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## Who is Justice Brown and why's he under probe?

Tonda MacCharles Toronto Star

**O**TTAWA - Justice Russell Brown of the Supreme Court of Canada is on an indefinite paid leave of absence pending an investigation into an unspecified complaint that has Canada's legal community abuzz but at a loss to say what impact it will have on the court or public trust in the judiciary.

That's because of the high level of secrecy around the investigation.

For Canada's top court, it's a first. There have been judicial absences due to health issues or sudden resignations from the nine-member bench before, leaving gaps particularly when a prime minister hasn't moved quickly to nominate a replacement.

However, it is unprecedented that one of the top judges in the country is facing an investigation and a potential disciplinary proceeding, as far as legal experts can determine.

Here's what is known and what isn't:

Who is Justice Russell Brown?

Brown, 57, is one of two judges from Western Canada on the country's top

court. A B.C. native, he practised law in Alberta and was teaching at the University of Alberta when he was first named in 2013 to Alberta's superior trial court by former prime minister Stephen Harper. Brown had a swift rise through judicial ranks, joining the Alberta Court of Appeal a year later, then the Supreme Court of Canada by the fall of 2015.

In private practice, he had specialized in commercial law, medical negligence, public authority liability, insurance law and trusts and estates. On the top court bench he has been a strong dissenter from the majority, along with Justices Malcolm Rowe and Suzanne Côté.

He is quick-witted, sharp-tongued, yet approachable. Brown counts many in the legal community among his friends. Several of those declined to comment about the matter, but also said they didn't know the nature of the complaint.

What is the complaint?

There is no indication of the nature of the complaint, whether it was made by an individual or a group, if it relates to Brown's conduct on the bench or at the workplace, or outside the workplace, what time frame it relates to or if those

The Canadian Judicial Council says it is reviewing a complaint filed against Supreme Court Justice Russell Brown. Adrian Wyld THE CANADIAN PRESS file photo

details will ever be known.

The Canadian Judicial Council, the body that oversees judicial conduct and independence, citing confidentiality, says it will not comment on the nature of the complaint, nor will the Supreme Court of Canada, nor will the judge himself. However, the legal process governing how such a complaint is dealt with leaves it open to the complainant to make their concern public, experts say.

In a statement to the Star, Brown said, "I am co-operating fully with the Canadian Judicial Council's review process. Out of respect for that process, I anticipate making no further comment on this matter."

When did the probe begin?

Brown's absence from the bench was not announced by the high court. Instead, it first came to light after an asterisk next to his name appeared in a standard court news advisory on Feb. 17 announcing the dismissal of an appeal heard last

May. Brown heard the case, but the court said he did not participate in the final ruling.

Only after a legal media outlet began asking questions did certain facts begin to emerge, and slowly. It was not until Tuesday that the Canadian Judicial Council revealed publicly it had received the complaint about Brown more than a month earlier, on Jan. 29.

Emmett Macfarlane, a political science professor at the University of Waterloo, says it was wrong for the Supreme Court not to have taken the initiative, and to have left people to assume Brown didn't participate in the judgment due to a health issue or a family or personal emergency.

What effect does this have on the court's operations?

The court says Chief Justice Richard Wagner has "made all necessary arrangements so that all appeals are heard, reserved judgments are rendered and applications for leave are determined without delay."

The high court can sit with a minimum of five judges, but it has sat, for example, with an even number of judges before. When there is a tie, legal experts say, the lower court ruling that was challenged could stand, or, the court says, a case may be reheard by reviewing the video of a hearing and written material.

But it's not ideal. And this month, there's a big federalism case to be argued before the court - Alberta's challenge of federal environmental impact assessment laws.

How long will the Brown investigation take?

The court does not know, nor is the CJC saying.

Lawyer Sujit Choudhry, who has litigated before the top court and is a close observer, said in an interview "it is in the interest of everyone to ensure an investigation be done properly, deliberatively and carefully. It should be done with dispatch and yet not hastily... precisely to uphold the integrity and public confidence in the judiciary."

Prof. Amy Salnyzyn of the University of Ottawa's law faculty said it's hard to predict how the review will proceed "given that we do not know the nature of the complaint."

But she said the CJC has the option under its review procedures to retain an investigator to gather further information and prepare a report.

"We don't know if this has been done or even if it would make sense to do so in this case. Presumably and hopefully, we will hear more from the CJC when a decision is made as to whether or not the complaint is being referred to the next stage, which would be constituting a Review Panel. A Review Panel may be established when it is determined that a complaint might be serious enough to warrant the removal of the judge."

CJC spokesperson Johanna Laporte said only that "while some matters may take more time, particularly if they are complex, the Canadian Judicial Council proceeds in a timely way in the interests of the public and the judge."