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December 10, 2017

The Senate of Canada
Parliament Buildings
Ottawa, ON K1A 0A4

Re:  Request for quote in support of striking a committee to investigate whether to tecommend changing Judges Act Criminal Complaints procedure

Thank you for your public service to our great nation of Canada. As you know, judicial independence is a constitutional doctrine, but the Parliament has exclusive constitutional jurisdiction over the criminal law and procedure in criminal matters.

Judges may read in or read down unconstitutional government legislation, however they cannot do indirectly (change the criminal code) what they lack jurisdiction to do directly. I hereby recommend that the Senate strike a Judges Act committee to investigate whether to recommend that Parliament legislate that the Canadian Judicial Council must refer all allegations of criminal misconduct to the RCMP who would submit a “record of investigation” within 90 days back to Council, upon receipt of the “record of investigation”, the Council would retain the power to decide whether to recommend a reprimand or removal of the judge.

In order to assist with this campaign for changes to the Judges Act, **can you please send me a quote re your personal position on creating a separate path for dealing with Judges Act criminal misconduct complaints against a judge?**

Judges are claiming judicial immunity for criminal offences like assault, extortion, obstruction of justice, fraud etc. Although judicial immunity is not a constitutional principle, the police are unable to investigate due to the common law principle of judicial immunity, therefore Council that must be required to request an  RCMP investigation of any criminal complaint. Surely, the time has come for Senators to take a position on the Judges Act criminal complaints procedure.

The status quo has created a situation where judges who are subject of criminal misconduct complaints are the same judges deciding not to request a record of the investigation, the same judges return to the court to assault and extort mandatory criminal code procedures for presenting evidence to meet the test for each element of the charge for a criminal prosecution of the Canadian Judicial Council, the same judges return to courts of appeal to defraud mandatory criminal code appeal procedures, which triggers new criminal misconduct complaints to the Canadian Judicial Council, the same judges decide not to request a record of the investigation and the cycle repeats itself.

The courts have found that since the Canadian Judicial Council is implementing government policy on criminal misconduct complaints and Council is not a court, judicial independence does not apply to judges acting for the Canadian Judicial Council, if it did (it does not), judicial immunity is not a constitutional doctrine, therefore Parliament exclusive constitutional criminal law jurisdiction overrides

any immunity common law doctrine, if it did not (it does), judges themselves created bad faith and lack of jurisdiction exceptions to the common law doctrine of civil judicial immunity.

There is no case law anywhere in Canada granting judges immunity from the criminal code, to my knowledge, there is no case law in any G7 country, granting judges immunity from the criminal code.

Madadi v. B.C. (Ministry of Education), 2012 BCHRT 380 (CanLII) [71] …The difficulty with these decisions is that ... In the words of the Supreme Court in Ocean Port, the Tribunal has elevated a common law rule to constitutional status. .. [73] It could be argued that the constitutional guarantee of independence extends to certain tribunals and may be inconsistent with the application of the human rights legislation to certain Court-like functions carried out by those tribunals …Conclusion Respecting Judicial Immunity [74] While ..there are sound reasons for immunizing judicial and quasi-judicial decision makers from civil suit: promoting finality of decision-making and the public interest in the integrity of the justice system, a key element of which is impartial and independent decision makers, constitutional judicial immunity does not apply to the hearing process of the TRB. As expressed in Ocean Port, "While tribunals may sometimes attract Charter requirements of independence, as a general rule they do not". Certainly **it is clear that the TRB was created for the primary purpose of implementing government polic**y respecting education. It therefore does not attract constitutional guarantees of independence in my view. **I am driven to the conclusion that judicial immunity does not apply** to the processes of the TRB whether they be those functions that may be performed interchangeably by Courts or tribunals, such as the discipline hearing in this case or responsibilities related to the sort of policy-driven adjudicative responsibilities that could not be performed by the Courts.

Douglas v. Canada (Attorney General), 2014 FC 299 (CanLII) [118] … Parliament cannot have intended that an Inquiry Committee be excused of its obligations to provide procedural fairness, as would be found in a court, on the ground that it is not a court, and simultaneously seek to insulate itself from judicial review on the basis that it is deemed to be a superior court. [119] **Immunizing the Council's decisions from review offends the principle that all holders of public power should be accountable for their exercises of power**: per Stratas JA in Slansky FCA, above, at paras 313-314. As mentioned above, where the issue arising from an impugned decision goes to a breach of procedural fairness, the **decision-making body may be deprived of jurisdiction**. Statutory tribunals cannot be immunized from review of such errors: Crevier v Quebec (Attorney General) (1981), 1981 CanLII 30 (SCC), 127 DLR (3d) 1 at para 20 (SCC) [Crevier]; Shubenacadie Indian Band v Canada (Canadian Human Rights Commission) (re MacNutt) (1997), 1997 CanLII 6370 (FC), 154 DLR (4th) 344(FC) at para 40.

Verge Insurance Brokers Limited et al. v Richard Sherk et al., 2015 ONSC 4044 (CanLII)
[61] "[T]he **inherent jurisdiction of the Court of Queen's Bench is not such as to empower a judge of that Court to make an order negating the unambiguous expression of the legislative will**": see *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.*, 1975 CanLII 164 (SCC)..
[62] "**Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule**": see Montreal Trust Company et al. v. Churchill Forest Industries (Manitoba) Limited, [1971] 4 W.W.R. 542 at p. 547, cited with approval in Baxter Student Housing Ltd. et al. v. College Housing Co-op…
[63] "In spite of the expansive nature of this power, **inherent jurisdiction does not operate where Parliament or the legislature has acted**": see *Stelco Inc. (Re)*, *supra*, at para. 35.
[64] Inherent jurisdiction is "not limitless; if the legislative body has not left a functional gap or vacuum, then **inherent jurisdiction should not be brought into play**": see *Royal Oak Mines Inc. (Re)*, 1999…
[65] "[W]here the usefulness of the powers under the Rule ends, the usefulness of the powers of inherent jurisdiction begins . . . they are wider and more extensive powers . . . filling any gaps left by the

Rules . . [66] Furthermore, s. 146 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 **restricts the scope of inherent jurisdiction to situations where there is an "absence of express provision for procedures**"

Bourbonnais v. Canada (Attorney General), [2006] 4 FCR 170, 2006 FCA 62 (CanLII)
[26]…. Sexton J.A., after reviewing the Canadian authorities on this point and, in particular, the decision of the Supreme Court of Canada in Morier et al. v. Rivard, 1985 CanLII 26 (SCC), [1985] 2 S.C.R. 716, and the decisions of the Quebec Court of Appeal in Royer v. Mignault (1998), 1988 CanLII 445 (QC CA), 50 D.L.R. (4th) 345 (Que. C.A.) leave to appeal to the Supreme Court refused, [1988] 1 S.C.R. xiii, and Proulx v. Quebec (Attorney General) (1997), 1997 CanLII 10286 (QC CA), 145 D.L.R. (4th) 394 (Que. C.A.), in which the Court of Appeal adopted the bad faith exception formulated by Lord Denning in Sirros, concluded as follows at paragraph 41: … judicial immunity does not apply where it is shown that a judge knowingly acts beyond his jurisdiction.…[28]In the case at bar, the **appellant does not contend that he is entitled to judicial immunity in regard to the criminal prosecution** that has been brought against him. In my opinion, **there would be no merit whatsoever to any such claim**. As Lord Denning stated in Sirros, at page 782: "Of course, if the judge has …**has perverted the course of justice, he can be punished in the criminal courts**." …
[30] ….It is clear from some of the cases discussed above, however, that the **immunity of judges from criminal liability is not total**. In this respect the law of England is the same as that of the USA. Excepting the general principles of immunity discussed above, **any judicial officer who violates the criminal law would be as liable therefore as any other private person**. According to Woodhouse J. of the New Zealand Court of Appeal, "a judge can, of course, be made to answer, and in a proper case, pay dearly, for any criminal misconduct. Like any other citizen criminal proceedings may be brought against him." **This is because "criminal conduct is not part of the necessary functions performed by public official**". … **The defence of judicial immunity from indictment was rightly rejected** in both Braatelein v. United States and United States v. Hastings (above). The law on immunity from criminal liability was aptly summed up by White J. of the US Supreme Court in O'Shea v. Littleton, We have never held that the performance of the duties of judicial . . . officers requires or contemplates the immuni-zation of otherwise criminal deprivations of constitutional rights . . . on the contrary the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress. A principle similar to this would probably apply (with appropriate modifications) in most commonlaw jurisdictions.

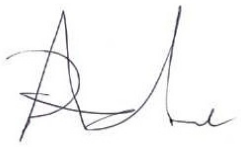
Gonzalez v. Ministry of Attorney General, 2009 BCSC 639 (CanLII) [35] After concluding that the commissioners enjoyed the same immunities as a superior court judge, a majority of the Supreme Court of Canada addressed the absolute character of superior court judges' immunity. They rejected the Court of Appeal's conclusion that judicial immunity was not absolute and depended upon whether the judge acted within or outside his jurisdiction. After reviewing the English authorities, credited as the source of the law in respect of superior court judicial immunity, Chouinard J., writing for the Majority, says that judicial immunity is absolute **except possibly when, "a judge who in bad faith did something he knew he did not have the jurisdiction to do**, or … a judge who was not acting in the course of his judicial duties knowing that he had no jurisdiction to act" (at para. 108).
[40] Mr. Taylor appealed this decision and the Appeal Division of the Federal Court upheld the decision of the Trial Division. In the course of its judgment, Sexton J.A., writing for the court, concluded that the so called **"bad faith" exception to the principle of absolute judicial immunity was good law in Canada**. In coming to this conclusion, Sexton J.A. relied on judgments from the Quebec Court of Appeal subsequent to Morier where this exception was confirmed to exist: See, Taylor at paras. 37- 39. However, at paras. 60 and 63, Sexton J.A. characterized this exception as very narrow: …
[42] Of significant relevance to the case at hand, the Appeal Division rejected Mr. Taylor's argument that, based on McLachlin J's (as she then was) judgment in MacKeigan, judges are subject to review pursuant to human rights legislation regardless of judicial immunity. In MacKeigan the Supreme

Court concluded that the **power of the courts to control their own administration was not absolute and could be subject to laws enacted by provincial legislatures or by Parliament**. Further, it was held that such laws could authorize inquiries into the conduct of judges by bodies "which possess sufficient safeguards to protect the integrity of the principle of judicial independence." See, MacKeigan at pp. 832-834.

For more information please visit: www.adeolumide.ca, Part1 and Part2

I look forward to your response.

Sincerely,



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