

## Case Summary of *National Council of Canadian Muslims v. Canada (Attorney General)*, 2022 FC 1087

### Decision Issued July 25, 2022

*This case concerns the review of the actions of a Tax Court of Canada Justice who involved himself in the hiring of Dr. Azarova at the University of Toronto's Faculty of Law. The Canadian Judicial Council (CJC) received several complaints about Justice Spiro's conduct. Ultimately, the CJC noted Justice Spiro's remorse and concluded that his conduct was not serious enough to warrant his removal from judicial office. It issued a formal expression of concern with constructive comments to Justice Spiro but determined that no further sanction was required. Several complainants sought a judicial review of that decision. The Federal Court upheld the CJC's decision.*

In August 2020, the University of Toronto's Faculty of Law's search for a new director of the International Human Rights Program concluded with the hiring committee's unanimous decision to appoint Dr. Valentina Azarova. However, the Dean of Law overturned the recommendation, just after Justice Spiro, a significant donor, had discussed concerns about hiring Dr. Azarova with a university official. During a conversation with an Assistant Vice-President at the Division of University Enhancement of the University of Toronto, Justice Spiro reportedly

said that the University should do its "due diligence" and be ready to "respond effectively" to the controversy which would occur if Dr. Azarova was hired. He also forwarded a memo issued by the Centre for Israel and Jewish Affairs ("CIJA") which was highly disparaging of Dr. Azarova. Dr. Azarova has published articles critical of the Israeli government's occupation of Palestine. CAUT [censured](#) the University until they eventually re-offered the job to Dr. Azarova.

Several individuals and organizations, including Professors Craig Scott (Osgoode Hall Law School) and Leslie Green (Queen's University), and the National Council of Canadian Muslims, filed complaints against Justice Spiro with the CJC. The CJC is the national body responsible for investigating and sanctioning judges for misconduct. The allegations were that Spiro had engaged in serious misconduct because: (1) he helped campaign to prevent the appointment of someone with interests at variance with those of the campaigners; (2) his actions demonstrated that he could not exercise his judicial duties free from bias or the appearance of bias; and (3) his actions harmed academic freedom at the University.

The CJC investigated by reviewing written submissions from Justice Spiro and his lawyer, and written statements from the complainants. The CJC considered Justice Spiro's statement of remorse and the letters of support for his character including from the Chief Justice of the Tax Court. The CJC found that Justice Spiro's conduct put public confidence in the integrity, impartiality, and independence of the judiciary at risk (para. 179), but that his conduct was not serious enough to warrant his removal from judicial office; there was not even a slim chance that the judge's conduct was "so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that public confidence would be irreparably undermined" (para. 156). Instead, the CJC issued a formal expression of concern and constructive comments.

Professors Scott and Green, as well as the National Council of Canadian Muslims and other community organizations ("Applicants"), sought judicial review of the CJC's decision not to take further action. CAUT and the Centre for Free Expression (CFE) intervened in support of the Applicants' position, submitting that Justice Spiro's actions caused significant harm to academic freedom and that the CJC did not consider that harm when assessing the seriousness of Justice Spiro's conduct.

Justice Kane of the Federal Court ruled that the CJC's decision was reasonable, constituted a balanced approach and confirmed that Justice Spiro did not demonstrate a risk of bias for future matters coming before him as a judge. The Federal Court agreed with the CJC that Justice Spiro's actions were better characterized as expressing concern as an active alumnus of the Faculty of Law as opposed to actively lobbying. The distinction appears to be based on Justice Spiro's subjective desire to protect the University from controversy rather than promoting a particular agenda. Justice Kane agreed with the CJC that the complainants had misapprehended the facts, and that the complaints were based on misinformation and speculation.

It is disappointing that the Federal Court endorsed the CJC's finding that Justice Spiro was not "lobbying" or motivated by disagreement with Dr. Azarova's scholarship. Both the CJC and Justice Kane base this finding on Justice Spiro's own expressions of intent. Such a conclusion does not fit well with Justice Spiro's

forwarding of a highly critical memo issued by the Centre for Israel and Jewish Affairs.

Despite the outcome, there are some important elements of the decision worth highlighting. The Attorney General agreed that conduct interfering with academic freedom could, in some circumstances, justify the removal of a judge. Justice Kane spent a considerable portion of the decision considering the submissions from CAUT and CFE, and following oral argument expressed her appreciation for insights into academic freedom.

The Applicants had until October 3, 2022 to request an appeal.