

Judge fights secret complaint hearing

Other jurists accuse him of angry outbursts and 'bullying'

With 'nothing to hide,' he opposes bid for publication ban

The Toronto Star - Feb.10, 2006.

Tracey Tyler – Legal Affairs Reporter

The criminal justice system in Peel Region may not be able to function if "scandalous" evidence involving one of its judges is made public at a hearing this spring, a panel of the Ontario Judicial Council has heard.

But a lawyer representing Justice Marvin Morten says the region's residents, particularly its 500,000 members of visible minorities, deserve to know why a black judge is in danger of losing his job.

If Morten's hearing unfolds behind closed doors "there will be an uproar in the black community," added Munyonzwe Hamalengwa, a lawyer representing *Pride News Magazine*, which specializes in news for African Canadians, one of several media outlets which appeared before the council yesterday to oppose a sweeping publication ban on evidence.

Much of the evidence is expected to come from Morten's fellow judges at the Brampton courthouse. Lawyers for the *Toronto Star* and *Globe and Mail* argued that allowing them to testify away from the eyes of the public would send a message there is one set of rules for judges and another for other citizens who ordinarily testify in public.

Morten, 61, is the subject of a complaint which accuses him of acting in a manner incompatible with the duties of his office and bringing the administration of justice into disrepute.

The council will hear evidence over several weeks from judges who claim extremely angry outbursts by Morten and his "bullying" of judicial colleagues has "poisoned" the work environment at the Brampton courthouse and have led some to fear for their personal safety,

said Doug Hunt, a lawyer presenting the case to the judicial council.

Morten's colleagues will testify he has demeaned their competence and work ethic to their face and behind their backs, including to Ontario Chief Justice Roy McMurtry, he said.

Hunt is asking the panel, headed by Justice Eileen Gillese of the Ontario Court of Appeal, to impose a publication ban on their testimony or close the hearing to the public when the judges and court staff take the witness stand, starting in May.

"Over several months, citizens are going to have to appear in the Brampton court in front of judges who have been criticized and berated by Justice Morten, who have been the subject of the most unflattering and extreme criticisms, that may be described as scandalous and may even have amounted to libellous remarks," he said.

Judges must be able to work "free from the potentially destructive effects of the media spotlight" on Morten's hearing and citizens must have confidence in the courts, which could be eroded by publication of the judges' testimony, Hunt said.

His request was opposed yesterday by lawyers for the media, Ontario's Criminal Lawyers' Association and Morten himself.

"My client ... wants to be vindicated publicly"

Robert Schipper, judge's lawyer

Peel residents have a right to know why one of their "prized citizens" could be removed from the bench, said Robert Schipper, Morten's lawyer. Morten was Brampton's Citizen of the Year for 2002.

"My client wants to be vindicated and he wants to be vindicated publicly. Right now, it's a huge embarrassment to him and his family," Schipper said. "He has nothing to hide. He's not ashamed of anything that may come out in the process."

Peter Jacobsen, a lawyer for the *Globe and Mail*, argued the justice system can withstand the scrutiny. "The court system is not some delicate porcelain doll that will shatter," he said.

Toronto Star lawyer Paul Schabas said there is not one shred of evidence to support Hunt's argument that publication could impair the administration of justice. In fact, closing the hearing to the public would bring the administration of justice into disrepute, Schabas said.

"The public should know and must know what the evidence is, and how you are going to decide this judge's fate, if you will, as a judge," he told the panel. "If that involves, unfortunately, or perhaps fortunately, the scrutiny of conduct and efficiency of conduct of other judges, so be it.

"There may be reason to be critical of the courts in Brampton. We don't know.

"Justice is not a cloistered virtue and this hearing does not deserve to be private just because it might deal with the workings of the cloister of the court," Schabas said.

Marlys Edwardh, a lawyer representing the Criminal Lawyers' Association, said the evidence in the case is expected to deal with subjects of genuine public interest, including whether court hearings start on time and the length of time persons spend in pre-trial custody.

It is significant that Morten himself wants the hearing open, Edwardh added.

"He is a member of a visible minority. We don't have a lot of members of visible minorities who sit on the bench in Ontario. It is absolutely critical that these proceedings occur in public so all members of the community can be comfortable with the result reached," she said.

"You will not restore confidence in His Honour, even if your findings are favourable, if you proceed in secrecy. If your findings are unfavourable, you will never be able to satisfy this community that a fair, impartial hearing proceeded."

Gillese said the panel will release its decision today.