

ONTARIO JUDICIAL COUNCIL
IN THE MATTER OF a complaint respecting
The Honourable Justice Donald McLeod
A Judge of the Ontario Court of Justice in the Central West Region

SUMMARY

NOTE

This summary is provided as an aid to the Ontario Judicial Council's decision. It does not form part of the reasons for decision and the full decision is the only authoritative document.

Following a tragic shooting, Justice Donald McLeod helped found and was a prominent voice for the Federation of Black Canadians ("FBC"). As a leading member of the Black community, Justice McLeod was determined to act to address the issues facing the Black community that were the underlying causes of violence and contact with the criminal justice system. The FBC has the goal of promoting greater equality and inclusion for persons of African descent in Canada. Its activities included the identification of issues confronting Black Canadians and meeting with politicians and government officials with a view to addressing those issues and improving the circumstances of African-Canadians.

The Ontario Court of Justice *Principles of Judicial Office* encourage judges to engage in community activities provided those activities are not inconsistent with judicial office. Before and after his judicial appointment, Justice McLeod has been an active member of the Black community. He was at all times motivated by the highly laudable goal of helping members of the Black community to overcome the historic barriers of racism and poverty.

While community activity is encouraged, judges must conduct themselves in a manner consistent with the principles of judicial impartiality, integrity and independence. Justice McLeod participated in a process that aimed to identify policy issues to be addressed. He then initiated meetings with senior government officials and politicians, including MPs, Ministers of the Crown, and elected municipal officials, and advocated specific policy changes and the allocation of government resources to achieve those policy changes. By participating in these activities while he was a judge, Justice McLeod engaged in a form of advocacy and political activity that is inconsistent with judicial office.

It is well-established in law that the purpose of judicial conduct proceedings is not punitive but remedial. A finding of judicial misconduct can only be made where any breach of the standards of judicial conduct by the judge was so seriously contrary to judicial impartiality, integrity and independence that it has undermined the public's confidence in the judge's ability to perform the duties of office or in the administration of justice generally.

The panel concludes that although Justice McLeod's conduct was incompatible with judicial office, when all the relevant circumstances are taken into account, his conduct

has not undermined public confidence in his capacity to carry out his judicial functions or in the administration of justice generally.

The advocacy and political activity that Justice McLeod engaged in were not prolonged and they were conducted in a measured and respectful manner. The problems confronting Black Canadians that the FBC identified are well-documented and have been recognized by Canadian courts. Justice McLeod's life experiences make him uniquely aware of the problem of Black over-representation in the criminal justice system. He is highly regarded as a judge and he serves as a role model for young Black males. He was genuinely motivated to promote public confidence in the justice system. He acted in good faith, sought ethical advice, and attempted to respect the limits that his judicial role imposed. There is no question of his ability to judge with integrity in an impartial and independent manner.

This decision clarifies the issue of advocacy and political activity by judges and defines a boundary that all judges must respect in the future, however laudable their motives. In all the circumstances, a finding of judicial misconduct is not required to restore public confidence in Justice McLeod or in the administration of justice generally. Accordingly, the complaint is dismissed.