

Canadian Judicial Council  
Ottawa, ON K1A 0W8

October 10, 2020

Dear members of the Judicial Conduct Committee;

**Re: CJC File 20-0275 – Joint Complaint regarding the alleged conduct of Justice David Spiro**

On behalf of the Arab Canadian Lawyers Association (ACLA), Independent Jewish Voices (IJV) and BC Civil Liberties Association (BCCLA), we are writing to complain about the alleged conduct of David Spiro, a sitting judge of the Tax Court of Canada. Although this alleged conduct does not relate to any active court case, it appears to have breached several of the Ethical Principles for Judges promulgated by the Canadian Judicial Council ('CJC Ethical Principles'). We request that this complaint be joined to those filed by Professors Leslie Green and Craig Scott regarding the conduct of Justice Spiro. This complaint adds to the record by:

- providing context about anti-Palestinian racism as it is practiced in Canada
- explaining the harms caused by Justice Spiro's alleged conduct on the communities most directly affected, specifically Palestinian-Canadians and those who work on issues related to Palestine.

As you have been made aware, two national newspapers have named Justice Spiro as the judge who allegedly interfered in an internal hiring process at the Faculty of Law, University of Toronto (Law School) in September 2020.<sup>1</sup> According to reports, the interference that took place appears to be racially motivated by anti-Palestine and anti-Palestinian views.

### **Anti-Palestinian Racism**

Anti-Palestinian racism is insidious and thrives in many sectors, including the legal profession. In one of its most dangerous forms, anti-Palestinian racism consists of attempts to deny the history and ongoing suffering of the Palestinian people. It also aims to paint those who are critical of Israel's treatment of Palestinians as anti-semitic and unfit for employment.

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<sup>1</sup> Paradkar, Shree. "Pressure mounts on U of T law faculty as Amnesty, National Council of Canadian Muslims seek investigations into alleged inappropriate influence", (22 September 2020), online: *Toronto Star* <<https://www.thestar.com/opinion/star-columnists/2020/09/22/pressure-mounts-on-u-of-t-law-faculty-as-amnesty-national-council-of-canadian-muslims-seek-investigations-into-alleged-inappropriate-influence.html>>; Fine, Sean. "Tax Court judge accused of pressuring U of T law school not to hire human-rights scholar identified", (24 September 2020), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-tax-court-judge-accused-of-pressuring-u-of-t-law-school-not-to-hire/>>

Those who experience or witness this form of racism include those early into their careers, precariously employed or lack a strong support network and therefore fear retaliation if they were to file a complaint.

As a result, the targeting of Palestinians and those who work on Palestine creates a deep chill for this community. As reported to ACLA, examples of this chill include: the belief they have to hide their identity or work; they must always be on alert for an attack, smear campaign or harassment; and their views are not welcome or may result in punitive treatment in the legal and justice sector. This retaliation contributes to silencing and erasure of Palestinian voices and limits their valuable contributions in the legal sector and justice system.

The lobbying against Palestinians and those who address Israel's violations of Palestinian human rights has resulted in a reduced understanding of Palestinian experiences and perspectives and made it easier to negatively stereotype human rights advocates and scholars as violent and/or prone to be critical of Israel out of anti-semitism.

### **The Alleged Misconduct Subject to this Complaint**

In their reports, the journalists for the *Toronto Star* and *Globe and Mail* attested to reviewing documents they cited in their reports that strongly suggest an offer of employment was made to Dr. Azarova, which she duly accepted, followed by the summary withdrawal of that offer by the Law School. One such document was a chronology of these events prepared by a senior Law School faculty member Prof. Audrey Macklin, Chair of the hiring committee and of the International Human Rights Program (IHRP)'s Faculty Advisory Committee. In her account, Prof. Macklin uses the initials "DS" to identify the judge who contacted the Law School, and notes his objections in the hiring of Dr. Azarova over her scholarship on Palestine/Israel.<sup>2</sup> This account corresponds with a letter drafted by the former directors of the IHRP that the drafters of this complaint obtained and reviewed (see Appendix A).

In summary, despite the internal IHRP hiring process being confidential (and this, on the public assertion of the University), Justice Spiro is alleged to have somehow learned that the program offered Dr. Azarova, a renowned international law scholar, the position of director of the IHRP. Justice Spiro is alleged (by members of the hiring committee and two former IHRP directors) to have contacted a member of the faculty's fundraising team to express his strong objections over Dr. Azarova's hiring. The reasons for his admonishment, as outlined in the documents that have been furnished to you by Professor Green and in media reports, was his apparent disapproval of Dr. Azarova's critical scholarship on Israel's occupation of Palestinian territory.

Justice Spiro is a graduate of the Law School (class of 1987), he is a donor to it in the \$25,000-\$99,000 category, and his extended family has reportedly donated tens of millions of dollars to

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<sup>2</sup>*Ibid*, (Globe and Mail).

the university.<sup>3</sup> Dr. Azarova is a respected expert in international law and has held several high profile positions. Justice Spiro has no apparent or reported expertise in international law or Dr. Azarova's areas of expertise. However, he does appear to have a deep and long standing interest in matters related to Palestine and Palestinians, at least as they involve criticism of Israel.

Justice Spiro is the former Toronto co-chair of the Centre for Israel and Jewish Affairs (CIJA), an advocacy organization co-founded by Larry Tannenbaum, Justice Spiro's uncle. CIJA is a registered lobby whose primary mandate includes increasing support for Israel.<sup>4</sup> Much of this pro-Israel activity is directed at suppressing Palestinian advocacy on campuses.<sup>5</sup>

It appears that Justice Spiro's alleged communications with the Law School were significant enough to prompt the Faculty of Law to rescind the offer of employment to Dr. Avarozza. Even if they were not, the mere fact that Justice Spiro may have communicated with the Law School at all on this matter is of great concern. Neither the Law School nor the University have denied that Justice Spiro made attempts to interfere with Dr. Azarova's employment prospects but have instead maintained that Dr. Azarova was not hired for reasons unrelated to such lobbying. Various sources, including individuals close to the hiring process, have questioned the veracity of these claims.<sup>6</sup>

### **Judge Spiro's Alleged Conduct Undermines Public Confidence in the Judiciary**

*Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary*<sup>7</sup>

Judges are expected to act with integrity inside and outside of the courtroom. Their conduct can influence public perceptions of the judiciary and ultimately undermine public confidence in the rule of law. "Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment."<sup>8</sup>

If the allegations made against him are true, Justice Spiro's conduct fails to meet the standard of integrity required of a judge for several reasons. First, if the allegations are true, he sought to use his power, status and influence to undermine the rights of an unsuspecting individual using backdoor conversations. This fact alone gives Palestinian-Canadians reason for serious concern.

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<sup>3</sup>*Ibid.*

<sup>4</sup> "CIJA at a Glance", (31 August 2017), online: *UJA Federation of Greater Toronto* <<https://jewishtoronto.com/news-media/what-we-do/cija-at-a-glance>>

<sup>5</sup> *Ibid.* Snapshot (reported in 2017): \$150,000 worth of Israel advocacy programming supported by CIJA this year; 20,000 pro-Israel products distributed by CIJA on Canadian university campuses this year through partnership with Hillel; 12,000 Ontarians mobilized to contact their MPPs in support of anti-BDS motion at the Ontario Legislature in 2016; 7 successful anti-BDS initiatives launched on Canadian university campuses in 2016 in partnership with Hillel.

<sup>6</sup> *Supra*, note 1. See also Appendix A.

<sup>7</sup> *Ethical Principles for Judges*, ed (Ottawa, Ontario: Canadian Judicial Council, 2004), online: CJC <[https://cjc-ccm.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](https://cjc-ccm.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)> See "Integrity" Commentary.

<sup>8</sup> *Ibid.*, Integrity, Commentary para 1.

This incident has created significant anxieties in our communities where people are wondering whether merely speaking up for the human rights of one's own people will mean risking one's livelihood or other opportunities. For this reason alone, Palestinian-Canadians and those who support equal rights for Palestinians will be closely watching whether and how the Canadian Judicial Council addresses this issue.

Second, we note that, if the allegations are true, Justice Spiro failed to meet the standards of judicial integrity because he acted without regard for the significant consequences of his actions upon others, particularly Dr. Azarova whose employment, reputation and well-being have been harmed as a result of the secretive communications that he is alleged to have made. Indeed, the allegations suggest that Justice Spiro exhibited animus, and not mere disregard, for Dr. Azarova, a woman who he appears to have never met but whose politics seem not to align with his own. Again, this sends the message to Palestinian-Canadians that their human rights are not important to members of the Canadian judiciary and it sends the message to anyone who speaks in favour of Palestinian human rights that their willingness to speak in favour of the equal worth and dignity of all carries risks in Canada.

Finally, if the allegations are true, Justice Spiro failed to meet the standards of integrity required of a judge because he did not consider the consequences of his actions on the judiciary itself. "The judge should exhibit respect for the law, integrity in his or her private dealings and generally avoid the appearance of impropriety."<sup>9</sup> Judge Spiro appears to have understood that the Law School was involved in employment negotiations with a candidate whose political views seem to have displeased him. It appears that he contacted the Law School precisely to interfere with those negotiations. Moreover, Justice Spiro appears to have objected to Dr. Azarova's hiring notwithstanding the fact that the views that she expressed are consistent with both international and Canadian law. By allegedly seeking to undermine Dr. Azarova's employment prospects, Justice Spiro therefore displayed a disregard for the law and the rule of law. If the allegations are true, he sought to circumvent the law by using his status and privilege to deny an unsuspecting individual of her rights and the good faith that was owed to her throughout the negotiation process. The rule of law is intended precisely to avoid such abuses of power.

While our complaint is intended to highlight the importance of this issue from the perspective of Palestinian communities in Canada, we also wish to emphasize that we believe that this matter carries significance beyond that community. In no way can Justice Spiro's alleged conduct, which has not been denied by the Law School, be said to be above reproach in the view of reasonable, fair minded and informed persons outside of the Palestinian-Canadian community. The fact that several newspapers have reported on the University of Toronto's treatment of Dr. Azarova and, eventually, in Justice Spiro's alleged role in the termination of employment bid attests to the import of this issue for the Canadian public.<sup>10</sup> Public confidence in and respect for Justice Spiro, the Tax Court of Canada and in the Canadian judiciary more broadly have been put at serious risk by the alleged conduct.

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<sup>9</sup> *Ibid*, Integrity, Commentary para 3.

<sup>10</sup> *Supra*, note 1.

## Perception of Impartiality has been Irrevocably Compromised

*Judges must be and should appear to be impartial with respect to their decisions and decision making.*<sup>11</sup>

The impartiality of the judiciary is the central foundation of the judicial system. It is expected that the conduct of judges, “both inside and outside of court, maintains and enhances confidence in their impartiality and that of the judiciary.”<sup>12</sup>

When judges lack or are perceived to lack impartiality, the administration of justice is compromised. The right to an impartial hearing forms the foundation of any legal system, and is binding on all members of the Canadian judiciary as both a matter of domestic and international law.<sup>13</sup>

There are reasonable grounds to believe that Justice Spiro may have been motivated by negative views towards Palestine and Palestinians when he allegedly interfered in a fair and robust hiring process and caused the unanimous job offer to be rescinded summarily and for discriminatory reasons. As noted above, Justice Spiro is not an international law scholar and is not qualified to opine on the quality of Dr. Azarova’s academic work. Even if he had expertise in this area, he was not a part of the hiring process and allegedly interfered in that process for improper motives - to stifle criticisms of Israel that might arise out of well documented concerns for Palestinian human rights.

If the allegations made against him are true, Justice Spiro established to the public that he holds anti-Palestine views and is willing and able to act on them to the detriment of others. Accordingly, Palestinian-Canadians, Arab-Canadians, and those who work on issues related to Palestine and Palestinians have reasonable grounds to believe that an appearance before Justice Spiro may result in a negative decision based on their identity or the subject matter of their claim.

Pursuant to the CJC’s Ethical Principles, members of the judiciary should always “exhibit respect for the law, integrity in their private dealings, and generally avoid the appearance of impropriety.”<sup>14</sup> The duty to act with integrity is rooted in the need for judges to be and be seen as impartial at all times. The independence of the judiciary relies on it. Put simply, a lack of judicial integrity and impartiality is corrosive of judicial independence because a judiciary that is seen as lacking integrity and impartiality cannot convincingly argue for its independence.

The duty of the judiciary to act with integrity and impartiality are foundational principles that are universally recognized, so much so the international legal community have collectively come together to enshrine these principles into international law. Both the CJC’s Ethical Principles and

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<sup>11</sup> *Supra*, note 7, CJC Ethical Principles, “Impartiality”.

<sup>12</sup> *Ibid*, Impartiality Principle A (General), para 1 (emphasis added)

<sup>13</sup> *Canadian Charter of Rights and Freedoms*, s. 7 and 11(d); *Universal Declaration of Human Rights*, art. 10; *International Covenant on Civil and Political Rights*, art. 14.

<sup>14</sup> *Supra*, note 7, Integrity Commentary para 3.

various international instruments link judicial conduct with the independence of the judiciary.<sup>15</sup> The CJC's Ethical Principles are reinforced by international standards. Indeed, the Ethical Principles concerning integrity and impartiality echo the *Bangalore Principles of Judicial Conduct*<sup>16</sup>. Other international principles make link between the conduct of a judge and the independence of judicial institutions.<sup>17</sup>

In light of the above, the complainants, as reasonable, fair minded and informed persons, have lost confidence in Justice Spiro's ability to carry out his judicial duties in an impartial manner.<sup>18</sup> If the allegations against him are found to be accurate, Justice Spiro's alleged activities demonstrate that he publicly holds anti-Palestinian views and, if these allegations are true, would be willing to act upon those views, without regard to the harm his actions will inevitably cause – and in fact did cause – to faculty<sup>19</sup>, students<sup>20</sup>, the university, Palestinian-Canadians, the judiciary and the administration of justice as a whole.

## Conclusion

Justice Spiro's alleged conduct adds to an increasing number of incidents related to censorship on Palestinian human rights and international law. The Palestinian-Canadian community and those working on Palestine are closely watching how the CJC handles this matter. The CJC has an important role in assuring the public that judges ensure their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary at all times. This necessarily requires that the CJC provides that there is no place for partiality or racial bias within the judiciary and that judicial institutions are committed to upholding the dignity, freedom of expression and procedural fairness for all under the law. Without a strong and public response to Justice Spiro's alleged conduct, others with negative views on Palestinian human rights and international law will be further emboldened to act on their prejudices.

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<sup>15</sup> *Ibid*, Purpose, Principles 1 and 3; Part 2: Judicial Independence, Principles 1-4 and Commentary; Impartiality (Political Activity) and Commentary (General and Political Activity);

<sup>16</sup> In its 59<sup>th</sup> Session on 23 April 2003, the United Nations Commission on Human Rights passed Resolution 2003/43 in which it noted the *Bangalore Principles of Judicial Conduct* and brought those principles to the attention of the United Nations Member States, the relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration. The text of the *Bangalore Principles of Judicial Conduct* is available online at [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf).

<sup>17</sup> See for example *The Basic Principles on the Independence of the Judiciary*, U.N. A/Res/40/32 November 29, 1985 and U.N. A/Res/40/146 December 13, 1985 and *The Universal Declaration on the Independence of Justice* Available at <https://www.icj.org/wp-content/uploads/2016/02/Montreal-Declaration.pdf>. See especially par. 2.10.

<sup>18</sup> The 1982 comments of the Canadian Judicial Council in the Berger matter stated that judges should not speak on controversial political matters that do not directly affect the operation of the courts.

<sup>19</sup> *Supra*, note 1. See also, Fine, Sean & Joe Friesen. "U of T law school under fire for opting not to hire human-rights scholar after pressure from sitting judge", (17 September 2020), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-u-of-t-law-school-under-fire-for-opting-not-to-hire-human-rights/>>

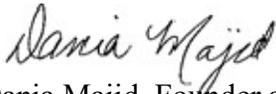
<sup>20</sup> Paradkar, Shree. "I was very, very mad': U of T law school students feel powerless amid hiring fiasco", (29 September 2020), online: *Toronto Star* <<https://www.thestar.com/opinion/star-columnists/2020/09/29/i-was-very-very-mad-u-of-t-law-school-students-feel-powerless-amid-hiring-fiasco.html>>.

ACLA, IJV and BCCLA request that the CJC exercise, to the fullest extent, its investigative and disciplinary powers and sanction Justice Spiro’s alleged conduct, including referral to the Inquiry Committee.<sup>21</sup> If warranted, Justice Spiro should also be immediately required to provide a public apology, undertake anti-racism/oppression training that addresses anti-Palestinian racism with a fully qualified expert that holds the confidence of the Palestinian-Canadian community, and be prohibited from hearing any cases related, directly or indirectly, to Palestine/Israel. The seriousness of Justice’s Spiro’s alleged conduct also warrants a review into his fitness for the bench.

We are happy to provide further information for your investigation or answer any questions you may have.

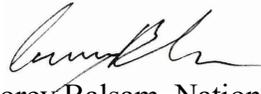
Yours truly,

Arab Canadian Lawyers Association



Per: Dania Majid, Founder and President

Independent Jewish Voices Canada



Per: Corey Balsam, National Coordinator

British Columbia Civil Liberties Association



Per: Meghan McDermott,  
Interim Policy Director & Senior Staff Counsel

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<sup>21</sup> “Complaint review procedures”, online: *Canadian Judicial Council* <<https://cjc-ccm.ca/en/what-we-do/review-procedures>>

## **Appendix A - Letter by the Former Directors of the IHRP Program**

September 12, 2020

Professor Edward Iacobucci,  
Dean University of Toronto Faculty of Law  
78 Queens Park Toronto, Ontario  
Canada

*Via email*

Dear Dean Iacobucci:

We write as former Directors of the International Human Rights Program at the Faculty of Law. On Friday, we learned that Professor Audrey Macklin had resigned her position as chair of the IHRP's Faculty Advisory Committee and of the circumstances giving rise to her resignation.

As the human rights community in Canada and elsewhere have been acutely aware, the IHRP has been without a permanent director for over a year. During that time, the Faculty of Law has initiated two searches for a Director with the international human rights background and expertise necessary to steer the program. As a result of the most recent search, the hiring committee, chaired by Professor Macklin, identified two viable candidates for the position. The hiring committee advised the Faculty that should neither of these candidates accept the position, there were no further options from the current pool and it would be a failed search.

Happily, Dr. Valentina Azarova – the hiring committee's top candidate – accepted the Faculty's offer in mid-August. Dr. Azarova's human rights practice in domestic and international settings over the past 15 years has been wide-ranging and impressive. She has carried out strategic litigation, legal advocacy, and legislative reform. She has worked to establish human rights enforcement mechanisms in Europe and beyond, and has regularly advised and consulted for United Nations fact-finding missions and mandateholders, governments, and civil society. She has taught international law and international human rights law since 2009, and established and taught clinical offerings since 2012. She holds a doctoral degree from the Irish Centre for Human Rights at NUI Galway, and has lived and worked in the Middle East and Africa.

The IHRP's most recent Director, Samer Muscati, immediately began working to help Dr. Azarova understand the duties of the Director and the foci areas of the IHRP to date. In the meantime, the Faculty of Law put Dr. Azarova in touch with immigration counsel to advise her on her options for securing a permit to work in Canada, and Dr. Azarova began planning to move with her partner from Germany to Toronto, where her stepchildren reside. In early September, however, Professor Macklin was advised that the Faculty had been contacted by a judge of the Tax Court of Canada, who had expressed concern about Dr. Azarova's scholarship on the operation of international law in the context of Israel's occupation of the Palestinian Territories. Shortly thereafter, Dr. Azarova's offer was rescinded by the Faculty. It is now our understanding that starting this week, you will be interviewing candidates already deemed by the hiring committee as unsuitable for the position of IHRP Director.

We recognize that it is the Dean's prerogative to make the ultimate decision with respect to hiring at the Faculty of Law. We expect, however, that such decisions be made in good faith. We are therefore alarmed by the sequence of events, which strongly suggests improper external interference by a member of the

judiciary in the hiring of the IHRP Director as well as a serious breach of confidentiality in the hiring process. Given that the essential nature of international human rights practice is to hold the powerful to account, any IHRP Director and their work will unavoidably be the subject of criticism from some quarters. As a staff appointment, the position of IHRP Director does not confer academic freedom. The IHRP Director's security of tenure is particularly vulnerable, and the Faculty of Law should stand as a bulwark against external pressures to the IHRP's work. Instead, the facts suggest that your office has caved to political pressure.

If the Faculty of Law chooses to install a new IHRP Director from a pool of candidates that the hiring committee has already rejected as unsuitable and unqualified for the position, it will send the message that the University of Toronto's law school has little interest in providing a serious experiential learning program in international human rights practice, at a time when the need for lawyers committed to preserving and advancing fundamental freedoms at home and abroad is greater than ever. Such a step would diminish the reputation of the Faculty of Law and irrevocably damage the reputation of the IHRP and all those associated with it.

Instead, we urge you to renew the Faculty's offer to Dr. Azarova, whose breadth of practice and depth of expertise would be a tremendous contribution to the student experience, and whose reputation and networks in the global human rights community would bring credibility to the IHRP and the University of Toronto. We understand that her immigration status may result in some delay before she can formally start at the IHRP. However, we believe that after a 12-month search and the interests at stake, she is worth a few months' wait.

Sincerely yours,

Carmen Cheung and Samer Muscati