IN THE MATTER OF
Complaints Respecting the Honourable Justice Kerry P. Evans

BEFORE The Honourable Justice Louise Charron
Court of Appeal for Ontario

The Honourable J. David Wake
Associate Chief Justice
Ontario Court of Justice

Mr. Henry G. Wetelainen

COUNSEL Mr. Douglas Hunt, Presenting Counsel

Mr. Brian Greenspan, Counsel to Justice Kerry P. Evans

REASONS FOR RULING

[1] The Ontario Judicial Council has directed that a hearing be held under s. 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 regarding the conduct of the Honourable Justice Kerry P. Evans. The hearing is scheduled to commence on August 3, 2004. Justice Evans seeks an order directing that the hearing be held in camera. His motion was heard on June 15, 2004 before three of the four members of the panel that was established for the purpose of holding the hearing. The fourth panel member, Jocelyne Côté-O'Hara, was not available for the hearing of the motion. The parties agree that this motion constitutes a procedural or interlocutory matter within the meaning of s. 4.2(1) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.2 and that it can be heard and determined by one or more members of the panel, as assigned by the Chair of the panel. Consequently, the motion was heard by the three present panel members.

[2] This Council's decision whether or not to hold a closed hearing is governed by the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the criteria promulgated by the Council under that statute. Subsection 49(11) requires that the Judicial Council's hearings be open to the public, unless subsection 51.6(7) applies. Subsection 51.6(7) provides as follows:
In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1(1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

[3] Section 51.1(1) provides that the Judicial Council shall establish and make public rules governing its own procedures. Under the authority of that section, the Council has established the criteria for determining whether or not exceptional circumstances exist in relation to holding a closed hearing:

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private;

a) where matters involving public security may be disclosed, or

b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

[4]In support of his motion, Justice Evans relies solely on the nature of the allegations and, if made public, their potential impact on his continued ability to sit as a judge. By way of example, Mr. Greenspan filed a copy of an article published in The Barrie Examiner following Justice Evans' acquittal of the criminal charge which was laid as a result of one of the allegations that form the subject matter of the hearing before this Council. Among other things, the article reported the complainant's comments to the effect that she was "extremely disappointed" but not surprised at the acquittal and that she intended "to make sure that he doesn't ever get back on the bench". The article also reported what was characterized as Mr. Greenpan's "outrage" at the woman's comments.

[5] Mr. Greenspan submits that this kind of publicity can be expected if this hearing is open to the public and, consequently, that it could seriously compromise Justice Evans' ability to return as a sitting judge even if he was exonerated by this Council. He therefore submits that the preferable approach would be to have the proceedings videotaped, but held in camera. At the conclusion of the hearing, if the Council finds that the allegations are established, the public could have access to the videotape. On the other hand, if the Council's decision was favourable to Justice Evans, the Council could make an informed decision as to what parts, if any, of the videotape could be made public.

[6] Undoubtedly, the public interest includes the public's confidence in the judge. However, we do not accept counsel's argument. If in the end result the Council's findings are favourable to Justice Evans, it is our view that the transparency of the process will go much further in restoring the public's confidence in him than any private hearing shrouded in secrecy. The fundamental importance of open judicial hearings has been emphasized repeatedly. Just recently, the Supreme Court of Canada, in Vancouver Sun (Re), 2004 SCC 43, reiterated that the "open court principle" is a "hallmark of a democratic society and applies to all judicial proceedings". The following excerpt is particularly relevant to the issue raised on this motion (at para. 25):
Public access to the courts guarantees the integrity of judicial processes by demonstrating "that justice is administered in a non-arbitrary manner, according to the rule of law": [reference omitted]. Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts.

[7] Justice Evans has not presented any circumstance particular to his case that would warrant the Council's departure from the principle that the hearing be open to the public. His argument is one that would apply in any case where a judge's conduct is the subject-matter of a hearing. In order to accede to the applicant's request, it is our view that it would be necessary to reverse the very strong statutory presumption in favour of a public hearing.

[8] For these reasons, the motion is dismissed. The hearing will be held in public.

DATED at the City of Toronto, in the Province of Ontario, July 2, 2004.

The Honourable Justice Louise Charron
Court of Appeal for Ontario, Chair

The Honourable J. David Wake
Associate Chief Justice
Ontario Court of Justice

Mr. Henry G. Wetelainen