the applicant— which brought the allegations before the Inquiry Committee.

## IV. Analysis

[21] In my opinion, the applicant, who is the respondent in the motion to strike, is correct to put the question before the Court in the terms he sets out in paragraph 21 of his factum in T-450-20:

> [TRANSLATION]
>
> Should the application for judicial review be struck out on the grounds of prematurity? Specifically, does the application for judicial review have no chance of success or is it devoid of any possibility of success because it is premature?

[22] However, I am afraid that the applicant-respondent is faced not only with vertical *stare decisis*, but also with what some refer to as horizontal *stare decisis*, perhaps more properly named comity. In my view, the motions to strike should be granted.

[23] In this case, a process has been initiated so that the Canadian Judicial Council can discharge its statutory obligation to "make the inquiries and the investigation of complaints or allegations described in section 63" (paragraph 60(2)c) of the *Judges Act*). Subsections 2, 3 and 4 of section 63 are relevant. I have reproduced them below:

| **Investigations** | **Enquêtes facultatives** |
|---|---|
| **(2)** The Council may investigate any complaint or allegation made in respect of a judge of a superior court. | **(2)** Le Conseil peut en outre enquêter sur toute plainte ou accusation relative à un juge d'une juridiction supérieure. |
| Inquiry Committee | Constitution d'un comité d'enquête |
| **(3)** The Council may, for the purpose of conducting an inquiry or investigation under | **(3)** Le Conseil peut constituer un comité d'enquête formé d'un ou plusieurs de ses |

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.

membres, auxquels le ministre peut adjoindre des avocats ayant été membres du barreau d'une province pendant au moins dix ans

**Powers of Council or Inquiry Committee**

**(4)** The Council or an Inquiry Committee in making an inquiry or investigation under this section shall be deemed to be a superior court and shall have

**Pouvoirs d'enquête**

**(4)** Le Conseil ou le comité formé pour l'enquête est réputé constituer une juridiction supérieure; il a le pouvoir de :

**(a)** power to summon before it any person or witness and to require him or her to give evidence on oath, orally or in writing or on solemn affirmation if the person or witness is entitled to affirm in civil matters, and to produce such documents and evidence as it deems requisite to the full investigation of the matter into which it is inquiring; and

**a)** citer devant lui des témoins, les obliger à déposer verbalement ou par écrit sous la foi du serment — ou de l'affirmation solennelle dans les cas où elle est autorisée en matière civile — et à produire les documents et éléments de preuve qu'il estime nécessaires à une enquête approfondie;

**(b)** the same power to enforce the attendance of any person or witness and to compel the person or witness to give evidence as is vested in any superior court of the province in which the inquiry or investigation is being conducted.

**b)** contraindre les témoins à comparaître et à déposer, étant investi à cet égard des pouvoirs d'une juridiction supérieure de la province où l'enquête se déroule.

A. *Federal Court of Appeal jurisprudence*

[24] Regarding judicial review of decisions that Parliament has chosen to confer on statutory bodies, the Federal Court of Appeal has for several years maintained that it should be left to the body or tribunal to complete its review before referring the matter to a superior court for judicial review. The leading decision in federal law is probably *Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61, [2011] 2 FCR 332 [*C.B. Powell*]. The Court devoted an entire section to the principle of non-intervention by the courts in ongoing administrative processes.

[25] The Court of Appeal notes that different words have been used to describe a very simple principle:

> [A]bsent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. . . . Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.
>
> (*C.B. Powell*, para 31).

[26] There is no decision at this stage that can be said to have determined the applicant's substantive rights or that deals with the process chosen to bring complaints before him or her. The three cases before the Court all relate to the steps leading up to the Inquiry Committee's investigation that the CJC may establish under subsection 63(3) of the *Judges Act*. They deal with the jurisdiction of the Inquiry Committee to hear these complaints. In T-1818-19 and T-2010-19, complaints were referred directly to the Inquiry Committee, in one case stating that the Inquiry Committee [TRANSLATION] "may decide how to proceed" while in the other, they were forwarded with the mention that [TRANSLATION] "the Inquiry Committee may decide what

further action, if any, should be taken". At this stage, we do not know more. The argument that the process is flawed has not yet been decided. As for T-450-20, it is nothing more than the Notice of Allegations, which is ultimately only the framework in which the Inquiry Committee will operate. The Committee itself states the following at the outset:

> [TRANSLATION]
>
> 1. The purpose of this notice is to inform Justice Gérard Dugré of the allegations that will be examined before the Inquiry Committee and to provide him with an opportunity to provide the Inquiry Committee with any written submissions or comments.
>
> 2. This notice does not address the responses that have already been provided by Justice Gérard Dugré with respect to certain allegations.
>
> 3. This notice does not take into account any responses that may be provided by Justice Gérard Dugré following receipt of this notice.
>
> 4. The facts alleged in this notice have not yet been proven.

If it is alleged that the Inquiry Committee did not validly receive complaints and therefore lacks jurisdiction, the argument may be brought before it.

[27] In *C.B. Powell*, the Court of Appeal discusses a rigorous application of the general principle of non-interference in administrative proceedings across Canada (para 33). The Court adds that very few circumstances can qualify as exceptional: the threshold is high. It states as follows:

> [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: see *Harelkin*, *supra*; *Okwuobi*, *supra* at paragraphs 38-55; *University of Toronto v. C.U.E.W, Local 2* (1988), 1988 CanLII 4757 (ON SC), 52 D.L.R. (4th) 128 (Ont. Div. Ct.). As I shall soon demonstrate, the presence of so-called jurisdictional issues is not an exceptional circumstance justifying early recourse to courts.

[28] It is clear that, contrary to the applicant's argument, procedural fairness or even constitutional issues are not grounds for short-circuiting the process put in place to deal with matters that Parliament intended to have reviewed by a body it created. The same is true of so-called jurisdictional questions (paras 45–46).

[29] The Federal Court of Appeal has continued to apply its leading case in developing its jurisprudence on what it has referred to as the "general rule against premature judicial review". In *Wilson v Atomic Energy of Canada Limited*, 2015 FCA 17, [2015] 4 FCR 467 [*Wilson*], the Court confirmed *C.B. Powell* and expanded on the noble origins of the principle and the reasons for its power and pervasiveness.

[30] The Court refers to the public law values that are inherent principles in administrative law: the rule of law, the principles of good administration, the democratic principle and the separation of powers (para 30). The rule against premature judicial review embodies at least two of these values, good administration and the democratic principle, which the Court of Appeal describes as follows:

> [31] The general rule against premature judicial reviews reflects at least two public law values. One is good administration – encouraging cost savings, efficiencies, promptness and allowing administrative expertise and specialization to be fully brought to bear on the problem before reviewing courts are involved. Another

> is democracy – elected legislators have vested the primary responsibility of decision-making in adjudicators, not the judiciary.

[31] These policy considerations are thus raised by the Supreme Court of Canada in *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364 [*Halifax*] which refers to and approves of *C.B. Powell* at paragraph 35 regarding a discretionary power of intervention which reviewing courts have but must exercise with restraint. At paragraph 36, the Supreme Court notes good administration and the democratic principle as reasons for this increased restraint:

> [36] While such intervention may sometimes be appropriate, there are sound practical and theoretical reasons for restraint . . . . Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a "correctness" standard with respect to legal questions that, had they been decided by the tribunal, might be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes . . . . Thus, reviewing courts now show more restraint in short-circuiting the decision-making role of the tribunal, particularly when asked to review a preliminary screening decision such as that at issue in *Bell* (1971).
>
> [Citations omitted.]

[32] The concern about obtaining a decision from the tribunal may be worthy of comment in this case. It appears that the applicant will want to argue that the complaints in T-1818-19 and T-2010-19 are not validly before the Inquiry Committee because the step of a Review Panel review was omitted. The issue may well be the scope of subsection 5(1) of the *By-laws*, which reads as follows:

| **Complaint or allegation** | **Plainte ou accusation** |
|---|---|
| **5 (1)** The Inquiry Committee may consider any complaint or | **5 (1)** Le comité d'enquête peut examiner toute plainte ou |

| | |
|---|---|
| allegation pertaining to the judge that is brought to its attention. In so doing, it must take into account the Judicial Conduct Review Panel's written reasons and statement of issues. | accusation formulée contre le juge qui est portée à son attention. Il tient alors compte des motifs écrits et de l'énoncé des questions du comité d'examen de la conduite judiciaire. |

I came to understand at the hearing that the applicant is asking the question. It seems to me that this is a question of law that the Inquiry Committee may have to answer and, if so, a review of such a decision may be possible on the basis of reasonableness (*Halifax* and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). In any event, the reviewing court would not have had prior access to the views and intentions of the Inquiry Committee, which must [TRANSLATION] "decide how to proceed" or [TRANSLATION] "what action, if any, should be taken". Of course, the opinion of such a tribunal must be known. This was noted by the Federal Court of Appeal in *C.B. Powell* and accepted by the Supreme Court in *Halifax*:

> [37] Moreover, contemporary administrative law accords more value to the considered opinion of the tribunal on legal questions, whether the tribunal's ruling is ultimately reviewable in the courts for correctness or reasonableness: *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 89; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 25; *C.B. Powell*, at para. 32; and Brown and Evans, at para. 3:4400.

[33] The restraint referred to in *C.B. Powell* and in *Halifax* is further articulated in *Wilson*. The Court of Appeal emphasizes the importance it attaches to the prohibition against premature judicial review. The Court of Appeal makes it the principle to which few exceptions will be recognized. I will reproduce paragraphs 32 and 33 of the decision, which speak in terms of "the force and pervasiveness of the general rule against premature judicial reviews":

> [32] The weighty nature of these public law values explains the force and pervasiveness of the general rule against premature judicial reviews. Indeed, in appropriate cases, the general rule can form the basis of a preliminary motion to strike: *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc*., 2013 FCA 250, [2014] D.T.C. 5001 at paragraphs 66 (motion to strike available), 51-53 (general rule against supporting affidavits) and 82-89 (discussion of prematurity in the context of motions to strike). Such motions serve to nip in the bud premature judicial reviews that corrode these values.
>
> [33] The force and pervasiveness of the general rule against premature judicial reviews and the need to discourage premature forays to reviewing courts means that the exceptions to the general rule are most rare and preliminary motions to strike are regularly entertained. As *C.B. Powell*, *supra* explained, the recognized exceptions reflect particular constellations of fact found in the decided cases. They are rare cases where the public law values do not sound loudly in the particular circumstances, the public law values are offset by competing public law values, or both. For example, there are rare cases where the effect of an interlocutory decision on the applicant is so immediate and drastic that the Court's concern about the rule of law is aroused: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 27-30. In these cases – often cases where prohibition is available – the values underlying the general rule against premature judicial reviews take on less importance.

As noted above, *C.B. Powell* does not accept that concerns about procedural fairness, impartiality, the existence of important legal or even constitutional issues, or concerns relating to so-called jurisdictional issues, constitute exceptional circumstances that would justify an anticipatory review by a reviewing court. Paragraph 33 of *Wilson* expresses the general nature of the prohibition against premature judicial review, but recognizes the possible exception where "the public law values do not sound loudly in the particular circumstances, the public law values are offset by competing public law values, or both". In *Wilson*, both the Federal Court and the Federal Court of Appeal agreed to deal with judicial review.

[34] The burden of establishing exceptional circumstances rests on the person who relies on them. Here, in my opinion, the applicant fails. Nothing exceptional has been raised. The applicant wants his case to be heard by this Court rather than by the body created specifically for this purpose. He is essentially raising an argument of lack of jurisdiction. The Inquiry Committee may hear any and all arguments that the applicant may wish to make, including those relating to the interpretation to be given to subsection 5(1) of the *By-laws*. The interpretation that the Inquiry Committee mandated by the CJC will give to its *By-laws* is certainly of great interest to this Court.

[35] No doubt, premature judicial review applications are appropriate in some cases. Counsel for the applicant raised the case of an investigation that the CJC would like to conduct against a judge of a provincial court even though the *Judges Act* refers to "investigating any complaint or charge against a judge of a superior court" (s. 63(2)). In *Wilson*, a labour adjudicator had found that the complaint of unjust dismissal was well founded, but adjourned the case to allow the parties to discuss an appropriate remedy. The argument was that the administrative process was not complete because the appropriate remedy phase had not yet been completed; this is to say that the administrative process was not fully complete, which would have made the application for judicial review premature since the remedy was still pending. However, the part of the process that was intended to go to the reviewing court was well and truly completed. The adjudicator had rendered his decision. The Court of Appeal noted the major difference with *C.B. Powell*, where the hearing was suspended in the middle of considering the merits. The reasons underlying the prohibition against premature judicial review were not present in *Wilson*. This is not the case now since the grievances made in the process have in no way been finalized by the

appropriate decision maker, namely the Inquiry Committee, which the applicant alleges did not receive the complaints validly. It seems to me that this is a clear case where the tribunal appointed by Parliament must decide the issues before it rather than presenting the arguments to a reviewing court without the benefit of the views of the Inquiry Committee.

[36] The need to allow the process to be completed was reconfirmed in *Alexion Pharmaceuticals Inc. v. Canada (Attorney General)*, 2017 FCA 241 [*Alexion*], to the point where the Court of Appeal raised the issue. The principle that adequate remedies must be exhausted is stated as follows:

> [47] The normal rule is that parties to an administrative proceeding may proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. This means that, ordinarily, a party to an administrative proceeding must put to the administrative decision-maker all arguments that it has the jurisdiction to hear, and must obtain its decision, before launching an application for judicial review (*Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 at paras. 30-31, [2011] 2 F.C.R. 332; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras. 35-37, [2012] 1 S.C.R. 364).
>
> [Emphasis added.]

The strength of the principle is referred to in paragraph 49, where the Court points out that the prematurity of the action is a "regular invocation as a basis for a motion to strike":

> [49] Many of the good reasons that animate this rule and show it to be in the public interest are summarized in *C.B. Powell*, above at para. 32. Among them is avoidance of multiplicity of proceedings, avoidance of the waste associated with interlocutory judicial review applications when the applicant for judicial review may succeed at the end of the administrative process anyway, ensuring that the court has the benefit of the administrative decision-maker's findings, and judicial respect for the legislative decision to invest administrative agencies with decision-making authority. Where the issue is a constitutional issue, proceeding first to court

> also risks depriving the court of the views of the administrative decision-maker based on "its factual appreciations, insights gleaned from specializing over many years in the myriad complex cases it has considered, and any relevant policy understandings" (*Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245 at paras. 42, 45, [2015] 4 F.C.R. 75). The strength of the rule and its underlying rationales is reflected both in its regular invocation as a basis for a motion to strike (*Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17 at paras. 32-33, [2015] 4 F.C.R. 467) and the court's entitlement to raise the rule on its own motion (*Forest Ethics*, above at para. 22).

[37] Contrary to the applicant's allegation, I cannot see how a motion to strike will be null and void because only the judge hearing the application for judicial review could make a preliminary determination at the hearing of the application for judicial review as to whether the conditions for the application have been met. Motions to strike are relatively common [taking the facts as being proven, is it clear and obvious that the proceeding undertaken has no reasonable prospect of success? (*R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 SCR 45, at para 17; *Odhavji Estate v Woodhouse*, 2003 SCC 69, [2003] 3 SCR 263, at para 15; *Hunt c Carey Canada Inc.*, [1990] 2 SCR 959, p 980)].

[38] The Court of Appeal mentioned motions to strike that "serve to nip in the bud premature judicial reviews that corrode these values" (*Wilson*, para 32). *Alexion* (above) refers to such motions, which are frequently invoked. It is a matter of good administration that an application that has no reasonable prospect of success be struck out.

[39] It is not that the applicant's grievances have no reasonable prospect of success on their own merits. Rather, raising these issues at this stage is premature (*Canada (National Revenue) v*

*JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 FCR 557 [*JP Morgan*], at paras 66 and 84–88 specifically).

[40] The Court is able to determine that the test for a motion to strike has been satisfied because the principle prohibiting premature applications for judicial review is as powerful and pervasive as the Court of Appeal found it to be. In our case, the grievances raised, on which the Court makes no judgment, are all those that the Court of Appeal states are not exceptional circumstances that justify rejecting a motion to strike. Underlying values such as good administration and the democratic principle means that the Inquiry Committee must, absent exceptional circumstances, rule on the grievances raised. In *JP Morgan* (above), while the Court of Appeal was considering when a Notice of Application can be struck, the following passage found at paragraph 86 is particularly significant here:

> [86] Administrative law cases and textbooks express this principle in many different ways: adequate alternative forum, the doctrine of exhaustion, the doctrine against fragmentation or bifurcation of proceedings, the rule against interlocutory judicial reviews and the rule against premature judicial reviews. They all address the same idea: someone has rushed off to a judicial review court when adequate, effective recourse exists elsewhere or at another time.

Given the power and pervasiveness of the principle, coupled with the absence of exceptional circumstances, the applications for judicial review have no reasonable prospect of success because the remedies are not exhausted and there would be bifurcation, which would constitute interlocutory judicial review, all of which constitute the premature exercise of judicial review.

[41] The Federal Court of Appeal's decisions are binding on this Court (*Apotex Inc. v Pfizer Canada Inc.*, 2014 FCA 250, at para 114). The issues decided by the Federal Court of Appeal apply to this Court. The higher courts also recognize that a court such as this one is bound to avoid departing from decisions rendered by colleagues: they will speak of "*stare decisis*" on questions of law, from a "horizontal" point of view *(Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101, para 39), or from a perspective of judicial comity. It is obvious that one of the values of our law, one of the fundamental foundations of the common law, is the notion of certainty in the law.

[42] Thus, a decision of a panel of the Court of Appeal will be viewed as a decision of the Court as a whole (*Tan v Canada (Attorney General)*, 2018 FCA 186, [2019] 2 FCR 648 [*Tan*]). *Tan* speaks of consistency, certainty, predictability and institutional integrity (para 25). How can the law be followed if it is constantly changing? But this does not mean nothing can be done. However, conditions must be met in order to depart from decisions, whether vertical or horizontal *stare decisis* applies (*Tan*, para 29; *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331, para 44).

[43] In this case, the applicant did not argue that this Court should depart from the Court of Appeal's consistent jurisprudence on premature judicial review. In fact, the applicant would have had to ask this Court to depart from the jurisprudence of this Court itself. A recent decision of the Federal Court of Appeal states that it is an error to fail to refer to previous divergent jurisprudence of the same court and to provide valid reasons for departing from it (*Canada*

*(Citizenship and Immigration) v Kassab*, 2020 FCA 10, at paras 35 and 36). The jurisprudence of this Court points in the direction of granting the motions to strike.

B. *Federal Court jurisprudence*

[44] The jurisprudence of this Court has been consistent that applications for judicial review that are effectively seeking to short-circuit the CJC process must be struck out because they are premature. Thus, this Court has followed the jurisprudence of the Court of Appeal in *C.B. Powell* and *Wilson*.

[45] In the cases relating to the complaints that the CJC must consider regarding the applicant, my colleague Mr. Justice Luc Martineau has already decided that the applications for judicial review in T-1622-19 and T-1637-19 should be struck (2019 FC 1604) because they are premature. He notes that it is not appropriate to intervene before the process that has been set in motion has at least reached the fourth stage, that of Inquiry Committees, where the applicant will be given the opportunity to make all arguments on preliminary matters and on the merits justifying dismissal of the complaints in question.

[46] It is certainly true that the process followed up until that point was such that the referral to the Inquiry Committee came from the Review Panel, whereas this is not the case for T-1818-19 and T-2010-19, where complaints are referred by the Vice-Chairperson of the Judicial Conduct Committee in one case and the Executive Director in the other for the Inquiry Committee to decide what to do next. The Inquiry Committee has at this stage only consolidated the complaints in one document, the Notice of Allegations. It would appear that the applicant is

arguing that passage through the Review Panel is a necessary step in order for it to have jurisdiction based on his reading of the Act and its By-laws. There is nothing to prevent this issue, like the others raised, from being the subject of representations to the Inquiry Committee. The question then becomes one of follow-up, which implies that a decision may be made to take no further action or to make a particular use of it. There is nothing exceptional to raise this preliminary issue.

[47] In *Girouard v Inquiry Committee Constituted Under the Procedures for Dealing With Complaints Made to the Canadian Judicial Council About Federally Appointed Judges*, 2014 FC 1175 [*Girouard*], the Attorney General of Canada had applications for judicial review struck out (see also, 2014 FC 1176). Justice Girouard raised arguments relating to jurisdiction, procedural fairness and administrative invalidity issues. As in this case, Justice Girouard argued that each step in the CJC's process is [TRANSLATION] "final", and therefore that the Review Panel was *functus officio* and judicial review was entirely appropriate.

[48] Justice Martineau, the motions judge in *Girouard*, noted that this was an interlocutory decision and that the Court had to find that the application was premature. The Inquiry Committee may dispose of the issues raised, including constitutional questions. The Court then relied on *C.B. Powell*, *Halifax* and *Douglas v Canada (Attorney General)*, 2014 FC 299, [2015] 2 FCR 911. Obviously, the Court did not have the benefit of the Federal Court of Appeal decisions in *Wilson* and *Alexion*, which emphasized the power and pervasiveness of the general principle prohibiting premature judicial review.

[49] In *Girouard v Canada (Attorney General)*, 2017 FC 449, Justice Simon Noël arrived at the same conclusion, this time with 20 applications for judicial review pending against preliminary decisions of the Inquiry Committee. The applicant in that case sought, pending the continuation of the Inquiry Committee's work, a judicial stay of proceedings, which he did not obtain.

[50] The decision centres largely on prematurity and the principle of non-intervention. It states that "the principle of non-interference is almost absolute" (para 33). Exceptional circumstances will be required to justify intervention. The Court wrote as follows:

> [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.

The same situation applies here.

[51] The Court also concluded that the decisions for which judicial review was sought were interlocutory and the process must be allowed to run its course:

> [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.

[52] The Court in *Girouard* (2017 FC 449) had before it an application for a stay of proceedings, which it had to dismiss. Rather, it was the applications for judicial review that were stayed. In our case, the Attorney General is simply asking for the motion to be struck because, in the end, an application for judicial review will depend on the final decision, the content of which is not known.

[53] Deputy Judge Robertson also refused to suspend the work of the CJC in *Camp v Canada (Attorney General)*, 2017 FC 240, finding that the law is well established in that "[i]nterlocutory decisions of administrative decision-makers are not subject to judicial review until a final decision issues" (para 13). The Court considered prematurity in the context of irreparable harm, the second stage of the three-stage test for judicial stays (*RJR-Macdonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311). The decision predates the Federal Court of Appeal's *Newbould v Canada (Attorney General)*, 2017 FCA 106, [2018] 1 FCR 590, which now places the issue of prematurity within the first stage of the three-stage test (is there a serious issue underlying the stay?). In any event, this Court, in *Camp*, considered the principle of non-infringement to be paramount. Paragraph 42 of the reasons reads as follows:

> [42] In my view, the public interest in seeing disciplinary proceedings dealt with expeditiously is pressing. More so having regard to the objectives underscoring the principle of non-fragmentation. It is less costly and more efficient to wait for the Council's final determination with respect to all the substantive issues raised and, if necessary, to have those issues determined in one forum on the basis of one record. The granting of a stay would have simply encouraged an "inefficient multiplicity of proceedings": see Halifax, supra, at para 36 and CB Powell, supra, at para 32.

[54] In *Newbould v Canada (Attorney General)*, 2017 FC 326, Justice Bowell also concluded that the application for judicial review was premature and dismissed an application for a stay. In his reasons, he refers in particular to *C.B. Powell* and *Girouard (*2014 FC 1175), which regards a motion to strike on the ground of prematurity. He concludes that "the Applicant's application for judicial review is premature and judicial intervention is not warranted at this stage of the proceedings" (para 24). The Court states that the application for judicial review cannot be struck out in the absence of any motion to do so (para 21). But the practical effect is the same. Justice Boswell followed *Groupe Archambault Inc. v CMRRA/SODRAC Inc.*, 2005 FCA 330 [*Groupe Archambault*] by disposing of the issue of the proceeding's prematurity before even considering the three-stage test. In *Newbould,* the Court of Appeal eventually concluded that considering prematurity before the three-stage test (rather than in the determination of the serious issue, as decided in *Newbould*, para 24), now constituted an error of law: "I can only conclude that *Groupe Archambault* was wrongly decided and ought not to be followed" (para 23). The Court of Appeal's decision contains no criticism of the trial level decision on the prematurity of the proceeding. Rather, the Court considered the issue of irreparable harm in disposing of the appeal.

[55] Even more recently, this Court refused to suspend the work of the CJC because, among other reasons, the applications for judicial review were premature (*Dugré v Canada (Attorney General)*, 2020 FC 602).

[56] The Federal Court of Appeal's jurisprudence recognizes the possibility of exceptional circumstances even if these appear to be rather narrow when reviewing the areas that are excluded (*C.B. Powell*, paras 33 and 45). An illustration of an exceptional circumstance can be

found in *Douglas v Canada (Attorney General)*, 2014 FC 1115 [*Douglas*], a case in which a judicial stay was sought to hear an application for judicial review on a specific issue regarding the admissibility of evidence. Justice Mosley found that the consequences of admitting into evidence certain matters that would seriously invade privacy merited a stay so that the judicial review could proceed. Justice Mosley noted that such an application falls within the category of exceptional circumstances:

> [39] In my view, Douglas ACJ presents a serious case that her application may fall within such exceptional circumstances. She does not bring her application to prevent a negative decision on the merits. Such applications are manifestly premature because they become moot if the tribunal ultimately sides with the applicant. Douglas ACJ challenges an interlocutory decision in order to pre-empt irreparable harm that will allegedly occur as the direct result of that interlocutory decision, irrespective of the Committee's final decision. She has no other effective remedy for avoiding this harm, she argues, since the Inquiry Committee dismissed her motion to have the photographs declared inadmissible. As such, the argument that the underlying application is not premature constitutes a serious issue to be tried.
>
> [Emphasis added.]

Thus, the exceptional circumstances in *Douglas* seem to me to be consistent with the circumstances described in *Wilson* at paragraph 33.

[57] To me, it seems there is no doubt that this Court has recognized for a number of years now that the prematurity of an application for judicial review, which would have the effect of preventing the body created by Parliament from hearing a case, may result in a stay being denied under the application for judicial review because it is premature, or in the application itself being struck out because it is premature. The applicable law appears to me to be the same in both

cases. Only exceptional circumstances can justify hearing a judicial review of an interlocutory decision. No such exceptional circumstances exist in this case.

C. *Other Federal Court jurisprudence*

[58] The applicant has sought to rebut the consistent jurisprudence of this Court with respect to the CJC by referring to cases in other areas where judges of this Court have seen fit to permit judicial review even when faced with arguments of prematurity. In my view, these decisions are of no assistance to the applicant.

[59] Justice Diner chose to hear applications for judicial review in *Singh v Canada (Citizenship and Immigration)*, 2016 FC 826 [*Singh*] and in *Ching v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839 [*Ching*], both immigration cases. In both cases, exceptional circumstances were found to exist in favour of the applicants. In *Ching*, the Court was faced with an allegation of abuse of process in an Immigration Appeal Division [IAD] decision finding Mr. Ching inadmissible. The Court concluded that the "IAD failed in that duty, leaving doubt as to whether evidence allegedly obtained by torture impacted its decision" (para 8). The Court certified two questions under section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. No decision appears to have been rendered.

[60] In *Singh*, the Court held that it was in the interests of justice to hear the judicial review given the delays in disposing of an application for permanent residence dating back to 1999: "it would be contrary to the interests of justice to allow this application to persist any longer than necessary by declining to make a decision now" (para 43).

[61] As can be seen, these two decisions are unrelated to the case before this Court, which seeks only to allow the statutory body to discharge the mandate conferred by Parliament. In *Ching* and *Singh*, it was held that exceptional circumstances warranted hearing the applications for judicial review.

[62] *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 732, [2019] 4 FCR 217 [*Whalen*], involved an election in a First Nation where a councillor was suspended a few months after being elected. The suspension was allegedly imposed under an inherent power claimed by the band council.

[63] The first reason given by this Court for not applying the doctrine of prematurity was that it was not at all clear that the decision to suspend could be characterized as interlocutory. The suspension could continue. In fact, the Court found that it was contrived. There was no remedy. Moreover, this was not a process of adjudication by a statutory body. In *Whalen*, the democratic principle could not be at issue even when an inherent power without definition was invoked. Finally, the multiplication of legal battles between factions meant that it was better to have this new front. In my opinion, this decision is of a completely different nature and does not assist the applicant in this case.

[64] The applicant also referred to another decision in the area of First Nation elections. In *Beardy v Beardy*, 2016 FC 383, band members sought to challenge an election that had been held. But no response came from the election committee, which had barred one of the applicants (Gordon Beardy) from running in the election held to replace him. The applicants sought the

annulment of the election. The respondents argued that the applicants were applying to the Court prematurely. One of the three applicants, Gordon Beardy, had not appealed, while the other two applicants had chosen not to vote, which the respondents argued disqualified them from appealing.

[65] Of particular interest to us, of course, is the argument that an appeal would have been necessary and that, therefore, the remedies had not been exhausted. It is neither desirable nor necessary to go into the intricacies of this case, with its electoral codes (of 2005 and 2012) and the conditions necessary for appeals following elections. Suffice it to say that our Court agreed to hear the case because there was no possible recourse since the actions of the election committee resulted in an unfinished process; there was no possible recourse. As the Court stated at paragraph 58, “because the Election Committee did not consider the appeals, the appeal mechanism offered by the Codes was not an adequate, alternative appeal mechanism to judicial review”. The Court went on to find that there were not even any appeals pending because the election committee was required to respond within five days of receiving the appeals, which it did not do. Without adequate recourse, therefore, there was no prematurity, and this decision does not advance the applicant’s case.

## V. Conclusion

[66] The Federal Court of Appeal’s jurisprudence on the issue of prematurity is obviously binding on this Court. This jurisprudence establishes the strict principle of non-intervention by Review Panels in ongoing administrative processes. There must be exceptional circumstances that appear to be very limited to justify early intervention. The general principle of

non-intervention is said to be powerful and omnipresent because it is necessary to discourage premature incursions before Review Panels. In fact, the issue can be raised *proprio motu*, without any of the parties to a dispute raising the issue: this illustrates power and omnipresence.

[67] The Federal Court of Appeal also expressly provides that a motion to strike is an appropriate vehicle in cases of prematurity. Moreover, it is difficult to understand why striking out should have to wait for a preliminary argument at the hearing of an application for judicial review. The advantage of a motion to strike is obviously that costs are avoided by disposing of the matter without having to make the necessary preparation for the consideration of the application for judicial review on the merits. In fact, as has been repeatedly stated in case law, the administrative process itself can lead to savings in that various grievances could be trimmed as the process unfolds.

[68] Moreover, the principle of prematurity is not absolute. There are cases, albeit rare, where intervention is appropriate. As stated in *Wilson*, public law values may be unclear or may be overridden by competing values:

> [33] . . . For example, there are rare cases where the effect of an interlocutory decision on the applicant is so immediate and drastic that the Court's concern about the rule of law is aroused: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 27-30. In these cases – often cases where prohibition is available – the values underlying the general rule against premature judicial reviews take on less importance.

The Court is not faced with this kind of situation, as it was in *Douglas*.

[69] This vertical *stare decisis* is combined with a horizontal *stare decisis*. This Court has repeatedly refused to intervene in cases involving the CJC before its Inquiry Committee could be heard. Even in *Douglas*, where this Court intervened (one might think that intervention was justified prematurely under paragraph 33 of *Wilson* because of the immediate and radical consequences for the applicant), it was noted that the application for judicial review was not made to avoid an adverse decision on the merits. The statutory body must be given an opportunity to decide. This is a matter of good administration and the democratic principle.

[70] Horizontal *stare decisis* obviously does not have the same binding (*R. v Sullivan*, 2020 ONCA 333) and strict effect as its vertical cousin. In the present case, one could seek to see distinctions on the facts in the various decisions of this Court, since judicial comity does not apply to findings of fact. But there would still have to be differences in the facts that are significant. The scope of the rule against the prematurity of remedies is broad and has deep roots. This Court seemed to take to heart the power and pervasiveness of the general principle that prohibits premature applications for judicial review. The allegations made by the applicant in support of his applications for judicial review fall within the categories that the Federal Court of Appeal has specifically excluded from those that might constitute the exceptional circumstances in which a reviewing court would intervene. This is a burden that the applicant has been unable to discharge. My conclusion that the Court should grant the motion to strike is only reinforced by the consistent jurisprudence of this Court. I have found nothing to distinguish this case. The motions to strike are therefore granted in all three cases.

[71] The Attorney General presented his motions, stating specifically that he was not requesting his costs. No costs will be awarded.

**JUDGMENT in T-1818-19, T-2010-19, T-450-20**

**THIS COURT'S JUDGMENT** is as follows:

1. The Attorney General of Canada's application to strike out the application for judicial review in dockets T-1818-19, T-2010-19 and T-450-20 of the Federal Court is allowed.

2. No costs are awarded.

3. A copy of this judgment and the reasons therefor will be filed in each of T-1818-19, T-2010-19 and T-450-20.

"Yvan Roy"
Judge

Certified true translation
This 27th day of August 2020.

Michael Palles, Reviser

## ANNEX

**Summary of the administrative process when a complaint is filed with the Canadian Judicial Council; from *Dugré v Canada (Attorney General)*, 2019 FC 1604, para 5**

[5] When a complaint regarding the conduct of a named, federally appointed judge is filed, an administrative process involving six stages is triggered:

1) the Executive Director of the Council reviews the complaint and decides whether it warrants opening a file;

2) if a file is opened, the Chairperson (or Vice-Chairperson) of the Judicial Conduct Committee reviews the complaint and may close the file or seek additional information;

3) if the file is not closed, a Review Panel reviews the complaint and the judge's written submissions and decides whether the complaint may be settled at this stage or whether it is serious enough to be referred to an Inquiry Committee;

4) if the matter is referred, the Inquiry Committee holds a hearing, hears the evidence concerning the complaint and submits to the Council a report in which it records the findings of the inquiry or investigation, including the conclusion as to whether the judge's removal from office should be recommended;

5) the Council reviews the complaint and makes a determination on its merits; and

6) the Council reports its conclusions, including the conclusion as to whether the judge's removal from office is recommended, and submits the record of the inquiry or investigation to Minister of Justice.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKETS:** | **T-1818-19, T-2010-19, T-450-20** |
| **STYLE OF CAUSE:** | THE HONORABLE GÉRARD DUGRÉ v THE ATTORNEY GENERAL OF CANADA and THE CANADIAN JUDICIAL COUNCIL |
| **PLACE OF HEARING:** | BY TELECONFERENCE BETWEEN OTTAWA, ONTARIO AND MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JUNE 30, 2020 |
| **JUDGMENT AND REASONS:** | ROY J. |
| **DATED:** | JULY 24, 2020 |
| **DATE OF AMENDED REASONS:** | JULY 31, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Magali Fournier | FOR THE APPLICANT |
| Gérald R. Tremblay | |
| Bernard Letarte<br>Liliane Bruneau<br>Pascale-Catherine Guay | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Fournier avocat inc.<br>Montréal, Quebec | FOR THE APPLICANT |
| McCarthy Tétrault LLP<br>Montréal, Quebec | |
| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |