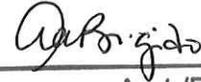


ONTARIO JUDICIAL COUNCIL  
COPY OF EXHIBIT 2

In the matter of a hearing into  
a complaint against

Justice DONALD MCLEOD

Date MARCH 11, 2020



Asst./Registrar

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

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**RESPONSE TO NOTICE OF HEARING**

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1. The evidence at the public hearing will show that Justice McLeod did not commit judicial misconduct. The Ontario Judicial Council should dismiss the complaint.
2. The evidence supporting the allegations against Justice McLeod is based on claims by individuals who were not direct witnesses to the events in question. Where the evidence is accurate, it does not establish judicial misconduct.
3. The evidence will show that Justice McLeod did not commit perjury or intentionally mislead the 2018 Hearing Panel, engage in impermissible advocacy or lobbying, or attempt to pressure or intimidate two youth delegates in relation to a racial profiling incident at the National Black Canadians Summit in 2019.

*The 2018 Hearing Panel decision*

4. A Hearing Panel of the Ontario Judicial Council (“OJC”) dismissed a complaint against Justice McLeod in December 2018. The 2018 complaint related to Justice McLeod’s involvement with the Federation of Black Canadians (“FBC”). The 2018 complaint alleged that Justice McLeod committed judicial misconduct by crossing the line into advocacy and political activity through his involvement in the FBC between its founding in early 2017 and March 2018, the date of the complaint.
5. The parties submitted an Agreed Statement of Facts for the 2018 Hearing Panel. Justice McLeod also testified at the hearing.
6. In its decision, the 2018 Hearing Panel clarified the rule regarding the limits of permissible political activity by judges. A judge crosses the line into impermissible advocacy and lobbying when he or she initiates engagement with politicians and government officials to achieve identified policy objectives that are not directly tied to the administration of justice.

7. The 2018 Hearing Panel recognized that racialized judges such as Justice McLeod legitimately feel and act upon a moral obligation to serve as leaders and role models in their communities. This includes working for the betterment of their communities. The test for judicial misconduct acknowledges this moral obligation.

#### *Attendance at events in 2019*

8. The Notice of Hearing notes that Justice McLeod attended and made remarks at two events in 2019: the National Black Canadians Summit and the Supporting Black Communities Initiative meeting. Justice McLeod did not engage in impermissible advocacy or lobbying at these events.
9. At the 2019 National Black Canadians summit, Justice McLeod spoke in his capacity as a judge and a member of the Black community. He was not at the summit as a representative of the FBC. Justice McLeod's speech at the Summit was not political. It was autobiographical and personal.
10. Justice McLeod attended a meeting hosted by Employment and Social Development Canada (ESDC) on July 23, 2019. He attended as the FBC's representative. However, his attendance was not advocacy or lobbying.
11. Neither of the events cited in the Notice of Hearing rise to the level of impermissible advocacy or political activity. Justice McLeod's attendance and remarks at the events were consistent with the 2018 Hearing Panel's decision.

#### *The Abdoukader Abdi case*

12. Justice McLeod did not commit perjury or intentionally mislead the 2018 Hearing Panel about his lack of involvement in the Abdoukader Abdi deportation case. He did not make public representations about Mr. Abdi. He met with the Minister in January 2018, but it was not about Mr. Abdi.
13. The discussion of the Abdi case in the Agreed Statement of Facts from the 2018 hearing refers to the FBC's public advocacy. The statement in the Agreed Statement of Facts that "Justice McLeod removed himself from any involvement in [the Abdi] matter" is true.
14. Similarly, Justice McLeod's answer in his testimony at the 2018 hearing was true. The evidence will show Justice McLeod was not involved in the FBC's public representation about Abdi. He answered truthfully.

#### *Return to the Federation of Black Canadians in 2019*

15. The 2018 Hearing Panel clarified the law regarding political activity by judges. Justice McLeod thus returned to the FBC in a limited capacity in January 2019. Justice McLeod's return to the FBC was not judicial misconduct. Justice McLeod did not ignore the 2018 Hearing Panel's decision. His reduced role conformed to the clarified legal rules contained in the decision. As the 2018 Hearing Panel noted, their decision clarified previously ambiguous law for judges in Justice McLeod's position who have a dual obligation to their own community and to the judiciary.

16. After his return to the FBC, Justice McLeod did not engage in advocacy. He was not involved in fundraising or applying for government grants.
17. Justice McLeod did not mislead the 2018 Hearing Panel about his intention to return to the FBC. Justice McLeod's choice to return to the FBC after a change in the law cannot retroactively make his testimony at the 2018 hearing false or intentionally misleading.

*February 6, 2019 call with National Black Summit Youth Delegates*

18. Following a racial profiling incident at the 2019 National Black Canadians summit, Justice McLeod had a phone conversation on February 6, 2019 with two youth delegates who were witnesses to the incident. Justice McLeod did not pressure or intimidate the youth delegates.
19. Justice McLeod drew upon his own experiences as a Black man in Canada to provide advice to the youth delegates about the potential outcomes of making public allegations of racial profiling against law enforcement. This was personal advice.

*The Review Panel's investigation of the complaint and the further evidence to be adduced at the Hearing*

20. The evidence will show the Review Panel did not interview anyone with first-hand knowledge of the meeting with Minister Hussen underlying the perjury allegation. The evidence will show that the alleged discussion about the Abdi case did not take place at the private meeting between Justice McLeod and Minister Hussen. The choice not to investigate this matter thoroughly led to a Notice of Hearing that contains unnecessary allegations against Justice McLeod.

**DATED** this 11<sup>th</sup> day of March, 2020.

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