



Court File No. T-1005-21

## FEDERAL COURT

NATIONAL COUNCIL OF CANADIAN MUSLIMS,  
CRAIG SCOTT, LESLIE GREEN, ARAB CANADIAN LAWYERS  
ASSOCIATION, INDEPENDENT JEWISH VOICES, AND CANADIAN  
MUSLIM LAWYERS ASSOCIATION

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

### NOTICE OF APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1 OF THE *FEDERAL COURTS ACT*

### NOTICE OF APPLICATION TO FEDERAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date June 23, 2021

Issued by \_\_\_\_\_  
(Registry Officer)

Address of  
local office: 180 Queen Street West, Suite 200  
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## APPLICATION

1. **THE APPLICANTS** make an Application for:
  - (a) Judicial review of the various decisions of the Canadian Judicial Council (the “**CJC**”) issued 20 May 2021 in Files #20-0254, 20-0260, 20-0275, 20-0261, and 20-0305 (the “**Review Panel Decisions**”) pursuant to section 8.2 of the *Council’s Procedures for the Review of Complaints or Allegations About Federally Appointed Judges* (“**Review Procedures**”) to not constitute an Inquiry Committee to further investigate the conduct of Justice David E. Spiro (“**Justice Spiro**”).
  - (b) Judicial review of the various decisions of the Canadian Judicial Council (the “**CJC**”) issued 20 May 2021 in Files #20-0254, 20-0260, 20-0275, 20-0261 and 20-0305 (the “**Judicial Conduct Committee Decisions**”), which collectively with the Review Panel Decisions and the Press Release, as that term is defined below, will be referred to as the “**Decisions**”) to close the Complaints, as defined below, with regards to the conduct of Justice Spiro and the determination that the matter raised in the Complaints had been appropriately addressed.
  - (c) A Declaration that the threshold stipulated by Section 2(4) of the *Canadian Judicial Council Inquiries and Investigations By-laws* (the “**Bylaws**”) has been met, thereby requiring the CJC to constitute an inquiry.
  - (d) In the alternative, a Declaration that the Vice-Chairperson of the Judicial Conduct Committee (the “**Vice-Chairperson**”) did not resolve the matter appropriately once the Review Panel made their findings, and an Order directing the Vice-Chairperson to substitute measures to resolve the complaint in the most appropriate way.

- (e) A Declaration that the Judicial Conduct Committee Decision's reasons were not justified, transparent and intelligible.
- (f) In the alternative, an Order setting aside or quashing the Decisions and referring the matters back to the person with the proper authority to reconsider the matters in accordance with the applicable By-laws, Review Procedures, policies, and guidelines.
- (g) In the further alternative, an Order setting aside the Review Panel Decision and remitting the matter back to the Review Panel to reconsider the Review Panel Decisions with instructions from the Federal Court.
- (h) An Order for the Applicants' costs in this matter; and
- (i) Such further and other relief as counsel may advise and this Honourable Court may deem just.

2. **THE GROUNDS FOR THE APPLICATION** are:

***Background:***

- (a) The International Human Rights Program (“**IHRP**”) is a program at the University of Toronto Faculty of Law that provides knowledge exchange and experiential learning opportunities for students.
- (b) In August 2020, Dr. Valentina Azarova interviewed for the position of Director of the IHRP. At the time, Dr. Azarova was a human-rights lawyer and scholar based in Germany. Dr. Azarova had communications with the University throughout

August, where it was indicated to her that the University expected her to start the position as soon as possible.

- (c) Justice Spiro is a judge of the Tax Court of Canada. He is an alumnus of the University of Toronto Faculty of Law and has a history of making financial donations to the Faculty of Law.
- (d) Justice Spiro was previously a member of the Board of Directors of the Centre for Israel and Jewish Affairs (the “CIJA”).

***Justice Spiro Contacts the University of Toronto:***

- (e) On 3 September 2020, Justice Spiro learned from a staff member of the CIJA about the imminent appointment of Dr. Azarova as the Director of the IHRP. The CIJA staff member shared with Justice Spiro that the organization had concerns about Dr. Azarova’s academic work and position on Israel’s occupation of the Palestinian Territory.
- (f) The CIJA staff person asked Justice Spiro to approach the Dean of the Faculty of Law to communicate these concerns about the appointment and to determine whether the appointment had been made. Justice Spiro did not communicate directly with the Dean but did have a conversation with another university official. In this conversation, Justice Spiro relayed his and CIJA’s concerns.
- (g) On 10 September 2021, the Faculty of Law called Dr. Azarova. By all accounts, after that call, Dr. Azarova was no longer welcome as the Director of the IHRP.

### *Complaints to the CJC:*

- (h) On 17 September 2020, Professor Leslie Green of the Faculty of Law at Queen's University ("**Professor Green**") wrote an initial letter of complaint to the CJC about the conduct of a judge that was not known at the time. This was later discovered to be the conduct of Justice Spiro. Professor Green's letter referenced two news articles that reported the allegations, as well as published reports on the matter.
- (i) On 21 September 2020, Mr. Mustafa Farooq made a complaint to the CJC on behalf of the National Council of Canadian Muslims (the "**NCCM**") about Justice Spiro's actions. This letter outlined the concerns that the NCCM had received about Justice Spiro's conduct from many organizations and individuals within the Muslim community.
- (j) On 29 September 2020, Professor Leslie Green wrote a follow up letter of complaint to the CJC about the conduct of Justice Spiro, which included further detail about the alleged conduct and some additional background information about Justice Spiro.
- (k) On 10 October 2020, Independent Jewish Voices Canada ("**IJVC**"), the British Columbia Civil Liberties Association ("**BCCLA**"), and the Arab Canadian Lawyers Association ("**ACLA**") wrote a joint letter of complaint to the CJC regarding the conduct of Justice Spiro. In this letter, these organizations expressed concern about Justice Spiro's ethical breaches and outlined the harm that this

conduct had on various communities, including Palestinian-Canadians and Jewish-Canadians.

- (l) On 20 and 25 September 2020 and on 20 and 22 April 2021, Professor Craig Scott complained to the CJC about the conduct of Justice Spiro and the procedure used to investigate the matter.
- (m) On 8 October 2020, the Canadian Muslim Lawyers Association (“**CMLA**”) and the Canadian Muslim Women Lawyers Association (“**CAMWL**”) wrote a joint email of complaint to the CJC regarding the conduct of Justice Spiro.
- (n) Collectively, the complaints from Prof. Green, Prof. Scott, the NCCM, the IJVC, the BCCLA, the ACLA, the CMLA, and the CAMWL are referred to as the **Complaints**.

***The CJC’s Investigation and the Decisions:***

- (o) On 11 January 2021, the Honourable Kenneth G. Nielsen, Associate Chief Justice of the Court of Queen’s Bench of Alberta and Vice-Chair of the Judicial Conduct Committee convened a Review Panel to investigate the matter.
- (p) On 20 May 2021, by way of separate letter to each complainant, the CJC provided its decisions and reasons to the Complaints (the “**Decisions**”).
- (q) The Decisions are substantively the same with one exception. The response to Prof. Scott also contained one additional paragraph that was not included in any of the other responses:

On April 22, 2021, you forwarded submissions to the Review Panel concerning your complaint and the *Cromwell Report*. On that date, the Review Panel had already made its determination in this matter. The *Review Procedures* and the *By-laws* do not provide an opportunity for a complainant to make submissions to a Review Panel, and Review Panels do not seek such submissions. Nevertheless, [Vice-Chair of the Judicial Conduct Committee] Associate Chief Justice Nielsen commented he did review your submissions of April 22, 2021 when making his decision on the most appropriate way to resolve this complaint.

- (r) The Decisions were announced to the public by way of a CJC Press Release dated 21 May 2021 (the “**Press Release**”). The Press Release stated that the Review Panel “reviewed” various documents including a report authored by former Supreme Court of Canada Justice Cromwell, known as the Cromwell Report. The Decisions do not inform the Complaints that the Review Panel reviewed the Cromwell Report as part of their investigation.

***The Decisions are Unreasonable:***

- (s) The CJC unreasonably found that Justice Spiro made “serious mistakes” but that these mistakes were not serious enough to warrant a recommendation for his removal from office and therefore did not warrant an inquiry.
- (t) The Decisions are internally inconsistent and are not based on a rational chain of analysis. The Decisions are unreasonable for the following reasons, among other reasons:
  - (i) In multiple instances throughout the Decisions, the CJC states that Justice Spiro’s actions were serious. Specifically, all of the Decisions state “[i]t was a serious error for Justice Spiro to discuss the appointment of the Director of IHRP.”



- (ii) Despite the stated seriousness of the conduct, the Decisions take no further action on the Complaints. The Decisions are not justified in relation to the facts and the law that constrained the CJC, nor do they sufficiently articulate why the CJC is taking no further action on the Complaints.
- (iii) The Decisions state that “the Review Panel concluded that nothing in the career of Justice Spiro or his work supports the suggestion of perceived bias on his part against Palestinian, Arab or Muslim interests”, without further explanation or elaboration. The Decisions do not sufficiently articulate a justification for this finding.
- (iv) The Decisions find that “right thinking persons apprised in accurate terms of the conduct of Justice Spiro over his career and in relation to this matter could not conclude that the judge is biased against Palestinian, Arab or Muslim interests”. This conclusion is unreasonable considering the number of complaints from organizations as well as affected and interested individuals.
- (v) The Decisions make a finding that the CIJA instructed Justice Spiro to approach the Dean of the Faculty of Law and then conclude, without reason or justification, that this instruction was not the reason he interfered and that instead it was due to his status as alumnus.
- (vi) Without reason or justification, the Decisions invoke Justice Spiro’s status as alumnus to explain and lessen the “serious error” he committed.

- (vii) The Decisions do not follow a rational chain of analysis as they simultaneously recognize the severity of the error made by Justice Spiro, whilst 1) never articulating with any clarity the nature of the error made and 2) ultimately dismissing the error without reason or justification.
- (viii) The Decisions are ultimately not justified or intelligible to the parties subject to the Decisions. They lack internal logic by seemingly accepting Justice Spiro's position without explaining further how the final decision was reached and justified.
- (ix) The CJC's By-Laws and Review Procedures are deficient and do not comply with the principles of natural justice and procedural fairness.
- (x) The CJC unreasonably found that Justice Spiro's conduct may be attributed to a role other than his judicial office, such as an interest as a donor to a university.
- (xi) The CJC, in reaching the Decisions, unreasonably relied on (1) assurances from Justice Spiro and (2) facts not elaborated in the Decisions and unknown to the public.
- (xii) The CJC unreasonably confined its assessment to (1) actual, conscious bias without consideration of the possibility of unconscious bias and (2) the possibility of potential animus towards particular groups without considering the effect of support for a particular position on an issue on the role of the Court.

(xiii) The CJC unreasonably failed to refer to, consider, or explain the relevance of the position of CIJA or to the effect of Justice Spiro's conduct on academic freedom within public universities or on Dr. Azirova.

3. The Applicant relies on the following statutes and rules:

- (a) *Judges Act* R.S.C. 1985, c. J.-1;
- (b) *Federal Courts Act*, R.S.C., 1985, c. F-7.
- (c) *Federal Courts Rules*, SOR/98-106;
- (d) *Canadian Judicial Council Inquiries and Investigations By-laws*, 2015;
- (e) *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, 2015; and
- (f) Such further and other grounds as counsel may advise and this Honourable Court may permit.

4. This Application will be supported by the following material:

- (a) The Complaints;
- (b) The Decisions of the CJC; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

5. The Applicants request Canadian Judicial Council to send a certified copy of the record that is not in the possession of the Applicants but is in the possession of the Canadian Judicial Council, including but not limited to all complaints, letters, emails, documentation, and any other records that were before the Review Panel and the Vice-Chair or prepared by the Review Panel and Vice-Chair in relation to this matter.

June 21, 2021

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