

Justice Patrick Smith

## The good Samaritan meets Seinfeld | Marcel Strigberger

By Marcel Strigberger



Marcel Strigberger

(November 19, 2018, 10:29 AM EST) -- The Canadian Judicial Council (CJC) has ruled on the matter of Ontario Superior Court Justice Patrick Smith. Justice Smith's offence was taking over, for no remuneration, as interim dean of Lakehead University's fledgling law school, which has a focus on Indigenous law, after its dean Angelique EagleWoman resigned. Some folks complained about the judge's involvement suggesting misconduct, even though Justice Smith sought and received the OK from his superior judge, Chief Justice Heather Smith (no relation) and the minister of Justice.

The CJC found that the judge was in fact in breach of provisions of the *Judges Act* and that his actions were unethical and ill advised.

The CJC rendered its decision notwithstanding a pending challenge scheduled for later this month to the Federal Court to stay or quash the council's actions.

The CJC, however, did decide that Justice Smith's misconduct was not serious enough to warrant dismissal from his job and it decided to close its file. Given its misconduct findings however, the application to the Federal Court will proceed to clear up his honour's name.

At first I thought this entire matter was Kafkaesque. Is this a way to treat a good Samaritan? Then on second thought I think this entire matter reminds me more of the *Seinfeld* series. A number of themes and phrases in the series come to mind as being applicable here. Check this out.

Firstly both lawyers and the Ontario Superior Court Judges Association, which intervened, said the CJC should not have started the process at all. Seinfeldly speaking, this entire proceeding *was about nothing*.

Then the CJC did decide to close its file as it found that this was not a case of bad behaviour or improper motives on the part of the judge. In other words, it was inferring that whatever happened, should be left at that, *not that there's anything wrong with that*.

Notwithstanding its ultimate ruling to close the file, the judge's good name has been assailed and sullied. The CJC's findings resulted in Justice Smith's reputation suffering *shrinkage*.

The council in its reasons fixated on how s. 55 of the *Judges Act* which requires judges to devote themselves exclusively to judicial duties even though by virtue of s. 54 of the Act the chief justice granted him a leave of absence to take on the temporary post, and that he also breached his ethical obligations as a judge to avoid controversy or public debate that possibly could be inconsistent with the dignity of judicial office ... *yadda, yadda, yadda*.

Unfortunately as matters stand, the issue is still not finalized given the pending application to the Federal Court. It's a pity that this is all happening near the holiday season, just before "*Festivas*."

I am sure we all would wish the good judge some *serenity now*.

Supporters of the judge are saying that the CJC should not have proceeded to rule and should have waited for the result of the Federal Court hearing. However the CJC is challenging the Federal Court's jurisdiction to review the CJC's activities in respect of judicial conduct. In short, it is saying to Justice Smith and his supporters, "No court for you!"

Agree it's all somewhat Seinfeldesque?

*Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humorous author and speaker. [www.marcelshumour.com](http://www.marcelshumour.com).*

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