

IN THE MATTER OF *THE TERRITORIAL COURT ACT*, RSNWT 1988,
c. T-2 AND IN THE MATTER OF A COMPLAINT REGARDING THE
CONDUCT OF THE HONOURABLE JUDGE DONOVAN MOLLOY

DECISION OF THE JUDICIAL COUNCIL FOR TERRITORIAL
JUDGES RESPECTING A REQUEST FOR AN ADJOURNMENT BY THE
HONOURABLE JUDGE DONOVAN MOLLOY

Yellowknife, Northwest Territories

January 16, 2023

1 Proceedings taken at the Chateau Nova, Yellowknife,
2 Northwest Territories.

3

4 January 16, 2023

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6 K.M. Shaner, J The Chair

7 J. Watson, JA Judicial Council Member

8 (Remote Appearance)

9 C. Baile, CTAJ™, C Arb Judicial Council Member

10 S. Toner, CTAJ™ Judicial Council Member

11 P. Scott, PhD Judicial Council Member

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13 J. Rossall, KC Counsel for the Judicial Council

14 E. Holmstrom Counsel for the Judicial Council

15

16 S. Renouf, KC Presenting Counsel

17 (Remote Appearance)

18 L. Anaka With Presenting Counsel

19 (Remote Appearance)

20

21 K. Teskey, KC Counsel for the Complainant

22 (Remote Appearance)

23 M. Chertkow The Complainant

24 (Remote Appearance)

25

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1 R. Bradbury Counsel for D. Molloy, J
2 (Remote Appearance)

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4 C. Bernier Senior Counsel, Department of
5 Justice Canada Representing
6 Public Prosecution Service of
7 Canada

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9 S. Masongsong Judicial Court Clerk

10 A. Vidal, CSR(A), RMR Official Court Reporter

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12 THE CHAIR: Judge Molloy seeks an
13 additional indefinite adjournment based on mental
14 and physical health issues which prevent him from
15 instructing counsel and from participating
16 meaningfully in the process.

17 Presentation Counsel does not object to one
18 further adjournment but suggests it should be
19 short and that the matter proceed unless
20 Judge Molloy can demonstrate at that time that he
21 is unfit to participate in the hearing.

22 The evidence in support of the application
23 is from Dr. Delva, who has conducted an
24 assessment of Judge Molloy. His opinion is that
25 Judge Molloy is incapable of participating in
26 this process for the foreseeable future.

1 The request for an adjournment, in this
2 case, presents some significant issues that our
3 Panel has had to grapple with. As with all
4 administrative bodies, the Judicial Council must
5 ensure that the process it follows is a fair one.
6 The jeopardy for Judge Molloy is significant, but
7 fairness is not limited to just Judge Molloy.
8 The process must be fair for the complainant, who
9 has a legitimate interest in seeing her
10 complaints addressed and resolved within a
11 reasonable time. The complaint, in this case,
12 was filed in June of 2021. An investigation
13 report was completed in April of 2022, after
14 which the matter was referred to a hearing. It's
15 been adjourned once already.

16 It's also important to bear in mind that the
17 Judicial Council has a very important public
18 function in addressing allegations of judicial
19 misconduct and, in doing so, maintaining public
20 confidence in the judiciary and the court system
21 generally. The public has an interest in seeing
22 complaints resolved within a reasonable time.
23 Lengthy delays in addressing complaints regarding
24 judicial misconduct will erode public confidence
25 in the Judicial Council's ability to carry out
26 this function, and this would in all likelihood

1 spill over into a loss of confidence in the
2 courts.

3 There are some deficiencies in the evidence
4 in support of the adjournment. These include the
5 absence of a prognosis; and relatedly, no
6 suggestion for an alternative date in the
7 foreseeable future, although Mr. Bradbury did
8 suggest that an adjournment of six months might
9 be reasonable when he made his oral submissions.

10 There are also insufficient details to
11 support the physician's conclusions with respect
12 to Judge Molloy's capacity to instruct counsel
13 and to participate in the hearing. There is,
14 finally, no information about accommodations
15 which might assist Judge Molloy in participating
16 in February or at some future date.

17 On the evidence presented by itself, the
18 Panel believes it would be difficult to justify
19 the adjournment. This said, however,
20 Presentation Counsel does not object to one
21 further adjournment so long as it is not an
22 unreasonable amount of time and does suggest that
23 six months is too long.

24 In these circumstances, it is the Panel's
25 view that an adjournment can be granted but on
26 the following conditions: First, the matter will

1 be rescheduled for either April or May of 2023,
2 and we will discuss those dates shortly. We'll
3 also discuss shortly what's going to happen with
4 the February dates which are currently booked.

5 Suggestions for details of what reasonable
6 accommodations are necessary to facilitate
7 Judge Molloy's participation will be provided to
8 the Judicial Council in writing no later than
9 February 10th, 2023, at 5 PM. Any additional
10 adjournment requests by Judge Molloy will have to
11 be accompanied by detailed evidence satisfying
12 the Panel that Judge Molloy is unfit to
13 participate, even with reasonable accommodations,
14 and the level of detail will have to be much more
15 than what has been presented today.

16 Finally, it's worth repeating that the Panel
17 is acutely aware of its very important duty to
18 ensure complaints about judicial misconduct are
19 addressed in a timely manner. It is also
20 important to point out that this is a duty which
21 is not only for the Judicial Council, but it is
22 shared with judges who are subject to its
23 proceedings.

1 CERTIFICATE OF TRANSCRIPT

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3 I, the undersigned, hereby certify that the
4 foregoing pages are a complete and accurate
5 transcript of the proceedings taken down by me in
6 shorthand and transcribed from my shorthand notes
7 to the best of my skill and ability.

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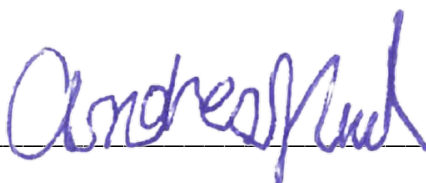
9 Dated at the City of St. Albert, Province of
10 Alberta, this 25th day of January 2023.

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A. Vidal, CSR(A), RPR, RMR

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Official Court Reporter

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