

4 April 2018

Dear

I am responding to your email of 6 January 2018 in which you make a complaint against the Honourable Kristine M. Eidsvik of the Court of Queen's Bench of Alberta. I appreciate you taking the time to write to the Council to express your thoughts and concerns regarding the conduct of Justice Eidsvik.

News media reported that on 4 January 2018 Justice Eidsvik made certain remarks that were insensitive to racial minorities while lecturing to law students. In your complaint, you express concerns about these comments and their significance, and about Justice Eidsvik's impartiality.

In accordance with the *Review Procedures* of the Council, I referred your letter to the Honourable Christopher E. Hinkson, Chief Justice of the Supreme Court of British Columbia and Vice-Chair of the Judicial Conduct Committee of the Council. Chief Justice Hinkson requested comments from Justice Eidsvik, as well as from the Honourable Mary T. Moreau, Chief Justice of the Court of Queen's Bench of Alberta. After carefully reviewing your complaint, Chief Justice Hinkson has directed me to provide you with this response.

Let me first explain the mandate of the Council in matters of judicial conduct. The role of the Council 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 *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, a failure to execute the duties of the position, or being in a position incompatible with the functions of a judge. In circumstances where the conduct of the judge was inappropriate but that removal is not justified, the Council may consider remedial measures and the judge may be informed about their shortcomings.

.../2

A brief explanation of the background that led to the comments, as well as the exact nature of these comments, may assist you in understanding the background to and context of what Justice Eidsvik did say. At the time, Justice Eidsvik was on a study leave from the Court as the Judge-in-Residence at the Law School at the University of Calgary. As such, she gave a number of lectures and on 2, 3 and 4 January 2018, she participated on an Advocacy course. On 4 January, Justice Eidsvik made a presentation on her practical experience in multi-party negotiations. After that lecture, which was at the end of the day, a Professor invited her to answer a few questions. Justice Eidsnik described the events as follow:

Among the questions, [the] Professor asked me whether there was any special arrangement in a JDR [Judicial Dispute Resolution] room with respect to where I place the participants who were in a JDR. I answered that the judge usually places themselves at the head of the boardroom like table in the room. There is a security button at that location under the table. I place the parties to the litigation closest to me, and the lawyers further away.

I then gave an example of entering a JDR room once and being shocked when I encountered a room full of very large dark men. I gestured with my arm that they were very tall. I went on to explain that this was very unusual in Calgary considering that our population is mainly white (gesturing to the room of mainly white students). I stated that I then sat down and carried on with a friendly JDR where we came to a good resolution.

I also explained (in terms of positioning in a JDR room) that the JDR room is very small compared to the courtrooms in Calgary where we sit up in our “ivory tower” with the “riff raff” far removed from me. This comment was delivered in a joking fashion with a view to entertaining a group that had been involved in a long day of learning and engendered a good deal of laughter.

Justice Eidsvik quickly realized she should not have used this example and that it was insensitive and not necessary to the point she was trying to make, which was the size of the room. Justice Eidsvik did not say she was afraid or scared as reported by the media, but rather that she was “shocked” as in “surprised” by the size of the parties compared to her. On learning that a student had complained, Justice Eidsvik commented she felt sick that she had offended some students in the room and that some had thought that her comments suggested that she was afraid of “dark people.” She advised the Council “I still feel sick about this and profoundly regret my comments. I was wrong using such an example of a

situation that I encountered once that with forethought I should have known would be misconstrued as it was by some, and certainly by the press.”

Justice Eidsvik was provided an opportunity to meet with the class on the morning following the day of the lecture and she apologized unreservedly. She also met personally with some of the students and a representative of the Black Law Students Association of Canada to further express her regrets. Shortly after these events, Justice Eidsvik undertook on her own a course of studies and readings to increase her appreciation of ethnic and cultural diversity issues. She also took the initiative of attending a cultural competence for judges training course that was provided by an expert in the field, and worked on exercises and techniques to understand the importance and application of intercultural competence in her judicial work. Justice Eidsvik's commitment to further her learning on cultural diversity issues demonstrates her desire to improve and expand her awareness.

Chief Justice Hinkson came to the conclusion that Justice Eidsvik does not harbour racist views. He is concerned though about the insensitivity of her remarks to the class. The Canadian Judicial Council has clearly expressed its position on this issue in the booklet *Ethical Principles for Judges*, which is available on its website:

[J]udges should strive to ensure that their conduct is such that any reasonable, fair minded and informed member of the public would justifiably have confidence in the impartiality of the judge. Judges should avoid comments, expressions, gestures or behaviour which reasonably may be interpreted as showing insensitivity to or disrespect for anyone. Examples include irrelevant comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect. Inappropriate conduct may arise from a judge being unfamiliar with cultural, racial or other traditions or failing to realize that certain conduct is hurtful to others.

After carefully considering your complaint, other complaints about the same event, Justice Eidsvik's response to the complaints, her unreserved immediate apology and expression of regrets, and the remedial measures that were undertaken, Chief Justice Hinkson concluded that no further measures need to be taken. He is satisfied this is an isolated incident that does not reflect on the judge's capacity to hold judicial office. Nevertheless, Chief Justice Hinkson did express his concerns to Justice Eidsvik in a letter to her, as provided under Section 8.3 of the *Review Procedures* of the Council.

Your complaint, as well as other complaints we received, serve to reinforce the importance of judicial education on diversity, cultural and ethnic inclusiveness and the need for all members of the Court to participate in these educational programs on an ongoing basis. Once again, thank you for taking the time to write.

Yours sincerely,

Norman Sabourin
Executive Director and Senior General Counsel