



Personal and Confidential

CJC File: 19-0631

28 April 2020

Mr Rob Moore
Member of Parliament
Room 710 Justice Building
Ottawa, ON K1A 0A6

By email: Rob.Moore@parl.gc.ca

Dear Mr Moore:

I am responding to your correspondence of 18 February 2020 in which you make a complaint in respect of the Honourable Colleen P. Suche of the Court of Queen's Bench of Manitoba.

Your correspondence was addressed to the Right Honourable Richard Wagner, Chairperson of the Canadian Judicial Council (Council). However, pursuant to section 2.2 of the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges* (Review Procedures), Chief Justice Wagner does not take part, in any way, in the review of judicial conduct matters. All correspondence sent to Chief Justice Wagner to this effect is redirected to the Executive Director.

In accordance with the *Review Procedures* of the Council, I referred your correspondence to the Honourable Christopher E. Hinkson, Chief Justice of the Supreme Court of British Columbia and Chair of the Judicial Conduct Committee of the Council. Chief Justice Hinkson asked Justice Suche and Chief Justice Joyal to comment on your complaint. After carefully reviewing this matter, Chief Justice Hinkson has directed me to provide you with this response.

The mandate of the Council in matters of judicial conduct is to determine whether a recommendation should be made to the Minister of Justice, after a formal investigation, that a judge be removed from office by Parliament. The reasons for removal are set out in the

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Judges Act and address situations where a judge has become incapacitated or disabled from performing the duties of a judge. This can be as a result of age or infirmity, misconduct, failure to execute the duties of the position, or being in a position incompatible with the functions of a judge.

Your complaint relates to articles published in the *Globe and Mail* in February 2020. You assert that Madam Justice Suche has provided lists of individuals whom she considered to be suitable candidates for judicial appointment. The articles asserted that identical lists of candidates were submitted to the office of the Minister of Justice and Attorney General by Madam Justice Suche and her husband.

Your complaint generally calls into question the impartiality of judicial appointments by the Liberal party, but in particular questions the role played by Madam Justice Suche in that process.

In response to your complaint, Madam Justice Suche accepts that, in order to preserve the necessary separation between the judiciary and the other branches of government, that when a judge is asked about a judicial appointment, the response must be entirely non-partisan. Preserving the institutional integrity of the judiciary and maintaining public confidence requires no less. She recognizes at the outset that it is a delicate circumstance, given her husband's elected office. She has tried to anticipate situations that might create conflicts or perception of same. Madam Justice Suche indicates that she has no role or presence of any kind in her husband's work nor he in hers.

Madam Justice Suche agrees that she provided the names of judicial candidates to the Minister of Justice's office, but says she did so only in response to inquiries from the Minister's office. She also agrees that her list was identical to that of her husband, but explains that that is because he "asked for [her] opinion about qualification of candidates because he did not know any of the people in issue".

Chief Justice Joyal, when asked for comments, indicated that he asked Madam Justice Suche to agree to refrain from discussions and communications with respect to judicial applicants, so long as her husband was in government. Chief Justice Hinkson concludes that it was appropriate for Chief Justice Joyal to have asked Madam Justice Suche for such an undertaking.

Appreciating that *Ethical Principles for Judges*, as explained at page 3, paragraph 2 “are not and shall not be used as a code or list of prohibited behaviours”, Chief Justice Hinkson notes that they represent some guidance to federally appointed judges as to how they should attempt to conduct themselves whilst holding judicial office.

In regards to judicial independence, this publication states: “[j]udicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians. Independence of the judiciary refers to the necessary individual and collective or institutional independence required for impartial decisions and decision making. Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge’s impartiality in fact; the latter with defining the relationship between the judiciary and others, particularly the other branches of government, so as to ensure both the reality and the appearance of independence and impartiality.”

Chief Justice Joyal, again when asked for comments, referred to Commentary D.9 found at page 39 of the *Ethical Principles for Judges*, which cautions that judges, including Chief Justices “should take care that they are not perceived as being advisors to those holding political office or to members of the executive”.

Chief Justice Hinkson stated that it was against the backdrop of these commentaries that he assessed the complaint against Madam Justice Suche.

Chief Justice Hinkson concludes that the conduct of Madame Justice Suche can only lead a reasonable and fair minded and informed member of the public to the conclusion that she has been acting as an advisor to those holding political office; in particular the Minister of Justice and her husband, another Cabinet Minister. Chief Justice Hinkson notes that Madam Justice Suche appears to have offered advice as to individuals in provinces other than Manitoba, one of whom was apparently not an applicant for a federally appointed judgeship but whom she considered should be approached to make such an application. While he accepts that from time to time sitting judges are asked for their views about a particular or even a number of applicants for federally appointed judgeships, it is Chief Justice Hinkson’s conclusion that given her husband’s position, the activities of Madam Justice Suche have gone far beyond this sort of commentary, and entered an area that is beyond the acceptable ambit for a sitting judge. Chief Justice Hinkson also concludes that as a sitting judge married to a Cabinet Minister, Madam Justice Suche ought to have refrained from communication with the Executive Branch of government on the subject of judicial appointments.

However, Madam Justice Suche has acknowledged that the complaint and its aftermath:

... reveals how comments based solely on my own views could be perceived or received as partisan, and related to my husband's position despite my intention to provide only relevant and non-partisan information. Perhaps they might take on different significance because of that. I accept that much can be misconstrued or misunderstood. The complex and public nature of the subject and the differing interests at play also allow for distortion should such information be disclosed.

All of that leads me to say that in looking at what has transpired, I see that it is best that I do not engage at all in such communications, which is what I will do from this point on.

With this acknowledgement, Chief Justice Hinkson concludes that your complaint does not warrant further consideration by Council. Therefore, he has directed me to close the file.

Yours sincerely,

Original signed

J. Michael MacDonald
Acting Executive Director