



Canadian
Judicial Council
Conseil canadien
de la magistrature

Ottawa, Ontario K1A 0W8

Personal and Confidential

Our File: 09-0332

12 March 2010

Mr Gana Kiritharan
307 - 10 Stonehill Court
Scarborough, Ontario M1W 2X8

Dear Mr Kiritharan:

I am writing further to your letter dated 19 February 2010 in which you make a complaint against the Honourable J.P. Moore of the Ontario Superior Court of Justice.

In accordance with the *Complaints Procedures* of the Council, I referred your complaint to the Honourable Richard Scott, Chief Justice of Manitoba and Chairperson of the Judicial Conduct Committee of the Council. After reviewing your complaint, Chief Justice Scott has asked me to provide you with this response.

The mandate of the Council in matters of conduct is to decide whether or not to recommend that a judge be removed from office in certain specific circumstances. The reasons for removal are set out in the *Judges Act* and address cases where a judge has become incapacitated or disabled from performing the duties of a judge. This can be as a result of age or infirmity, misconduct, a failure to execute the duties of the position, or being in a position incompatible with the functions of a judge.

In your letter, you complain about the decision of Justice Moore, who, on a summary judgment application, dismissed your action, granted the Respondent its counterclaim for damages, and ordered costs against you. You question the role of the judge in such proceedings and relate an incident where the judge tore up a document. You also complain about two masters and one registrar.

The mandate of the Council is limited to federally-appointed judges. Your complaints against the two masters and the registrar fall outside this mandate, and cannot therefore be reviewed by Council.

It is important to note that it is not the role of judges to conduct investigations or to seek evidence

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for a litigant. The core functions of a judge during a trial or the hearing of a motion include hearing the evidence submitted by the parties, making determinations as to its admissibility and its reliability, assessing the credibility of witnesses and, after weighing the evidence and applying the law, reaching an impartial decision. A disagreement by one party, or anyone, on the correctness of the judge's exercise of judicial discretion, the determination they have to make, or in the conduct of the trial, are not issues of conduct. Further, the Council has no authority to review a judicial decision for the purpose of determining its correctness, nor can the Council change or rescind a judgment.

Chief Justice Scott is of the view that your complaint is in reality a disagreement with the way in which Justice Moore conducted the hearing, his role in the proceedings and the decision he made. Your complaint does not raise any issue of conduct on the part of Justice Moore and falls outside the mandate of the Council. The alleged tearing up of a document does not raise an issue of conduct, as you admit the document in question was not what you were looking for and was not to be used by the Court. The judge can hardly be criticized for, in effect, ignoring a document that you said was not properly before him.

Accordingly, Chief Justice Scott has directed me to close the file with this reply.

Yours sincerely,

Norman Sabourin
Executive Director and Senior General Counsel