A disciplinary complaint against a member of the Supreme Court of Canada has been ruled serious enough to warrant his possible dismissal, and sent on to a five-member panel for a review behind closed doors that will determine whether he will have to face a public trial.

Justice Russell Brown, 57, is being investigated over a complaint from a former United States marine, Jonathan Crump, after a physical altercation between the two men at an Arizona hotel in late January. Mr. Crump, 31, told local police that Justice Brown had followed two women to their room, and that he had intervened to protect them. Police laid no charges, and Justice Brown has called the allegations “demonstrably false.” He has said Mr. Crump punched him several times in the head without provocation.

The Canadian Judicial Council, a disciplinary body of chief and associate chief justices, announced the review panel on Thursday. The council has not revealed the contents of the complaint. Nor did it disclose in its announcement why it had decided the complaint may justify removal from the bench. Supreme Court Chief Justice Richard Wagner placed Justice Brown on paid leave from his $403,300-a-year post on Feb. 1.

The decision to set up a review panel is a step toward the embarrassing prospect, for the judge and the court itself, of a trial in front of senior judges from around the country - one likely to draw widespread media coverage and international attention.

It also means several more weeks, if not months, in which the court will need to function with eight members instead of nine. Chief Justice Wagner has chosen to use an odd number of judges to avoid ties. He sidelined the court’s first Indigenous judge, Justice Michelle O’Bonsawin, in a case this month with major implications for Indigenous peoples.

Justice Brown issued a statement in both of Canada’s official languages acknowledging the council decision and adding that he looks forward to resuming his duties at the court. Mr. Crump could not be reached for comment.

Justice Brown, a 2015 appointee of Conservative prime minister Stephen Harper, is the only member Canada’s top court to have been placed on leave during an investigation into a complaint against him.

Pierre Thibault, a constitutional law professor at the University of Ottawa, said he is not surprised by the decision to move the process along to the next stage. “I would not draw any conclusion at this point,” he said. “The process needs to be followed, and it needs to be followed properly. For me, it’s wait-and-see for the moment.”

He did not object to the lack of disclosure by the council.

“I think I will put all my confidence in the process. Maybe there are some personal things that cannot be revealed. We should give the process a fair chance to end properly.”

The judicial council received the complaint on Jan. 29, and the preliminary stages have taken two months to complete. The council’s executive director, Marc Giroux, who has the power to dismiss complaints, turned it over almost immediately to B.C. Supreme Court Chief Justice Christopher Hinkson, the chair of the council’s conduct committee.

Chief Justice Hinkson had the authority...
to dismiss the complaint. He could also have expressed concerns in writing, privately, to Justice Brown, or arranged for remedial measures such as counselling, or an apology. To send the matter to a review panel, Chief Justice Hinkson had to decide it was serious enough to justify possible removal from the bench.

He was required under the council’s by-laws to explain his reasons to Justice Brown and Chief Justice Wagner.

Review panels are made up of three chief or associate chief justices, one other judge and a lay member of the public.

If the review panel were to decide a public trial, known formally as an inquiry, was not necessary, it would refer the matter back to Chief Justice Hinkson, who would decide how to resolve it.