

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20131118**

**Docket: A-462-12**

**Citation: 2013 FCA 267**

**CORAM: EVANS J.A.  
TRUDEL J.A.  
WEBB J.A.**

**BETWEEN:**

**CONRAD BLACK**

**Appellant**

**and**

**THE ADVISORY COUNCIL FOR THE ORDER  
OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on November 18, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on November 18, 2013.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**EVANS J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario on November 18, 2013)**

**EVANS J.A.**

[1] In a letter dated July 20, 2011, the Secretary to the Governor General informed Conrad Black that the Advisory Council for the Order of Canada proposed to review his appointment to the Order in light of his criminal conviction in the United States for fraud and obstruction of justice.

[2] Mr. Black requested an in-person oral hearing before the Council to enable him to demonstrate that the prosecutors in the United States had not acted appropriately towards him and that a court in Canada would not have found him guilty of the offences.

[3] The Council refused his request, stating that he could make written representations, supported by documentation, on why his conviction did not warrant the termination of his appointment to the Order of Canada. Mr. Black asked the Council to reconsider its decision, but it maintained its initial position.

[4] Mr. Black rejected the offer to make written representations and made an application for judicial review to set aside the Council's decision, on the ground that the duty of fairness required that he be afforded an opportunity for an oral hearing. In a decision reported as *Black v. Advisory Council for the Order of Canada*, 2012 FC 1234, the Federal Court dismissed Mr. Black's application.

[5] In full and careful reasons, Justice de Montigny (Judge) agreed with Mr. Black that the exceptional circumstances of this case justified a challenge to an interlocutory decision of the Council. He also held that, while the exercise of the prerogative power respecting the award and termination of an honour (including an appointment to the Order of Canada) was not justiciable, the *Policy and Procedure for Termination of Appointment to the Order of Canada* (Policy) created a legitimate expectation that the procedures that it outlined would be followed. However, the Judge held, the Policy did not give rise to a legitimate expectation that an oral hearing would be held prior to a recommendation to the Governor General that an individual's appointment should be revoked.

[6] Moreover, on the basis of the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (*Baker*) for calibrating the content of the duty of fairness in a given case, Mr. Black's procedural entitlements fell towards the low end of the scale, because: the Council's process does not resemble judicial decision-making and is non-adversarial; the Council's function is recommendatory and the Governor General's decision is discretionary; Mr. Black had no legal right to an appointment, nor a legitimate expectation that it would not be terminated, and any damage to his reputation flowed from his conviction; and the Council was entitled to deference in the exercise of its discretion as to whether Mr. Black should be given an opportunity to make representations orally or in writing.

[7] Without expressing an opinion on the Judge's determination of the issues of justiciability and legitimate expectation, we are all of the view that, substantially for the reasons given by the Judge, the *Baker* factors do not require the Council to give Mr. Black an oral hearing in order to ensure that he is afforded procedural fairness in all the circumstances of the case.

[8] In particular, since it is not the Council's function to determine if Mr. Black's conviction in the United States was proper, we are not persuaded that the Council's recommendation will turn primarily on an assessment of Mr. Black's credibility. Further, to the extent that credibility may be an issue, we are also of the view that no single *Baker* factor necessarily trumps all the others.

[9] For these reasons, the appeal will be dismissed with costs.

"John M. Evans"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-462-12

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE de MONTIGNY  
OF THE FEDERAL COURT, DATED OCTOBER 23, 2012, IN DOCKET NO. T-1348-12.**

**STYLE OF CAUSE:**

CONRAD BLACK v. THE  
ADVISORY COUNCIL FOR THE  
ORDER OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 18, 2013

REASONS FOR JUDGMENT OF

**DELIVERED FROM THE BENCH BY:**

WEBB J.A.

EVANS J.A.

**APPEARANCES:**

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Aaron Kreadon

Christine Mohr  
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FOR THE RESPONDENT

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