



FEDERAL COURT

THE HONOURABLE LORI DOUGLAS

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

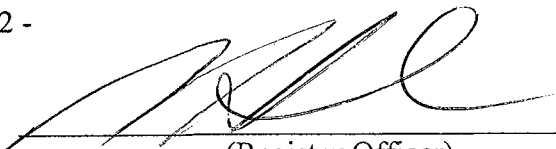
THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 26 2017

Issued by 
(Registry Officer)

Address of
local office: 180 Queen Street West
Suite 200
Toronto, Ontario
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TO: Attorney General of Canada
c/o Deputy Attorney General of Canada
Department of Justice Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: Inquiry Committee of the Canadian Judicial Council concerning the Honourable
Lori Douglas
c/o George Macintosh
Farris, Vaughn, Wills & Murphy LLP
25th Floor, 700 W Georgia Street
Vancouver, BC V7Y 1B3

AND TO: Independent Counsel to the Inquiry Committee of the Canadian Judicial Council
concerning the Honourable Lori Douglas
Guy J. Pratte
Borden Ladner Gervais LLP
Barristers & Solicitors
World Exchange Plaza
1100-100 Queen Street
Ottawa, ON K1P 1J9

APPLICATION

This is an application for judicial review of the July 27, 2012 ruling of the Canadian Judicial Council Inquiry Committee constituted to investigate the conduct of the Honourable Lori Douglas, Associate Chief Justice of the Court of Queen's Bench of Manitoba ("Douglas ACJ") in which the Inquiry Committee refused to recuse itself.

THE APPLICATION IS FOR AN ORDER:

- (1) declaring the manner in which the Inquiry Committee has conducted itself gives rise to a reasonable apprehension of bias;
- (2) setting aside the July 27, 2012 ruling of the Inquiry Committee, which was that it did not have to recuse itself;
- (3) prohibiting the Inquiry Committee from continuing its proceedings and remitting the complaints against Douglas ACJ back to the Canadian Judicial Council (the "CJC");
- (4) granting Douglas ACJ her costs of this application on a full indemnity basis; and
- (5) such other relief as may seem just.

THE GROUNDS FOR THE APPLICATION ARE:

- (1) The Inquiry Committee was constituted pursuant to s. 63(3) of the *Judges Act*, R.S.C. 1985, c. J-1, to investigate certain matters relating to Douglas ACJ.
- (2) By s. 63(4) of the *Judges Act*, an Inquiry Committee is deemed to be a superior court. It is an integral part of a process which can lead to the removal of a federally-appointed judge from the bench. Its duties include making findings of fact. An Inquiry Committee is therefore required by law, including the CJC Inquiries and Investigations By-laws, to afford the judge who is the subject of its investigation the highest level of procedural fairness.
- (3) An Inquiry Committee may be assisted in the conduct of its investigation by Committee Counsel, whom it engages. Under the CJC Policy on Inquiry Committees, Committee Counsel does not participate in the hearings, and may therefore assist in drafting rulings and the Inquiry Committee's final report. It is, according to the CJC's By-laws and

Policies, the responsibility of Independent Counsel, who is appointed for his or her ability and experience and who is to perform his or her duties in the public interest, to present the case to the Inquiry Committee in a fair and impartial manner and to ensure that all relevant evidence is gathered, marshalled, presented and tested.

- (4) The CJC appointed Mr. Guy Pratte of Borden Ladner Gervais LLP as Independent Counsel. Prior to the commencement of the hearing, Independent Counsel intended to submit to the Inquiry Committee his report and recommendations as to whether any allegations should go forward, and on what grounds.
- (5) On May 15, 2012, the Inquiry Committee drafted that Independent Counsel should, instead, file a Notice of Allegations presenting “the strongest case possible in support of the allegations against the judge”.
- (6) Independent Counsel then released a Notice of Allegations on May 18, 2012. That Notice complied with the Inquiry Committee’s ruling but did not include an allegation based on the original complaint to the CJC by Alexander Chapman (“the Chapman Complaint”). A Review Panel of the CJC had previously determined not to send the Chapman Complaint forward to the Committee. Despite the conclusion of the Review Panel, on May 24, 2012, the Inquiry Committee directed Independent Counsel to add the Chapman Complaint to the Notice of Allegations.
- (7) The hearing began on May 19, 2012 and resumed June 25 and 26, 2012, when the Inquiry Committee granted limited standing and state-funded counsel to Chapman over the objection of both Independent Counsel and Douglas ACJ. The hearing of evidence then commenced July 16, 2012.
- (8) The Inquiry Committee conducted the hearing so as to give rise to a reasonable apprehension of bias. It did so by:
 - (a) instructing and permitting Committee Counsel, to undertake on its behalf cross-examinations of Michael Sinclair and Douglas ACJ’s husband Jack King, two witnesses whose evidence supported Douglas ACJ’s position, that included:
 - (i) aggressive and argumentative questions;
 - (ii) sexist and insulting references;

- (iii) misstatements and distortions of the evidence; and
 - (iv) attacks on Douglas ACJ's character and credibility;
 - (b) refusing Independent Counsel's request to end the improper questioning by Committee Counsel;
 - (c) advising Committee Counsel, during Independent Counsel's cross-examination of Chapman, that it did not want to see such an aggressive cross-examination of that witness by Independent Counsel, which comments Committee Counsel passed on to Independent Counsel during the cross-examination; and
 - (d) preventing Douglas ACJ's counsel from asking various questions relevant to Chapman's credibility.
- (9) Douglas ACJ's counsel promptly sought to have the Inquiry Committee recuse itself on the basis that its conduct had given rise to a reasonable apprehension of bias. By ruling of July 27, 2012, the Inquiry Committee refused to recuse itself.
- (10) The Inquiry Committee's conduct in the July hearing, and the reasonable apprehension of bias that it has created, renders it impossible to continue the hearing. Continuing the hearing would cause damage to Douglas ACJ and to the administration of justice. The intervention of this Court is required.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

- (1) the ruling of the Inquiry Committee, dated July 27, 2012;
- (2) the Notice of Allegations, dated May 29, 2012;
- (3) the Response to the Notice of Allegations, dated June 13, 2012;
- (4) excerpts from the transcripts of the hearing;
- (5) the affidavit of Sarah Whitmore; and
- (6) such further and other materials and evidence as counsel may advise and the Court permit.

THE APPLICANT REQUESTS that the Committee, pursuant to Rule 317 of the *Federal Court Rules*, send a certified copy of the audio recordings of the hearing for the days of July 20, 2012 and July 25, 2012.

August 20, 2012



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