Federal Court  Cour fédérale

Date: 20170329

Docket: T-205-17

Citation: 2017 FC 326

Ottawa, Ontario, March 29, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

THE HONOURABLE JUSTICE FRANCIS J.C. NEWBOULD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS
(Motion for a Stay)

[1] The Applicant, the Honourable Justice Francis J.C. Newbould, is a federally appointed judge of the Superior Court of Justice of Ontario. He has come to the Federal Court seeking judicial review of a decision made by a Judicial Conduct Review Panel of the Canadian Judicial Council dated February 10, 2017, finding that an Inquiry Committee should be appointed to inquire into various issues concerning the Applicant's involvement in a public consultation on a

proposed settlement of a First Nation's land claim in respect of Sauble Beach, Ontario, where the Applicant's family has owned a cottage property for nearly a century.

[2] In his application for judicial review, the Applicant applies for, among other things:

1. an order quashing the decision of the Judicial Conduct Review Panel, dated February 10, 2017, on the ground that the decision was made without jurisdiction; and
2. an order prohibiting the Canadian Judicial Council from taking further steps concerning the complaints about the Applicant's conduct.

[3] The Applicant has initiated the present motion requesting an order staying the decision of the Judicial Conduct Review Panel [the Review Panel] dated February 10, 2017, pending the outcome of the application for judicial review. He claims that he has satisfied the well-known tri-parte test for obtaining a stay emanating from *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, 164 NR 1 [*RJR-MacDonald*]. The Respondent contends that a stay should not be granted because there are no exceptional circumstances in this case to depart from the well-established principle of courts not reviewing interlocutory decisions of tribunals and, in any event, the Applicant has not met the test for a stay.

I. Background

[4] 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 Canadian Judicial Council [the CJC] 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 evidence concerning the complaint and submits to the CJC a report in which it records the findings of the inquiry or investigation, including a conclusion as to whether the judge's removal from office should be recommended;

5. the CJC reviews the complaint and makes a determination on its merits; and

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

[5] Between August and December 2014, the CJC received seven complaints concerning the Applicant's participation in discussions regarding a land claim dispute that affected a cottage property owned by the Applicant's family. These complaints were reviewed by Chief Justice MacDonald, the Chairperson of the CJC's Judicial Conduct Committee [the JCC], who, after

receiving submissions from the Applicant, determined in accordance with the CJC's Complaints Procedures that it was appropriate to close the files for the seven complaints. One of the closed files involved a complaint by the Indigenous Bar Association, whose complaint file was closed in January 2015. Some six months later though, the Indigenous Bar Association requested that the CJC reconsider the matter. According to the Applicant, this request for reconsideration was not a new complaint, but simply reiterated the same matters that had previously been canvassed in the review of the seven complaints.

[6] The CJC notified the Applicant in a letter dated September 24, 2015, that Chief Justice MacDonald had decided to defer the reconsideration request to the most senior member of the JCC, Chief Justice Pidgeon. After receiving the Applicant's submissions, Chief Justice Pidgeon decided, in a decision dated May 5, 2016, to establish a Review Panel to determine whether an Inquiry Committee should be constituted in accordance with subsection 63(3) of the *Judges Act*, RSC 1985, c J-1. In July 2016, the Applicant provided submissions to the Review Panel on whether an Inquiry Committee should be constituted. Counsel for the Applicant provided additional submissions to the Review Panel on January 20, 2017. These additional submissions outlined the reasons why the JCC had no jurisdiction to reconsider or in any way revisit the decision to close the file on the Indigenous Bar Association's complaint and, further, requested that the Review Panel direct that the matter be closed.

[7] On or about February 13, 2017, the Applicant received the Review Panel's reasons for its decision to refer the complaints against him to an Inquiry Committee. The Review Panel concluded that the JCC had jurisdiction to reopen a complaint file to ensure that the issues in the

original complaint were completely addressed. It is this decision by the Review Panel which the Applicant impugns in his application for judicial review.

[8] In a letter dated February 10, 2017, the Applicant gave notice to the Minister of Justice and Attorney General of Canada of his decision to retire as a Justice of the Ontario Superior Court effective June 1, 2017.

[9] On February 15, 2017, the Applicant filed a notice of application for judicial review of the Review Panel's decision.

II. Issues

[10] The Applicant's motion for a stay order raises two issues:

1. Is the application for judicial review of the Review Panel's decision premature?
2. Should the Review Panel's decision constituting an Inquiry Committee be stayed pending the outcome of the judicial review?

A. *Is the application for judicial review of the Review Panel's decision premature?*

[11] The Respondent submits the prematurity of the underlying application for judicial review is a threshold issue that must be resolved before addressing whether a stay of the Review Panel's decision is warranted. In *Groupe Archambault v CMRRA/SODRAC Inc*, 2005 FCA 330 at para 7, 153 ACWS (3d) 253 [*Groupe Archambault*], the Federal Court of Appeal stated that: "Before addressing the conditions for issuing an interlocutory stay of proceedings, the Court must be

satisfied that its intervention is warranted under the circumstances." The Court of Appeal reviewed the interlocutory nature of the impugned decision and concluded that: "the motion for a stay of proceedings must be dismissed even before we proceed to analyse the conditions that must be satisfied in order to grant an interlocutory stay of proceedings" (at para 10). It is necessary, therefore, to first determine whether judicial intervention with the administrative process involving the Applicant before the CJC is warranted.

[12] The Applicant acknowledges, in view of the Federal Court of Appeal's decision in *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-33, [2011] 2 FCR 332, leave to appeal to SCC refused, 2011 SCCA No 267 [*CB Powell*], the principle of judicial non-interference with administrative proceedings in the absence of "exceptional circumstances." He contends, however, that there are no prematurity concerns sufficient to defeat the serious jurisdictional issue raised by the Review Panel's decision. According to the Applicant, since the present case raises at least a serious possibility that the Court will not deem the application to be premature, the Court should, on the basis of *Douglas v Canada (Attorney General)*, 2014 FC 1115 at paras 37-39, [2014] FCJ No 1149 [*Douglas*], grant the stay even if the Applicant is unlikely to succeed at the hearing on the merits of the judicial review application.

[13] The Applicant says he brings the application challenging the Review Panel's decision and this motion for a stay in order to pre-empt the irreparable harm he will suffer if an Inquiry Committee is permitted to be struck and he has no other effective remedy for avoiding this harm. In the Applicant's view, some of the main concerns underlying the principle of judicial non-

intervention are not present in this matter. The reviewing court will have an exhaustive record relating to the jurisdictional issue and will not be deprived of a full record and, moreover, the rationale to promote efficiency in administrative proceedings and preserve scarce judicial resources does not apply where the very issue to be decided in the judicial review application is whether there is any jurisdiction to conduct an inquiry at all. According to the Applicant, if the inquiry proceeds, it would be with the risk that a reviewing court could subsequently find the entire process was without jurisdiction, resulting in substantial time, money and judicial resources having been wasted; whereas, if the judicial review application fails and the inquiry proceeds anyway, there will have been a relatively small expenditure of the Court's resources.

[14] The Respondent maintains that, even by framing the challenge in the application for judicial review as one of jurisdiction, the Applicant cannot meet the high threshold required to place this case in the narrow category of exceptional circumstances. According to the Respondent, the Applicant can challenge the CJC's jurisdiction to reconsider complaints in front of the Inquiry Committee itself and it has the expertise to determine its own jurisdiction. Contrary to the Applicant's assertion that the reviewing court will have an "exhaustive record" on which to decide the jurisdictional issue, the Respondent says that, until a final decision has been rendered by the CJC, the Court will not have the benefit of the CJC's reasons regarding its interpretation of its own jurisdiction. The Respondent says the Applicant's case is distinguishable from *Douglas* since the harm in that case would have been a direct result of an interlocutory decision by an Inquiry Committee and could not have been repaired at the conclusion of the tribunal process through judicial review.

[15] It is well established that applications for judicial review are properly brought at the conclusion of an administrative process after all issues have been determined and the reviewing court has the benefit of the complete record. The rationale for this principle was summarized in *CB Powell*:

> [30] The normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. The importance of this rule in Canadian administrative law is well-demonstrated by the large number of decisions of the Supreme Court of Canada on point…[citations omitted]
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> [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, the rule against interlocutory judicial reviews 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 proceed to court. 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.
>
> [32] This prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway… Further, only at the end of the administrative process will a reviewing court have all of the administrative decision-maker's findings; these findings may be suffused with expertise, legitimate policy judgments and valuable regulatory experience… Finally, this approach is consistent with and supports the concept of judicial respect for administrative decision-makers who, like judges, have decision-making responsibilities to discharge…

> [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. Little need be said about this exception, as the parties in this appeal did not contend that there were any exceptional circumstances permitting early recourse to the courts. 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...the presence of so-called jurisdictional issues is not an exceptional circumstance justifying early recourse to courts.

[16] Absent exceptional circumstances, therefore, this Court should not interfere with the ongoing administrative process involving the Applicant before the CJC until after that process has been completed or until the available, effective remedies have been exhausted.

[17] I agree with the Respondent that the Applicant cannot meet the high threshold required to place this case in the narrow category of exceptional circumstances. In *Groupe Archambault*, the Federal Court of Appeal observed that: "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" (at para 7).

[18] This case is distinguishable from *Douglas*. In this case, it appears based on a press release issued by the CJC on February 13, 2017 (of which I take judicial notice) that: while the CJC has announced that an Inquiry Committee will be held under the *Judges Act* about the Applicant's

conduct, "additional details, including the names of the Inquiry Committee members and of Independent Counsel, will be made public over the coming weeks." In contrast, in *Douglas* an Inquiry Committee had commenced its proceedings, and the judge initiated a motion for an order to stay the Inquiry Committee's decision to admit certain intimate photographs of the judge subject to confidentiality, sealing and non-disclosure orders. The stay in *Douglas* was granted because the harm would have been a direct result of the Inquiry Committee's interlocutory decision and could not have been repaired at the conclusion of the tribunal process through judicial review. The Court in *Douglas* stayed only the Inquiry Committee's interim decision that certain evidence was admissible until such time as the underlying application for judicial review was finally determined.

[19] It is true that there are cases where disciplinary proceedings may be stayed prior to completion of a tribunal's proceedings. For example, in *Adriaanse v Malmo-Levine*, [1998] FCJ No 1912 (TD), 161 FTR 25, the disciplinary proceedings were stayed shortly after the tribunal had commenced its hearing on the alleged misconduct; and in *Bennett v British Columbia (Superintendent of Brokers)*, [1993] BCJ No 246, 22 BCAC 300 (CA) [*Bennett*], the tribunal's hearing was stayed pending the determination of an appeal on a ruling about alleged bias. These cases, however, unlike the present case, involved allegations of a reasonable apprehension of bias on the part of the tribunals. As Justice Robertson recently observed in *Camp v Canada (Attorney General)*, 2017 FC 240, [2017] FCJ No 230 [*Camp*]:

> [27] …both *Adriaanse* and *Bennett* support the understanding that potential harm to the Applicant's judicial reputation may amount to irreparable harm. However, those were start-of-the-line cases where substantial time and money would have been wasted had the tribunal hearings proceeded to completion and the judicial review application succeeded. And most certainly, it was arguable

> that those cases would have fallen within the "exceptional circumstances" category and, therefore, early recourse to the courts should have been available.
>
> [28] Accepting the premise that facts make a difference, the present case is clearly distinguishable. This is an end-of-the-line case….

[20] The Applicant submitted at the hearing of this motion that this case, unlike *Camp*, is a "start-of-the-line" case raising exceptional circumstances that warrant the Court's intervention to stay the Review Panel's decision. In my view, however, this is not a start-of-the-line case and it does not raise exceptional circumstances. Nor, for that matter, is this an "end-of-the-line" case as in *Camp*, where the Inquiry Committee had completed its work and made a recommendation to the CJC which had received written representations and was in the process of deliberating on whether to make a recommendation for the judge's removal from office. This is a "middle-of-the-line" case and parallels *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, [2014] FCJ No 1360 [*Girouard*].

[21] In *Girouard*, a judge of the Superior Court of Québec sought, like the Applicant here, to have a decision made by a Review Panel to constitute an Inquiry Committee set aside. The Attorney General of Canada moved to strike out the notice of application for judicial review on the basis that the application was premature. I pause to note here that, for whatever reason, the Respondent in this case has yet to make any such motion; perhaps, she will do so at some later date. Nonetheless, in my view, the Court's reasoning and conclusions in *Girouard* are equally applicable in the context of the Applicant's motion for an order to stay the Review Panel's decision. The practical effect of the application being struck out in *Girouard* was that the

proceedings before the CJC continued; the same would be the case here if the Applicant's motion for a stay is dismissed.

[22] The Court in *Girouard* concluded that the application for judicial review in that case did not "fall within the category of rare and exceptional cases justifying early intervention by the Court" (at para 33). As in this case, the Inquiry Committee in *Girouard* had not yet commenced its inquiry and it had "not been given an opportunity to rule on the issue of jurisdiction or the invalidity of the By-laws and Complaints Procedures as a matter of constitutional or administrative law" (at para 35). The Court in *Girouard* noted that the complaint was, as in this case, only at the beginning of the fourth stage of the administrative process (at para 39). It further stated:

> [40] Although the representative for the Attorney General seemed to be of the view at the hearing that it is only at the conclusion of the sixth stage that an application for judicial review may be brought by the applicant—a claim not held in *Douglas*, above, and on which it is not necessary to provide a final ruling today—it is sufficient to decide that at this stage of the file, the applicant must, at a minimum, await the conclusion of the fourth stage. The fact is that, on the one hand, neither the Inquiry Committee, nor independent counsel, are bound by the Review Panel's report, and that, on the other hand, the notice to be given pursuant to the Act and By-laws, has yet to be provided to the applicant, which makes it virtually impossible at this stage to conduct an informed review of the applicant's multiple arguments.

[23] The Court in *Girouard* allowed the Attorney General's motion to strike, and stated:

> [47] In closing, I must also make a trite observation: nothing prevents the applicant from filing a motion with the Inquiry Committee for a stay of proceedings (or for recusal if he feels there is a reasonable apprehension of bias) and from raising the administrative and constitutional law arguments that are also mentioned in his notice of application for judicial review. The applicant raises several key issues, some of public interest that

> should preferably be decided on a preliminary basis by the Inquiry Committee. Moreover, in the past, Review Panels have already had to dispose of various preliminary issues of jurisdiction, evidence and even constitutional law. While it may not be clear in the case law that the Inquiry Committee has the power to issue a declaratory judgment having the force of *res judicata* for all of Canada, it may, nevertheless, refuse to apply legislation that is unconstitutional or contrary to the *Canadian Charter of Rights and Freedoms*, if it finds that the By-laws, or the Complaints Procedures, are inconsistent with the Act or the Constitution. This is sufficient to persuade me, at this stage, that effective remedies are available to the applicant and that it is up to him to exhaust those remedies prior to going before the Court.

[24] The proceedings concerning the Applicant now before the CJC have only recently reached the fourth stage of the administrative process noted above. The Applicant's application for judicial review is premature and judicial intervention is not warranted at this stage of the proceedings in the absence of exceptional circumstances. The Applicant's motion for a stay of the Review Panel's decision is dismissed. The application for judicial review cannot, however, be struck out in the absence of any motion to do so.

B. *Should the Review Panel's decision constituting an Inquiry Committee be stayed pending the outcome of the judicial review?*

[25] In view of my determination that the Applicant's application for judicial review is premature and his motion for a stay therefore dismissed, it is unnecessary to analyse whether the Applicant has satisfied the tri-parte test for obtaining a stay. However, if I am mistaken in my finding that the Applicant's application for judicial review is premature and his motion for a stay should be dismissed, I find, in the alternative, that the Applicant has failed to satisfy the tri-parte test for a stay.

[26] When considering an application for a stay, a three-stage test is adopted. As stated by the Supreme Court in *RJR-MacDonald*:

> 43 …First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[27] The *RJR-MacDonald* test is conjunctive, in that to be entitled to an order staying the Review Panel's decision in this case the Applicant must satisfy all three elements of the test. Furthermore, as noted in *Douglas*: "the moving party shoulders the burden of proving that three conditions are met: (1) there is a serious issue to be tried, (2) the moving party will suffer irreparable harm if the stay is not granted and (3) the balance of convenience favours the moving party" (at para 19). It is trite law that the issuance or refusal of a stay lies within the Court's discretion.

[28] The Applicant says the underlying application for judicial review raises a serious issue about whether the Review Panel acted without jurisdiction in referring previously-closed complaints against the Applicant to an Inquiry Committee. According to the Applicant, whether the CJC is about to strike an Inquiry Committee without any jurisdiction to conduct an inquiry is a serious question to be decided.

[29] The Applicant asserts that he will suffer irreparable harm if this Court does not grant a stay of the Review Panel's decision and such harm has a particular meaning for the judiciary, where tenure is institutional, personal, and based on public confidence. A stay is necessary, the

Applicant says, to prevent the reputational damage to him inherent in a public inquiry process. The reputational harm he would suffer is significant in this case, the Applicant claims, because of his long service and respected career as a Superior Court judge and his impending retirement. Moreover, the Applicant says it is inconceivable that an inquiry will be concluded prior to his retirement, and to start the process now, with a serious live question as to its jurisdictional basis, will only damage his professional reputation; and since the process will not be completed before his retirement, there is no prospect that his reputation could be redeemed through a favourable outcome.

[30] The Applicant argues that the balance of convenience favours staying the Review Panel's decision pending the outcome of his judicial review application on its merits. If the Review Panel's decision is not stayed and an inquiry process commenced, that process will have been for naught should this Court find that the Inquiry Committee was struck without jurisdiction and grant the underlying application for judicial review on its merits. In the Applicant's view, neither the Respondent nor the CJC will suffer harm or inconvenience from the granting of a stay and, while the public has an interest in seeing proceedings dealt with expeditiously, the CJC itself has previously stated that "the public interest would not be served by further expending public funds for legal proceedings when the judge is retiring" in a matter of months. Additionally, the Applicant points to a letter from the President of the Canadian Superior Courts Judges Association to the CJC dated March 8, 2017, stating that it is "not in the public interest" to move forward with an inquiry in light of his imminent retirement.

[31] The Respondent maintains that the issues challenging the CJC's jurisdiction to reconsider a complaint are not only frivolous or vexatious and do not raise a serious issue, but they also are not ripe for adjudication at this stage of the tribunal's proceedings.

[32] The Respondent notes that the alleged harm cannot be speculative or hypothetical, and that allegations concerning reputational harm cannot be based on simple assertions and the harm must be caused by the decision at issue. According to the Respondent, the Applicant's claim that he will suffer irreparable harm remains hypothetical and speculative, and any damages occasioned to him were as a result of the media coverage of his participation in the public discussions regarding settlement of the First Nation's land claims.

[33] The Respondent claims that the public has an interest in non-interference with the decision-making process of administrative tribunals, and that the public interest also favours the expeditious resolution of disciplinary proceedings. There are no countervailing public interests, the Respondent states, to outweigh the well-recognized public interest in not interfering with the decision-making process of administrative tribunals. Furthermore, the Respondent says the public has an interest in knowing whether the person being investigated can continue to perform their judicial functions.

[34] The Applicant's motion for a stay of the Review Panel's decision pits his individual interests against those of the CJC which, as an administrative decision-maker, has been tasked by Parliament in Part II of the *Judges Act* to conduct inquiries as to whether a judge of a superior

court should be removed from office for any of the reasons set out in paragraph 65(2) of the *Judges Act*.

[35] After consideration of the parties' submissions and in view of the jurisprudence noted in these reasons, I have determined that the Applicant's motion for a stay should not be granted and, therefore, his motion is dismissed. The Applicant has failed to show with clear and convincing evidence that the harm arising from the Review Panel's decision is or would be irreparable and, in any event, maintaining the integrity of the principle of judicial deference to an uncompleted administrative proceeding trumps the Applicant's interests since his circumstances are not exceptional.

[36] I accept that the Applicant raises a serious issue in his application for judicial review of the Review Panel's decision. The Applicant's challenge to the CJC's jurisdiction to reconsider a complaint by way of his application for judicial review is neither frivolous nor vexatious.

[37] As to irreparable harm, this case does not present concerns similar to those in *Douglas*. Any harm caused to the Applicant's reputation by reason of the Review Panel's decision has conceivably already occurred as a result of media coverage of his participation in the public discussions concerning settlement of the First Nation's land claim (see *Canada (Immigration and Refugee Board) v Canada (Attorney General)*, 2010 FC 1064 at para 34, 194 ACWS (3d) 832, and *Camp* at para 28). A party cannot satisfy the irreparable harm component of the *RJR-MacDonald* test in relation to allegations of reputational harm by relying, as the Applicant does in this case, upon unsubstantiated assertions; irreparable harm cannot be inferred and it must be

established by clear and compelling evidence (see: *Gateway City Church v. Canada (National Revenue)*, 2013 FCA 126 at para 14, 445 NR 360; also see *Choson Kallah Fund of Toronto v Canada (National Revenue)*, 2008 FCA 311 at paras 5, 8, 172 ACWS (3d) 801, leave to appeal to SCC refused, [2008] SCCA No 528). There is no such evidence that any harm suffered by the Applicant would be irreparable.

[38] Moreover, it is possible that any reputational harm or damage suffered by the Applicant arising by virtue of the Review Panel's decision might be alleviated if and when the Inquiry Committee determines that his conduct was not misconduct warranting a recommendation that he should be removed from judicial office. The Applicant contends that since the Inquiry Committee will be unable to complete its investigation before his imminent retirement, there is no prospect that his reputation could be redeemed through a favourable outcome. The Applicant's retirement date is not tomorrow though, and he has offered no evidence as to how long Inquiry Committee investigations take on average or as to how long the Inquiry Committee's proceedings will take in this case. It is at least conceivable that the Inquiry Committee may have completed its work before June 1, 2017. Presumably, in view of the Applicant's pending retirement, the Inquiry Committee will proceed promptly and expeditiously. Furthermore, even if the Inquiry Committee has not completed its work before the Applicant's retirement, it may determine, as did the Inquiry Committee in the Inquiry into the conduct of the Honourable Lori Douglas, to stay its proceedings in view of the Applicant's pending retirement.

[39] In view of my determination that the Applicant has not established that he will suffer irreparable harm because of the Review Panel's decision, it is unnecessary to address the third

element of the *RJR-MacDonald* test as to which of the parties would suffer greater harm from the granting or refusal of the stay pending a decision on the merits of the judicial review application.

[40] Neither party made any submissions as to costs at the hearing of this matter. The Respondent's motion record makes no request for costs. Pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, there shall be no order as to costs.

ORDER

THIS COURT ORDERS, for the reasons stated above, that:

1. The Applicant's motion, requesting an order staying the decision of the Judicial Conduct Review Panel dated February 10, 2017 pending the outcome of the application for judicial review, is dismissed.

2. There is no order as to costs.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-205-17
STYLE OF CAUSE:	THE HONOURABLE JUSTICE FRANCIS J.C. NEWBOULD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 14, 2017
ORDER AND REASONS:	BOSWELL J.
DATED:	MARCH 29, 2017

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