



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

**Personal and Confidential**

CJC File: 16-0545

6 June 2017

Ottawa, Ontario K1A 0W8

Ms Jessica Ernst  
Box 753  
Rosebud, AB T0J 4T0

Dear Ms Ernst:

I wish to acknowledge receipt of your letter of 25 January 2017 to the Right Honourable Beverley McLachlin, in which you make a complaint against Justice Rosalie Abella of the Supreme Court of Canada.

Due to an administrative error in my office, your letter was misplaced. Please accept my apologies for the delay in providing this response.

Pursuant to the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges* (the *Review Procedures*), I am “responsible for the administration of the judicial complaints process, including the receipt of complaints.” The *Review Procedures* further provide that Chief Justice McLachlin, although she is Chairperson of Council, does not participate in any way in the review of judicial conduct matters.

Your complaint follows the decision of the Supreme Court of Canada in the *Ernst v. Alberta Energy Regulator* case. You say that Justice Abella improperly described you as a vexatious litigant.

The judge made the comment in noting that the Energy Resources Conservation Board had made a decision to stop communicating with you. She expresses her view that in making this decision, the Board was “in essence finding her to be a vexatious litigant.”

I must advise that judges have a wide latitude in respect to their written reasons for decision. Absent bad faith or unusual circumstances, the contents of reasons for decision fall within the ambit of judicial discretion and are not an issue of judicial conduct. The only body competent to amend or review reasons for decisions is the Court itself, in this case the Supreme Court of Canada.

As you have noted, a number of judges in that case wrote, at paragraph 172:

Our colleague Abella J. suggests that the Board, in deciding to stop communicating with Ms. Ernst, “in essence f[ound] her to be a vexatious litigant” (para. 64). We see no basis for our colleague’s characterization.

Court decisions speak for themselves. Both Justice Abella’s comments, and those of the dissenting judges, are part of the public record.

Without commenting on the merits of the decision as such, I must point out that Justice Abella did not declare you to be a vexatious litigant, as a matter of law. She was simply expressing her view about certain facts that gave rise to the proceedings before the Court.

Pursuant to my duties under the *Review Procedures*, I must determine if complaints require further consideration by Council. After carefully reviewing all available information in this case, I have come to the view that the matter does not warrant consideration by Council as it does not involve judicial conduct.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'NSab', followed by a long, horizontal, wavy flourish.

Norman Sabourin  
Executive Director and Senior General Counsel



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