

# Tax Court judge accused of pressuring U of T law school not to hire human-rights scholar identified

SEAN FINE JUSTICE WRITER

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PUBLISHED SEPTEMBER 23, 2020 UPDATED 10 HOURS AGO

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The University of Toronto's St. George Campus is seen in a July 27, 2013, file photo.

JENNIFER ROBERTS/THE GLOBE AND MAIL

The Canadian Judicial Council is considering multiple complaints against Justice David Spiro, a member of the Tax Court of Canada, over allegations that he sought to influence the hiring process at the University of Toronto's law school.

Council spokeswoman Johanna Laporte said in an e-mail that complaints against the judge are "currently being reviewed." She declined to say how many the council has received. The Globe and Mail is aware of at least three complainants.

Justice Spiro is a 1987 graduate of the law school. Before the Liberal government appointed him to the Tax Court last year, he advised the law school on its \$30-million fundraising campaign. His extended family has donated tens of millions of dollars to the University of Toronto and its affiliated hospitals.

He is alleged to have contacted a member of the law school's fundraising team about the hiring of a director for the International Human Rights Program.

The allegation is contained in a chronology prepared by law professor Audrey Macklin, chair of the hiring committee for the position. The chronology, obtained by The Globe, says Justice Spiro expressed concern about the committee's first choice, Valentina Azarova, over her "Israel/Palestine work."

Dr. Azarova has written for legal journals about Israel's occupation of the Palestinian territories. Two days after Justice Spiro's phone call, according to Prof. Macklin's chronology, negotiations with Dr. Azarova were terminated. Prof. Macklin then resigned from the hiring committee. She has declined to speak with The Globe. Two former directors of the program accused the school of succumbing to political interference. A second member of the hiring committee resigned his paying job with the human-rights program.

The judicial council, a disciplinary body, has received complaints from the National Council of Canadian Muslims, Queen's University law professor Leslie Green and Osgoode Hall law professor Craig Scott.

The nub of the complaints is that litigants, lawyers and the public may not perceive Justice Spiro to be fair on certain issues that may come before him. The allegations, if true, "would put the integrity and impartiality of the Court in jeopardy," Prof. Green said in his letter of complaint. "Any party or lawyer before it who is Palestinian, Arab, or Muslim could reasonably fear bias."

The first step is for the Judicial Council's interim executive director, Michael MacDonald, a former chief justice of Nova Scotia, to assess any complaints and decide whether they deserve further consideration. The council has published guidelines, which caution judges to be sure to preserve the appearance of impartiality in their personal conduct outside the courtroom.

If Mr. MacDonald decides complaints have merit, he refers them on to a member of the judicial conduct committee. Ultimately, if an investigation is conducted in this case, Justice Spiro and Chief Justice Eugene Rossiter of the Tax Court would be asked for comments. A public hearing would be held if the council decides the complaints are serious enough that the judge could potentially face removal from the bench.

The Tax Court has declined to comment on the allegations. Justice Spiro has not replied to a request from The Globe on his voice mail at the Tax Court, and another request through Sophie Matte, executive legal counsel to Chief Justice Rossiter.

The judge's alleged interference has also sparked a petition signed by more than 1,000 lawyers and academics in Canada and abroad, urging the law school to establish an independent, external review of the episode. Among the signatories are U of T law school alumnus Diana Buttu, a former adviser to the Palestinian Liberation Organization's negotiating team; linguist Noam Chomsky; and Richard Falk, a former United Nations special rapporteur on human rights in the Palestinian territories.

Separately, Amnesty International has called for an independent, external review, and threatened to end its relationship with the law school's human-rights program if that is not done. And the Canadian Association of University Teachers is demanding an explanation of what it describes as a grave violation of Dr. Azarova's academic freedom.

The law school lists David Spiro as a donor to its fundraising Campaign for Excellence Without Borders, in the \$25,000 to \$99,999 category; it also lists a charity named for his parents, the Tauba and Solomon Spiro Family Foundation, in the same category. The school describes Justice Spiro as having contributed to a pro bono program that teaches law students to represent low-income taxpayers at the Tax Court.

Justice Spiro is also a former member of the board of directors of the Centre for Israel and Jewish Affairs, an advocacy group.

His maternal grandmother, Anne Tanenbaum, endowed two research chairs at the university's medical school and chairs at four hospitals the university describes as "fully affiliated." Her estate, along with the Lawrence and Judith Tanenbaum Family Charity Foundation, contributed \$5-million toward the university's Jewish studies program, now called the Anne Tanenbaum Centre for Jewish Studies.

His uncle and aunt, Larry and Judy Tanenbaum, donated \$35-million to the Lunenfeld-Tanenbaum Research Institute at an affiliated hospital. Another uncle, Joey Tanenbaum, helped endow the university's Bahen-Tanenbaum Chair in Civil Engineering, and with his wife, Toby, supported civil engineering scholarships. His parents' family foundation has given money to programs at affiliated hospitals.

The law school's dean, Ed Iacobucci, has not denied that a Tax Court judge contacted the administration about the potential hiring of Dr. Azarova. He has said, however, that the school never offered her a job, and that political interference played no part in the school's decision to shut down the hiring process.

According to Prof. Macklin's chronology document, Mr. Iacobucci acknowledged Dr. Azarova's work on Israel and Palestine was an "issue," but said it did not need to be addressed because immigration problems stood in the way of hiring her. (Dr. Azarova, who is originally from Russia, lives in Europe.)

Mr. Iacobucci declined on Wednesday to comment on the calls for an independent review, or on Prof. Macklin's report that Dr. Azarova's Mideast work was an issue.