



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

**Personal and confidential**

CJC File: 16-0601

19 July 2017

Ottawa, Ontario K1A 0W8



Dear :

This is in response to your letter of 6 March 2017, in which you made a complaint against Justice Denis Pelletier, of the Federal Court of Appeal, and against Chief Justice Eugene Rossiter and Justice R. S. Boccock, both of the Tax Court of Canada.

In accordance with the Council's *Review Procedures*, I referred your complaint to the Honourable J. Michael MacDonald, Chief Justice of Nova Scotia and Chairperson of the Council's Judicial Conduct Committee. Chief Justice MacDonald asked Justice Pelletier and the Honourable Marc Noël, Chief Justice of the Federal Court of Appeal, as well as Justice Boccock and Chief Justice Rossiter, to provide comments regarding your complaint. After reviewing the file, Chief Justice MacDonald asked me to provide you with the following response.

The Canadian Judicial Council's mandate with regard to complaints is to determine whether there are grounds for the Council to recommend that a judge be removed from office by Parliament for any of the reasons set out in the *Judges Act*. The *Act* provides that the Council may recommend removal from office where, in its opinion, a judge has become incapacitated or disabled from the due execution of office of judge for any of the following reasons: age or infirmity; having been guilty of misconduct; having failed in the due execution of that office; or having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of that office.

In your letter, you allege that Justice Pelletier, Justice Boccock and Chief Justice Rossiter were in a conflict of interest and failed in their duty of restraint. You say they undermined the public's confidence in the impartiality of their Courts. Your complaint stems from events that were reported jointly by the CBC's documentary program *The Fifth Estate* and Radio-Canada's *Enquête*. These events relate in particular to a conference held by the

International Fiscal Association (IFA) in Madrid, from 25 to 30 September 2016. That conference was approved by Council as a continuing education opportunity for judges who hear tax law cases.

### Justice Pelletier

According to the report, Justice Pelletier attended two evening social events organized by the conference, of which KPMG is one of the main sponsors. Following a media inquiry, a member of the Court staff indicated that Justice Pelletier had not attended those events. Justice Pelletier later explained that this was a miscommunication.

Chief Justice MacDonald noted that the two social events attended by Justice Pelletier were organized by the IFA and were included in the conference's social program. All participants were invited to those events.

Although the Council approves the participation of judges in continuing education seminars, it is up to each judge to make sure that they avoid any conflict of interest or the appearance of conflict, particularly regarding disputes that have been referred to the Court. Issues of conflict of interest are assessed according to the circumstances of each case, and such issues are normally raised before the Court. Except in specific circumstances, a conflict of interest is not in itself a judicial conduct issue.

In this case, Chief Justice Noël and Justice Pelletier indicated that KPMG is not a party to disputes before the Tax Court of Canada. KPMG's clients are. Furthermore, no dispute involving KPMG is or was pending before the Federal Court of Appeal in the days or months preceding the conference. Consequently, any suggestion of conflict of interest that would approach misconduct must be dismissed.

For these reasons, Chief Justice MacDonald is of the opinion that your complaint against Justice Pelletier does not warrant further consideration.

### Justice Boccock

Also according to the report, Justice Boccock attended a cocktail organized by the law firm Dentons, while he was the judge responsible for managing the case [TRANSLATION] "relating to KPMG's scheme and the Cooper family of Victoria," on appeal before the Tax Court of Canada.

Chief Justice MacDonald noted that the two events attended by Justice Boccock, including the evening social event organized by the law firm Dentons, were open to all conference participants. Furthermore, he noted that Justice Boccock was unaware of Dentons' involvement in the Cooper matters, since there was only one brief mention of it in all the case management documents. This brief mention referred to a written notice produced by Dentons. When he became aware of Dentons' involvement, Justice Boccock chose to recuse from the Cooper matters.

In commenting on this matter, Justice Boccock offers the following:

I have reflected on this entire matter...The potential for a conflict of interest in this matter seems remote; however, through inadvertence, the portrayal of a potential conflict, where all the facts are at first unknown, is possible. As such, there are consequences, costs, and reputational risks to the judge, the judiciary and the administration of justice as a whole. Prudence and best practice would suggest that, in future, refraining from attending such off site sponsored conference receptions is a better and wiser choice. I certainly intend to follow this prudent conduct in the future.

Given these circumstances and given the judge's own comments, Chief Justice MacDonald is of the opinion that this aspect of your complaint does not warrant further consideration.

#### Chief Justice Rossiter

Finally, according to the report, Chief Justice Rossiter stated that "Justice Boccock did not place himself in a conflict of interest by briefly attending a reception that was open to all participants of [the] conference," and even defended the practice at a tax conference held in Calgary last November, stating that he would continue to attend receptions and saying "we will have pizza and we will have wine and lots of it."

The Council's *Ethical Principles for Judges* state that judges must observe high standards of conduct, and must therefore accept certain restrictions on their activities. Judges should also encourage their judicial colleagues to do the same. Nevertheless, the *Ethical Principles* also state that

[...] an out of touch judge is less likely to be effective. Neither the judge's personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. Legal standards frequently call for the application of the reasonable person test. Judicial fact-finding, an

important part of a judge's work, calls for the evaluation of evidence in light of common sense and experience. Therefore, judges should, to the extent consistent with their special role, remain closely in touch with the public.

Moreover, Council's *Judicial Education Guidelines for Canadian Superior Courts* encourage all judges to participate in education programs.

Chief Justice MacDonald noted that, when Chief Justice Rossiter made those remarks at the Canadian Tax Foundation's conference, he was defending the practice of judges of the Tax Court of Canada attending conferences, by explaining how important it is for them to interact with the public across Canada and to understand the challenges they could face in their interaction with the Court. He was explaining why, in his view, it is not inappropriate for judges of the Court to attend Canadian Tax Foundation events that are open to the public.

Chief Justice MacDonald considers that Chief Justice Rossiter's remarks about pizza and wine are regrettable. However, his controversial remarks were meant as a joke as part of his address on accessibility and involvement of judges in public events. In that context, Chief Justice MacDonald is of the opinion that Chief Justice Rossiter's remarks do not warrant further consideration by Council.

Since part of the complaint involves a Council member, an additional step was followed. In accordance with the Council's *Review Procedures*, an outside counsel was retained to provide his views on the proposed disposition of the matter. Mr Owen Rees, of the law firm of Conway Baxter Wilson LLP, reviewed the file. After having considered all available information, including your letter and the article you referred to, Mr Rees indicated that he was in complete agreement with Chief Justice MacDonald's decision and the reasons stated in this letter.

Yours sincerely,

*Original signed*

Norman Sabourin  
Executive Director and Senior General Counsel