Federal Court  Cour fédérale

Date: 20211230

Docket: T-505-21

Citation: 2021 FC 1483

Ottawa, Ontario, December 30, 2021

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KAREN LYNNE TURNER-LIENAUX

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the March 1, 2021 decision [the Decision] of Mr. Giroux, the Interim Executive Director [the Executive Director] of the Canadian Judicial Council [the CJC], dismissing the Applicant's complaint to the CJC [the Complaint] on the grounds that it does not warrant consideration.

Background

[2] In March 2018, the Applicant was pulled over by the Halifax Regional Police due to erratic driving. This ultimately led to her being charged with impaired driving pursuant to subsections 253(1)(a) and (b) of the *Criminal Code*, RSC 1985, c C-46, and having her driver's license suspended pursuant to the *Motor Vehicle Act*, RSNS 1989, c 293.

[3] After trial, the Applicant was acquitted of the criminal charge: see *R v Turner-Lienaux* (August 26, 2019), HA-18-1783 (NS Prov Ct) [the Criminal Decision]. However, the Registrar of Motor Vehicles for Nova Scotia maintained that the acquittal did not automatically result in her license suspension being lifted. The Applicant sued the Registrar and the Attorney General of Nova Scotia, arguing that her subsection 11(d) and 11(h) *Charter* rights had been breached, the defendants had committed the tort of misfeasance in public office, and there had been a re-litigation of her criminal charges.

[4] On October 21, 2020, Justice Norton of the Supreme Court of Nova Scotia dismissed the Applicant's action: see *Turner-Lienaux v Nova Scotia (Registrar of Motor Vehicles)*, 2020 NSSC 292.

[5] Following this decision, on November 3, 2020, the Applicant made a complaint to the CJC regarding Justice Norton. Additional submissions were filed on November 10, 2020, November 16, 2020, December 7, 2020, and January 22, 2021. In her final submissions, the Applicant asked the CJC to find that Justice Norton had misrepresented evidence and fabricated facts such that he engaged in intentional judicial dishonesty and breached his judicial duty by:

(a) failing to base his decision upon the written and oral evidence on the record for him to judicially consider;

(b) basing his decision upon wrong facts and legal submissions, which he knew to be based on a falsified version of section 279A of the *Motor Vehicle Act*;

(c) plagiarizing wrong facts and legal submissions from Crown counsel's submissions as the basis for his judicial rulings, which he knew to be based on a falsified version of section 279A of the *Motor Vehicle Act*;

(d) misrepresenting the legal substance of the *viva voce* evidence of Crown witnesses;

(e) misrepresenting the content of the judicial rulings made in the Criminal Decision; and

(f) fabricating facts not on the record as part of his reasons for judgment.

[6] On March 1, 2021, the Executive Director dismissed the Applicant's complaint. He wrote that, in essence, the Applicant alleged that Justice Norton "disregarded prior judicial rulings, failed to accurately report the evidence and consider it, did not consider the case laws and was biased." He noted that in the last correspondence filed, the Applicant alleges, "Justice Norton disregarded the fact that Crown counsel, falsified the relevant provisions of the *Motor Vehicle Act*, intentionally misrepresented evidence, violated the doctrine of abuse of process and fabricated facts not in evidence."

[7] The Executive Director observed that "[t]he assessment of evidence and of the applicable law, as well as the subsequent findings of fact and of law by a judge, fall strictly within the

judge's decision-making responsibility." Accordingly, they "do not involve conduct and fall outside the mandate of Council." The Executive Director indicated that if the Applicant took issue with how the judge exercised judicial discretion or arrived at the decision, the appropriate recourse was to appeal the decision.

[8] The Executive Director noted that "[t]he use of such expressions as 'falsification' 'misrepresentation' 'violation' 'fabrication' 'dishonesty' [and] 'intentional' does not, in and of itself, make the judgment a conduct issue."

[9] With respect to allegations of bias and judicial dishonesty, the Executive Director indicated that the existence of a bias is a judicial matter, to be decided by a court. The Executive Director noted that nothing in the material provided raised any issue that may require the CJC to intervene and that the Applicant's disagreement with Justice Norton's ruling was not evidence of bias.

[10] With respect to the allegations of plagiarism of Crown counsel's submissions, the Executive Director cited *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 [*Cojocaru*], where the Supreme Court of Canada held that judicial copying is a long-standing and accepted practice, so long as it is clear that the judge put their mind to the facts, argument, and issues. The Executive Director noted that, as observed in *Cojocaru*, where plagiarism does indicate the judge did not properly consider the case, the proper redress is before a court and the copying of submissions is not, without more, an issue of conduct.

[11] The Executive Director concluded: "[I]t is my view that the material provided does not raise any issue of conduct on the part of Justice Norton and, consequently, does not warrant consideration by council and it is dismissed."

Issues

[12] It is not this Court's role on judicial review to make a determination as to whether the Complaint is well founded. Nor is it this Court's role to wrap itself in Justice Norton's robes or second-guess his determinations. This Court's only role is to determine whether the decision of the Executive Director on review must be set aside.

[13] I make the following observations on the written materials that have been filed. Each party filed a written memorandum of 30 pages or less, as required by the *Federal Courts Rules*. Rule 70 specifies that the memorandum is to contain a concise statement of the points in issue, statements of fact, submissions, and the order sought. Neither party faithfully observed this obligation.

[14] The Applicant's Memorandum sets out two points in issues:

> 25. Did Mr. Giroux err in law when he ruled that the CJC has no authority to review the judicial decision of Norton J to determine whether it discloses evidence of actions which requires investigation by the CJC?
>
> 26. Did Mr. Giroux err in law when he ruled that actions of "falsification" "misrepresentation" "violation" "fabrication" [and] "dishonesty" committed by a supreme court judge in the course of adjudicating a litigation do not constitute "conduct" which requires investigation by the CJC?

[15] One week before the hearing of this application, the Applicant filed a 36-page document entitled “Applicant’s Oral Argument” [Applicant’s Further Written Submissions] which purports to be filed to assist the Court and the Respondent at the hearing. It was submitted with a cover letter in which counsel asserts:

> This document does not change the substance of the Applicant’s original legal argument. It only builds into the argument how the law of fraud on the court impacts on the Application.

[16] The points in issue in this new document are stated as the following:

> (i) Are decisions of the Canadian Judicial Council reviewable by the Federal Court?
>
> (ii) What is the duty of the Council when a Complaint is made against a judge of a superior court?
>
> (iii) What is the responsibility of the Executive Director of the Council when a Complaint has been received by the Council?
>
> (vi) [*sic*] What is the standard of review which applies to the facts of this case?
>
> (v) Was any evidence of judicial misconduct submitted to the Council which requires investigation to determine whether disciplinary action is required?
>
> (vi) Should the decision dismissing the Applicant’s Complaint be quashed and the Complaint remitted to the Council for investigation?

[17] One might think that the Applicant’s Further Written Submissions’ statement of 6 issues unpacks the Applicant’s Memorandum’s statement of 2 issues. This view might be said to reflect that the Applicant’s Memorandum lists 6 subheadings under the heading “Statement of Issues”: Canadian Judicial Council Decisions Are Reviewable (paras 27-28), Federal Court Jurisdiction (para 29), Standard of Review (para 30), The Evidence Submitted to the CJC (paras

31-79), First Issue (paras 80-110), and Second Issue (paras 111-116). In my view, these do not entirely accord with the six issues in the new document.

[18] Much of the Applicant's submissions in both documents are reiterations of the allegations that she put before the CJC because, as she put it, she must convince me that she had raised an issue of conduct in her complaint. The Applicant accepted that the CJC only has jurisdiction to deal with issues involving the conduct of judges. Absent a finding that judicial conduct has been raised in a complaint, the CJC is without jurisdiction.

[19] The Respondent, on the other hand, offers no written comment in response to the Applicant's submission that the Executive Director did not have the authority to assess evidence. The Respondent instead makes submissions on whether the Executive Director reasonably determined that the CJC cannot consider complaints that do not involve conduct. However, the Applicant expressly agreed with this point both in oral submissions and at paragraph 92 of the Applicant's Memorandum:

> The issue of whether a judge's decision is protected from disciplinary action turns on whether the act complained of is an act of "judicial decision-making" or an act of "judicial conduct".

[20] The Respondent conceded in oral submissions that it is possible that the behaviour of a judge during a hearing or as reflected in the decision reached could involve conduct that could be subject to a complaint to the CJC and fall within its jurisdiction. The Respondent submits that the behaviour of Justice Norton complained of in the Complaint is not of that sort.

[21] In my view, based on the submissions of both parties, and especially in view of their oral submissions, there are three relevant issues in the application for judicial review:

1. What is the standard of review?
2. Did the Executive Director exceed his authority by considering the merits of the evidence?
3. Did the Executive Director reasonably determine that the Applicant's complaint did not concern conduct and, therefore, should be dismissed?

Analysis

1. Standard of Review

[22] The Applicant submits that the appropriate standard of review is correctness. Her submissions on this issue in the Applicant's Memorandum consist solely of highlighted quotations from *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], without any direct application to the circumstances of the present case. However, at the oral hearing and in response to the Respondent's written memorandum, she conceded that the standard of review analysis must be governed by Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[23] Counsel pointed to para 2 of *Vavilov*, as support for his submission that *Dunsmuir* remains relevant to this analysis:

> In these reasons, we will address two key aspects of the current administrative law jurisprudence which require reconsideration and clarification. First, we will chart a new course forward for

> determining the standard of review that applies when a court reviews the merits of an administrative decision. Second, we will provide additional guidance for reviewing courts to follow when conducting reasonableness review. The revised framework will continue to be guided by the principles underlying judicial review that this Court articulated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190: that judicial review functions to maintain the rule of law while giving effect to legislative intent. We will also affirm the need to develop and strengthen a culture of justification in administrative decision making.

[24] The Applicant submits that in keeping with *Vavilov* "the initial standard of review which the Applicant must meet is reasonableness." She then offers at paragraphs 24 -27 of the Applicant's Further Written Submissions why the decision under review is unreasonable.

[25] She then goes on to submit that, as per *Vavilov* at para 17, the presumption of reasonableness can be rebutted. One situation where it is rebutted is with respect to "general questions of law of central importance to the legal system." She relies on *Pfizer Canada Inc v Canada (Minister of Health)*, 2011 FCA 215 [*Pfizer*] and *Mediatube Corp v Bell Canada*, 2018 FCA 127 [*Mediatube*] for the proposition that where there is a fraud on the court, it cannot be condoned and courts have an interest in protecting and ensuring their integrity. She submits:

> There can be no more important issue to the judiciary than the integrity of its court process. Therefore in this case the requirement for correctness of Mr. Giroux's decision overrides the reasonableness standard of review.

[26] I am not persuaded that either authority assists the Applicant. I note that neither of these authorities involved a review of an administrative action.

[27] *Pfizer* involved a motion pursuant to Rule 399 of the *Federal Courts Rules*, SOR/98-106 to set aside an order of the Federal Court of Appeal allowing an appeal on the basis that the decision was obtained by fraud on the part of Pfizer. *Mediatube* dealt with a motion filed by the appellant to add ineffective counsel as a ground of appeal in a matter that was under appeal before the Federal Court of Appeal. The passage relied on by the Applicant relates to the Court's comment that in order to obtain such relief the appellant must demonstrate the conflict of interest and that the conflict adversely affected the lawyer's performance on behalf of the appellant. Regarding this test, the Court goes on, at paragraph 55, to observe:

> This test is congruent with cases … which all suggest that conduct tantamount to a fraud on the court process wholly subverts the integrity of that process and the judgment resulting from that process. Such conduct places the court in the position where it cannot countenance or condone that conduct by leaving the judgment on the books. Equally, counsel who have reduced their performance due to an actual conflict of interest thereby betraying their clients have wholly subverted the integrity of the court process. In such circumstances, the judgment is tainted fatally and must be set aside.

[28] The conduct of the trial judge was not impugned in either of these cases. The alleged fraud on the court at the trial level was raised and addressed in the appeal of the trial result. In the context of an appeal, a trial judge is to be given deference by an appellate court, except on questions of law: see *Housen v Nikolaisen*, 2002 SCC 33 at paras 7-37 [*Housen*]. One of the principles underlying this deference is the presumption "that a trial judge is competent to decide the case before him or her, and that a just and fair outcome will result from the trial process:" *Housen* at para 17. In that context, a decision based on a fraud, where this presumption no longer holds, would not be entitled to any deference on appeal.

[29] Even accepting that "there can be no more important issue to the judiciary than the integrity of its court process," this does not entail that the disposition of complaints to the CJC are to be reviewed on a correctness standard, especially as the court's integrity can properly be dealt with by an appellate court on appeal.

[30] For these reasons, the only standard of review applicable to the decision under review is reasonableness.

2. The Authority of the Executive Director

[31] In the Applicant's Memorandum, it is submitted that the Executive Director erred by reviewing and considering the evidence in the Applicant's submissions to the CJC. The Applicant notes that the Executive Director explicitly indicated in his decision that he had reviewed the evidence and had come to the conclusion that it did not raise any issue of conduct.

[32] It is submitted that in so concluding, the Executive Director exceeded the authority delegated to him by the CJC. The Applicant relies on *Girouard v Canada (Attorney General)*, 2019 FC 1282 [*Girouard*], in which Justice Rouleau summarized the CJC process as follows:

> [120] […] The Executive Director is responsible solely for the administration of the complaints process. His role is limited to receiving the complaint and reviewing it to determine whether the complaint meets the following criteria:
>
> 1. It involves one or more federally-appointed judges;
>
> 2. It is not clearly irrational; or
>
> 3. It is not an obvious abuse of the complaints process.

> [121] The Executive Director does not assess any evidence at this stage of the process. If the complaint is well founded in light of these three criteria, it is referred to the Chairperson of the Judicial Conduct Committee. Although the Executive Director does carry out administrative duties at various stages of the complaints process, he or she plays no decision-making role in the inquiry at any of those stages.
>
> [emphasis added]

[33] The Applicant's reliance on *Girouard* is misplaced because Justice Rouleau was not considering the current version of the CJC's procedures applicable to the Complaint.

[34] The current version of the *Canadian Judicial Council Procedures for Review of Complaints About Federally Appointed Judges* [the 2015 Procedures] is effective as of July 29, 2015. In *Girouard*, two complaints were made against the applicant. The first was made by the Chief Justice of the Superior Court of Quebec in 2012. The second was made jointly by the Canadian Minster of Justice and the Attorney General of Quebec in 2016.

[35] Subsection 63(1) of the *Judges Act*, RSC 1985, c J-1 provides that the CJC "shall" commence an inquiry on the request of the Minister of Justice or the attorney general of a province. Accordingly, an inquiry into the 2016 complaint was mandatory and not subject to screening by the Executive Director. Subsection 63(2) provides that complaints by other parties, including members of the judiciary and the general public, "may" ("peut") be investigated by the CJC. Only subsection 63(2) complaints are subject to screening.

[36] Despite *Girouard* being decided in 2019, when Justice Rouleau was reviewing the screening process, he was referring to the version applicable to the complaint made in 2012. At that time, complaints were conducted according to the CJC's *Procedures for Dealing with Complaints made to the Canadian Judicial Council about Federally Appointed Judges* [the 2010 Procedures], which came into effect on October 14, 2010. The screening procedure in in the 2010 Procedures reads as follows:

2.2 The Executive Director shall open a file when a complaint about a named, federally appointed judge made in writing is received in the Council office from any source, including from a member of the Council who is of the view that the conduct of a judge may require the attention of the Council. The Executive Director shall not open a file for complaints which, although naming one or more federally appointed judges, are clearly irrational or an obvious abuse of the complaints process.	2.2 Sur réception, au bureau du Conseil, d'une plainte formulée par écrit concernant un juge de nomination fédérale, le directeur exécutif ouvre un dossier. Ces plaintes peuvent être formulées par quiconque, y compris par un membre du Conseil qui estime que la conduite d'un juge pourrait exiger l'attention du Conseil. Le directeur exécutif n'ouvre pas de dossier dans le cas des plaintes qui, même si elles concernent un ou plusieurs juges de nomination fédérale, sont nettement irrationnelles ou constituent un abus manifeste de la procédure relative aux plaintes.
[emphasis added]	[je souligne]

[37] It is clear from his reasoning that Justice Rouleau was considering this version, as the three criteria set out at para 120 of *Girouard* are clearly those in the 2010 Procedures.

[38] However, it is the 2015 Procedures that are applicable to the Complaint considered by the Executive Director in this matter. Section 4 specifically provides for an early screening

mechanism that is to be conducted by the Executive Director as to whether a complaint warrants consideration by the CJC. Section 5 specifically references those matters that do not warrant consideration - one of which is "complaints that do not involve conduct."

4. Early Screening by Executive Director	**4. Examen préalable par le directeur exécutif**
4.1 The Executive Director must review all correspondence to the Council that appears intended to make a complaint to determine whether it warrants consideration.	4.1 Le directeur exécutif doit réviser toute la correspondance adressée au Conseil qui paraît l'être dans l'intention de déposer une plainte, afin de décider si elle justifie un examen.
[…]	[…]
5. Early Screening Criteria	**5. Critères d'examen préalable**
For the purposes of these Procedures, the following matters do not warrant consideration:	Aux fins de ces procédures, les affaires suivantes ne justifient pas un examen :
(a) complaints that are trivial, vexatious, made for an improper purpose, and manifestly without substance or constitute an abuse of the complaints process;	(a) les plaintes qui sont futiles, vexatoires, faites dans un but inapproprié, sont manifestement sans fondement ou constituent un abus de la procédure des plaintes.
(b) complaints that do not involve conduct; and	(b) les plaintes qui n'impliquent pas la conduite d'un juge; et
(c) any other complaints that are not in the public interest and the due administration of justice to consider.	(c) toutes autres plaintes qu'il n'est pas dans l'intérêt public et la juste administration de la justice de considérer.

[39] When this was pointed out, the Applicant readily accepted that the 2015 Procedures apply. Accordingly, I find that the Executive Director did not exceed his authority. He was required to review the allegations set out in the Complaint in order to determine whether they warranted consideration.

[40] It is also worth noting that at no point in the Decision does the Executive Director suggest that the facts alleged by the Applicant are false. The Executive Director effectively determined that, assuming that all of the factual allegations were true, the proper remedy lay in an appeal and not with the CJC. The Executive Director appears to have only considered the evidence to the extent necessary to understand the allegations of the complaint and whether they warranted consideration by the CJC.

3. Did the Executive Director reasonably dismiss the Complaint?

[41] The Applicant takes issue with the Executive Director's assertion that the CJC "has no authority to review a judge's judgment to determine whether the judge rendered a decision that is congruent with the law and or the evidence." The Applicant submits that Justice Norton's acts are not examples of judicial decision-making, but rather are acts of misconduct.

[42] The Applicant submits that subsection 63(2) of the *Judges Act* makes it clear that the mandate of the CJC is to "investigate any complaint or allegation made in respect of a judge of a superior court." According to the Applicant, if a complaint shows even a scintilla of evidence of dishonesty, the CJC has a duty to investigate it.

[43] The Applicant relies on *Singh v Canada (Attorney General)*, 2015 FC 93 [*Singh*] as an example of the CJC investigating allegations of case fixing, "similar" to those in the present case. In *Singh*, the Chairperson of the Judicial Conduct Committee found that there was no evidence of wrongdoing and so there was no need for further investigation. The Applicant submits that this demonstrates that the CJC can review a judicial decision for evidence of judicial misconduct, as the Judicial Conduct Committee did in that case.

[44] The Applicant submits that the Executive Director made an error of law and was unreasonable where he found that "judicial acts of 'falsification' 'misrepresentation' 'violation' 'fabrication' [and] 'dishonesty' do not constitute 'conduct' which justifies investigation by CJC." She submits that such a finding is "absurd on its face" and brings the "administration of justice into disrepute in violation of the CJC's Integrity requirements" as set out in the CJC's *Ethical Principles for Judges*.

[45] The Respondent submits that the Executive Director provided an explanation of the CJC's mandate and the types of complaints that it may consider, and reasonably concluded that the Complaint did not raise issues involving conduct.

[46] With respect to use of the words "falsification", "misrepresentation", "violation", "fabrication", "dishonesty", and "intentional", the Respondent submits that merely saying a judge did such things is not sufficient to show a conduct issue worthy of further consideration. The Respondent submits that the Applicant's allegations that the conduct complained of is akin to case fixing are mere speculation and bald assertions, unsupported by evidence. The

Respondent submits that there is not a scintilla of evidence in the record supporting the Applicant's allegations.

[47] At the hearing, the Applicant provided detailed submissions on what she viewed as "conduct" of Justice Norton that merited a CJC Inquiry. As earlier noted, it is not my role to step into the shoes of the Executive Director and evaluate the Complaint, nor to opine whether I agree with his decision; rather it is my sole role to assess whether the decision of the Executive Director was reasonable.

[48] Reasonableness review is concerned with both the outcome of the decision and the reasoning process that led to that outcome: see *Vavilov* at para 87. A reasonable decision is one that is justified, transparent, and intelligible — it must be based on an internally coherent and rational chain of analysis that is justified in relation to the relevant facts and law: see *Vavilov* at paras 85 and 99.

[49] A decision will generally be unreasonable if "[the] decision maker's rationale for an essential element of the decision is not addressed in the reasons and cannot be inferred from the record:" *Vavilov* at para 98. However, reasonableness review is not a "line-by-line treasure hunt for error:" *Vavilov* at para 102. A decision's flaws must be sufficiently central or significant to render it unreasonable: see *Vavilov* at para 100.

[50] Importantly, a reviewing court should refrain from reweighing or reassessing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: see *Vavilov* at para 125.

[51] The Applicant's complaint to the CJC sets out six alleged examples of misconduct by Justice Norton. The Executive Director correctly set out these allegations. The Executive Director reviewed each of them, and concluded that the actions complained of relate to the judge's assessment of evidence and of the applicable law, and as such fall within the judge's decision-making responsibility and are not issues of conduct.

[52] The Executive Director clearly set out that such complaints were not within the mandate of the CJC and explained why this was the case.

[53] With respect to the complaint of plagiarism, the Executive Director explained that this was not, in and of itself, an act of misconduct and supported this conclusion with case law from the Supreme Court of Canada. As to the judge making a ruling based on plagiarizing submissions that were based on a falsified version of section 279A of the *Motor Vehicle Act*, I note that the judge actually recites the "correct" section in his reasons at para 54.

[54] A tribunal's decision may be unreasonable where it departs from past practice of the tribunal without justification: see *Vavilov* at para 131. The Applicant relies on *Singh* to demonstrate that the CJC has allowed complaints through screening and reviewed a judicial decision in the past.

[55] The Applicant's reliance on *Singh* is misplaced. *Singh* was decided under the 2010 Procedures which, as discussed above, provided for a different screening process. It is not inconsistent with past practice for the Executive Director to dismiss a claim that previously would have passed a preliminary screening process that applied different criteria.

[56] Screening out matters that do not pertain to conduct was previously performed by the Chairperson of Judicial Conduct Committee. If past practices under the 2010 Procedures are to be considered, this is the relevant stage.

[57] In *Singh*, the complaint was reviewed by the Chairperson under the 2010 Procedures to determine whether it pertained to conduct. Contrary to the Applicant's submissions, the CJC in *Singh* did not review the master and judges' decisions. The finding of the Chairperson in *Singh* was that (1) there was no evidence to support the allegations of misconduct and (2) that the applicant was improperly challenging judges' decision-making. The Chairperson found that "[s]uch matters fall under the judges' decision-making responsibilities, and if they are to be challenged, should be challenged on appeal": see *Singh* at para 53.

[58] The Executive Director's decision is consistent with *Singh*. Just as in *Singh*, the Executive Director dismissed the Complaint because there was no evidence of a conduct issue and because it was clear that the Applicant's complaints were properly the subject matter of an appeal.

[59] The Applicant submits that the Executive Director made an error of law and was unreasonable when he found that “falsification”, “misrepresentation”, “violation”, “fabrication”, and “dishonesty” did not constitute misconduct. With respect, the Applicant has misinterpreted the Decision. The full quotation from the Decision is as follows:

> The use of such expressions as ‘falsification’ ‘misrepresentation’ ‘violation’ ‘fabrication’ ‘dishonesty’ [and] ‘intentional’ does not, in and of itself, make the judgment a conduct issue.”

[60] The Executive Director was not saying that the listed acts were not examples of misconduct. The Executive Director was indicating that using these words in a complaint cannot make a complaint about judicial decision-making into one regarding conduct. I agree. It is the essence of the complaint and not the language used by the complainant that determines whether it falls within the CJC’s jurisdiction.

[61] The Executive Director reviewed the allegations and concluded that they were in essence complaints about judicial decision=making and not judicial conduct. The Executive Director provided logical reasons for this conclusion. This result was consistent with past practice. The Decision is reasonable.

[62] The parties are agreed that an award of costs of $2,500.00 to the successful party is a reasonable amount. Given the extensive records filed by both parties and the detailed submissions made, I agree.

JUDGMENT IN T-505-21

THIS COURT'S JUDGMENT is that this application is dismissed, with costs to the Respondent fixed at $2,500.00.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-505-21
STYLE OF CAUSE:	KAREN LYNNE TURNER-LIENAUX v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 27, 2021
JUDGMENT AND REASONS:	ZINN J.
DATED:	DECEMBER 30, 2021

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