

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

**Minister of Public Safety and Emergency Preparedness
and
Canada Border Services Agency
and
Her Majesty the Queen in Right of Canada**

Defendants

**LETTER TO THE COURT
Re: Direction regarding SCC filing**

Radu Hociung
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TO:

The Registrar
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

Re: Direction regarding SCC filings

Mr. Gleeson,

On January 24, 2020, you sent to the parties a letter advising the Defendant to serve and file a motion in writing to stay the action, suggesting that your discretion under para 50(1)(b) of the *Federal Courts Act* is at his disposal, and to advise the Plaintiff that his request for your recusal should be done in the form of a motion. This letter is the Plaintiff's response to your letter.

On January 13, you gave the parties an unsolicited direction to provide confirmation of filing of the Application for leave with the Supreme Court not later than January 16. Both parties ignored your "direction" and did not respond in any way by your deadline.

On January 20, the Plaintiff offered some commentary to the Registrar and to you, characterizing your January 13 direction as conducting research to benefit the Defendant.

Most recently, on January 24, you decided to insist that a stay be pursued, and offered legal advice on how it may be accomplished. You recommended that the Defendant a) file a motion to stay, b) make it in writing and c) make use of section 50(1)(b) of the *Federal Courts Act*. While you titled your letter "Directions", any informed person would see through that thin disguise. You did not even set a timeline, nor mentioned which Rule would enable such a motion. Given that procedure is governed by Rules, directions concerning procedure must necessarily reference the Rules, set how the Rules would be varied, if any, and set timeline for the completion of the step. Your letter lacked these necessary elements, and therefore cannot be seen by a reasonable person as "Directions concerning procedure", but would more reasonably be seen as plain legal advice.

While the rules of the Court permit you to give directions in specified circumstances, it does

not permit you to volunteer such directions. You may give unsolicited directions to the parties under Rule 53(1) along with an order, ie, in response to either a motion or trial. Directions concerning procedure are to be sought by means of motion pursuant Rule 54. Neither of these circumstances is present.

For these reasons, with respect to your continued “directions” that the Defendant should pursue a stay, in addition to reasons I have mentioned before, such as ignoring the Rules to benefit the Defendant, and planting evidence to aid in the Defendant's case, the Plaintiff considers you partial to the Defendant.

In any case, a motion for stay would not have the effect you imagine. Motions have to be determined in the order they were filed, or at worst, simultaneously. Determining a latter motion before an earlier one would be unjust. While I'm not able to find the reference to the relevant jurisprudence at this time, I have made a mental note when I first encountered it on CanLii. It was a very old judgment, possibly late 1800s or early 1900s, and it dealt with the question of whether a party could bring a motion that would have the effect of sabotaging a procedural step that was underway, eg, to block discovery by way of motion. Perhaps you might have an easier time locating it. Should you eventually succeed in convincing the Defendant to file a motion to stay, I would look up this relevant jurisprudence.

Concerning your resignation from this proceeding, the plaintiff is not required to request it by way motion, or by any means whatsoever. Your resignation is your discretionary obligation, and it is guided by principles of ethical conduct detailed in Canadian Judicial Council's publication “Ethical Principles for Judges”, not by a request. If a request is necessary, it would likely come in the form of disciplinary action by the CJC.

I would like to highlight several principles that, in my view as an informed, reasonable and fair-minded person, your conduct falls short of.

- 1) Integrity Principle 3(1), requires to you make every effort to ensure that your conduct is above reproach in the view of reasonable, fair minded and informed persons.

- 2) Impartiality Principle Statement, “Judges must be and should appear to be impartial with respect to their decisions and decision making”,
- 3) Impartiality principle 6(E)(1), “Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially”
- 4) Impartiality principle 6(E)(2), “Judges should disqualify themselves in any case in which they believe that a reasonable, fair-minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest and a judge's duty.
- 5) Impartiality 6(C)(1)(d), “Judges should not give legal advice”, relates to Civic and Charitable Activity.
- 6) On the webpage that introduces the “Ethical Principles for Judges”, the CJC explains: “While judges ensure that self-represented litigants are provided with fair access and equal treatment in the courts, they cannot answer legal questions on how to proceed. They cannot give legal advice or provide recommendations about what people should do. “

The relevant essential factors are that

1. The perception of integrity and impartiality is as important as actual integrity and impartiality, and they must be evaluated from the perspective of “reasonable, fair-minded and informed person”.
2. You are to disqualify yourself, without being asked, when this perception cannot be upheld.

I wish to be as clear as possible, I do not perceive you as an ethical, impartial judge, owing to your demonstrated conduct so far.

In light of your continued misconduct, I have decided to proceed with my formal complaint against you at the CJC. As you might imagine, I will be much more thorough in my arguments, than I sought to be in this letter, given that here I'm just offering some comments, but I am not

required to persuade you to resign, while the language of my complaint needs to be devastatingly effective.

I am looking forward to your resignation at your earliest convenience, and determination of the Plaintiff's Motion to Amend the Statement of Claim and the Defendant's Motion for Summary Judgment, in the order they were filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Hociung'. The signature is fluid and cursive, with a large initial 'R' and a stylized 'H'.

Radu Hociung - Plaintiff