

September 25, 2020

Updating note from Prof. Craig Scott:

The Canadian Judicial Council replied to my letter of September 20, 2002, by email on September 25, 2020, to indicate that it had been received and a file has been opened numbered CJC File: 20-0260. The reply characterizes my letter as being itself a letter of complaint – and this is accurate because I joined myself to the earlier complaint of Prof. Leslie Green – but it does not also explicitly address the other aspect of my letter, namely, a request for review of any decision that (according to news reports) may already have been made to reject Prof. Green’s complaint for failure to specifically name a judge.

Focusing on the complaint status of my letter, the CJC email reply stated: “The Council seeks to complete its review of complaints within 3 to 6 months of receipt and achieves this objective in most instances. Once the review of your complaint is completed, the Acting Executive Director will communicate with you.”

While this sentence does style my submission as a “complaint”, it does not indicate whether it has passed the threshold screening stage (by the CJC Executive Director) and been passed to – or on the way to being passed to – the Chairperson of the Judicial Conduct Committee. Some ambiguity slips in with the following general sentences:

- “Please be advised that your *correspondence* will be reviewed in accordance with the Canadian Judicial Council Procedures for the Review of Complaint or Allegations (Review Procedures).” (my emphasis added)
- “Your *letter of complaint* will be processed as provided in the Review Procedures.” (my emphasis added)

I have replied to the CJC to ask for clarification as to whether my file still remains susceptible to screening out by the Executive Director (e.g. because the complaint-letter – like that of Prof. Green -- does not name a specific judge but rather indicates how the CJC can determine the name). If I receive a reply, I will add a codicil (v2) to this note.

On the ‘request for review’ aspect of my letter, the Canadian Judicial Council’s email to me did point out – and I am grateful for this – that my letter appears to assume that the Chairperson of Council (Chief Justice of Canada Richard Wagner) is also the Chairperson of the Judicial Conduct Committee. I had not checked the committee membership lists and just assumed the Chairperson was the same person in both

capacities. This turns out not to be the case. A closer read of the Review Procedures (notably s.2.2) on this point would have alerted me to the fact that the Chairpersons cannot be the same person as the Chairperson of Council does not take part in judicial-conduct review. As such, I have now requested to the CJC that my letter should be read as addressed to both Chief Justice Wagner in his capacity as Chairperson of Council and to the judge who is the Chairperson of the Judicial Conduct Committee.

The reason it is important that it remain addressed to the Chief Justice as Chairperson of Council is that, upon re-reading the review procedures, it is unclear to me if the Chairperson of the Judicial Conduct Committee can indeed intervene – based on a letter like mine – to overturn any screening decision by the Executive Director by which the Executive Director chooses not to convey the complaint to the Chairperson of the Judicial Conduct Committee for reason of lack of a specifically named judge. Whether the Chairperson of Council as a whole has any more power is of course itself open to considerable doubt (indeed almost certain not to be possible), in which case my letter would serve the purpose of alerting CJC Wagner to a possible need for reform of procedures by the Canadian Judicial Council as a whole.

That part of my letter that asks the Chairperson (of the Judicial Conduct Committee) to override her/his own decision not to proceed with the complaint by Professor Leslie Green for lack of a name – *if* the Executive Director did indeed pass the Green complaint to the Chairperson and if that decision was then made – still applies but the addressee on that point is solely the Chairperson of the Judicial Conduct Committee and not the Chairperson of Council.