

## Judicial Council

# Judge in jeopardy | Marcel Strigberger

By **Marcel Strigberger**



Marcel Strigberger

(October 18, 2018, 2:30 PM EDT) -- I stand with the judge. We are witnessing a travesty of justice and due process. This veteran judge's record and reputation is exemplary. Yet his entire career is being threatened. What do they want from the poor man? Enough already. I say stop hassling Superior Court of Ontario Justice Patrick Smith.

I am talking about the attack on one of our own Superior Court of Ontario justices whose offence is as follows. Angelique EagleWoman, the dean of Lakehead University's law faculty, which has a focus on Indigenous law, resigned. While looking for an Indigenous replacement the university president asked Justice Smith to take over the position, no pay, temporarily, on an urgent basis. Justice Smith, after getting the blessing of his own boss, Chief Justice Heather Smith (no relation) and the minister of Justice, took on the position.

After a CBC news story referred to First Nations communities across northwestern Ontario demanding that the university appoint an Indigenous successor to EagleWoman, the previous dean, unfortunately someone on the judicial council considered the judge's action "misconduct" worthy of further investigation by the judicial council. And now the poor judge is being assailed, not for doing something bad but for doing something kind. As they say in French, no good deed goes unpunished.

He is seeking to stay/quash this ruling before the Federal Court. Fortunately the Ontario Superior Court Judges Association is planning to intervene on behalf of its colleague's fight before the Federal Court.

The problem I see is that there is a clear conflict of interest facing the Federal Court judges. After all they are judges judging another judge. Given the circumstances, how can they possibly carry out their duties objectively? Surely some will say, "Oh yeah, he is one of yours. You have to recuse yourself."

Given that Justice Smith is in hot water for being a nice guy and stepping up to the plate when asked by a place in need and blessed by his superiors, I have no doubt that the potential Federal Court judge hearing this matter will have some trepidation about handling it. He or she might think, "Ah huh, conflict? Maybe I'll just run it by the chief justice of the Federal Court? Then again, maybe not. I've known that done. It doesn't always work."

I don't have the answer to this dilemma.

Maybe it's time to make use of technology and come up with robot judges. That might just work. True you would need a tech person in the judge's chambers at times. And the government would have to come up with an appropriate robe for the new jurists on the block.

But there would certainly be some economy here No pensions. No vacations. Most important they would not go out of their way to voluntarily help any organization in need.

*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).*

*Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Peter Carter at [peter.carter@lexisnexis.ca](mailto:peter.carter@lexisnexis.ca) or call 647-776-6740.*

---

© 2018, The Lawyer's Daily. All rights reserved.