



FACULTY OF LAW

Macdonald Hall, Union Street  
Queen's University  
Kingston, Ontario, Canada K7L 3N6  
Tel 613 533-2220

29 September 2020

The Chief Justice, as Chair of  
The Canadian Judicial Council  
Ottawa, K1A 0W8  
*By email*

Dear Chief Justice,

Re: CJC File: 20-0254

On 29<sup>th</sup> September I received acknowledgment of my complaint to the CJC, sent electronically twelve days earlier. It asks whether I wish to add information to my complaint. The following may be helpful.

(1) The Tax Court judge described in my letter is now reported to be **The Honourable David E. Spiro**.

(2) Judge Spiro is a distinguished lawyer, judge, and alumnus of the Faculty of Law at the University of Toronto. He is a generous donor to the University of Toronto, as are his extended family. Judge Spiro was a donor to the Faculty of Law Building Campaign Donors and Campaign for Excellence without Barriers campaign, in the \$25,000-\$99,999 donor category.

(3) Judge Spiro holds, or once held, that for university professors to research or advocate, for example, a 'One-State Solution' to the Israel/Palestine conflict is to **'advocate the demise of Israel as a Jewish State'** and that any academic conference predominantly advocating that view would be a **'forum for anti-Israel propaganda.'**(24<sup>th</sup> June 2009). (Annex A)

It is a fact that in Canada as in Israel it is lawful and well within the bounds of academic freedom and freedom of speech to: advocate (solely) for a 'One-State solution', to condemn the belligerent occupation by Israel of Palestinian lands, to investigate human rights abuses within Israel, and to teach, advocate, research, publish, and organize conferences on any of these or related subjects.

(4) Judge Spiro holds, or held, very restrictive views of academic freedom and the right of free inquiry. In the same statement, he stated that university conferences should be subject to **'the test of fairness and balance, both of which are essential to for any academic conference.'** (Annex A). This view, like the view that university professors

must not be ‘**one-sided**’ in their research and must be ‘**impartial,**’ is gravely in error. (Annex D) Those are duties of *judges*, not researchers, who are fully entitled to advocate, within the law, for any position they find convincing.

The so-called ‘balance’ test is repugnant to academic freedom and is repudiated by the CAUT and all serious research institutions. That test requires that if one perspective is represented in research, at a conference, or in a publication then a conflicting perspective must also be represented to ‘balance’ it. That would require a conference on covid-19 to include covid-deniers, and a conference on freedom for Tibet to include voices from the Chinese government. No Canadian university, scholarly association, or granting body has ever accepted a ‘balance’ or ‘impartiality’ test. Academic freedom includes the freedom of advocacy and it secures diversity *among*, not *within*, research programmes, conferences, or publications.

(5) In the summer of 2020, the University of Toronto Faculty of Law began a search of a Director of its International Human Rights Programme. Vice-President Kelley Hannah-Moffat, Vice President later stated, “**The hiring process for the IHRP director...[is] confidential, and the university is continuing to do its best to maintain confidentiality.**” (Annex B)

(6) On or before 3<sup>rd</sup> September, Judge Spiro or a surrogate sought, or was given, the identity of candidates under consideration in that strictly confidential process, including Dr Valentina Azarova, the unanimous choice of the search committee with whom the Faculty of Law had already discussed what it described as its “offer” to her of a position. (Annex C)

Dr Azarova had not named Judge Spiro as a professional reference or consented to his intervention. The IHRP committee did not approach Judge Spiro for an opinion on her research, nor would any university. Judge Spiro is a distinguished lawyer, litigator, and jurist in the area of tax law and policy. He has no academic qualifications, peer-reviewed publications, or research on the Israel/Palestine conflict, on human rights, on freedom of expression, or on academic freedom. He may have, and is fully entitled to have, private commitments on such matters. According to a Department of Justice news release (17<sup>th</sup> April 2019) “**Justice Spiro has held a number of significant volunteer leadership responsibilities within the Jewish community.**” He is often praised in the community for this work and for his strong commitment to Israel. This, too, is fully permissible as an aspect of his private life.

(7) By September 4<sup>th</sup> Judge Spiro or a surrogate had contacted staff of the Alumni /Advancement office at Faculty of Law, or others, to express concern about the impending appointment of Dr Azarova. (Annex B) The grounds of concern were based on the character and quantity of her research into the Israel/Palestine conflict: Judge Spiro had made his own views on that conflict clear in his public statements of June 2009. (Annex A) Others in Toronto’s Jewish community shared his views and pressed people to act on them in this very case. (Annex D)

(8) On September 4<sup>th</sup>, the Assistant Dean contacted Professor Audrey Macklin, as Chair of the search committee and Advisory board, and alerted her to Judge Spiro's objections. Professor Macklin writes, "**the director of alumni/advancement (I think Jennifer Lancaster but I'm not sure) received a call from an alum about VA [Valentina Azarova], regarding VA's Israel/Palestine work. The alum is a tax judge, and told the alum/advancement staff member that he intended to call Ed [Dean Iacobucci]**" (Annex C)

(9) On September 6<sup>th</sup>, Dean Iacobucci met with Professor Macklin to inform her that he had decided not to proceed with the appointment of Dr Azarova and to cancel the search, leaving the IHRP without a Director. Iacobucci stated the following as possible reasons for refusing to appoint Azarova:

- a) complications in her immigration status,
- b) the fact that she would need to be working remotely for a period
- c) the fact that Azarova's research on Israel/Palestine had become "**an issue**" for an alumnus. (Annex C)

(10) In reply to an expression of concern from Professor Macklin about the improper influence of consideration (c), Dean Iacobucci said "**it is an issue, but given the other two reasons, I don't need to get to the third issue.**" Dean Iacobucci was thus alert to the judge's opposition but would exclude it from consideration and rely instead only on the other putative reasons. (Annex C)

(11) On September 11<sup>th</sup>, Professor Macklin resigned in protest from the committee owing to the lack of transparency in the process and Dean Iacobucci's willingness to entertain, if not rely on, an alumnus's political opposition to the appointment. She was followed by the entire Advisory Board of the IHRP. (Annex C).

Shortly thereafter, comity and collegial self-governance in the Law Faculty broke down, as the Dean's conduct, and that of the judge, became matters of grave public concern in Canada and abroad. It is for the University of Toronto to deal with any allegations of breach of contract, discrimination on grounds of creed, defamation, and---importantly---violations of academic freedom and breach of norms of university governance. But it is for the Canadian Judicial Council to investigate the matters touching the personal integrity and impartiality of the judiciary, to record its findings of fact, and to take such action as it deems just and appropriate in the circumstances, having regard to the gravity of the published allegations.

(12) The following people have personal knowledge that bears directly on the matters discussed in this letter. I respectfully request that the Investigator(s) interview each of them:

Dr Valentina Azarova  
 President Meric Gertler, University of Toronto  
 Vice-President Kelley Hannah-Moffat, University of Toronto

Dean Edward Iacobucci, Faculty of Law, University of Toronto  
Assistant Dean Jennifer Lancaster, Faculty of Law, University of Toronto  
Assistant Dean Alexis Archbold, Faculty of Law, University of Toronto  
Professor Audrey Macklin, Faculty of Law University of Toronto,  
Mr Michael Mostyn, CEO, B'nai Brith Canada  
Mr Howard English, CAF Canada, formerly of UJA Federation, Toronto  
Mr Daniel Ferman, Toronto, formerly of Hillel of Greater Toronto

Yours truly,

A handwritten signature in black ink, appearing to read "Leslie Green". The signature is written in a cursive, flowing style.

Leslie Green, D.Phil.  
Professor of Law and Distinguished University Fellow