

IN THE MATTER OF AN INVESTIGATION PURSUANT TO SECTION 63(2) OF
THE *JUDGES ACT* REGARDING THE HONOURABLE ASSOCIATE CHIEF
JUSTICE LORI DOUGLAS

DATE : September 30, 2014

**RULING OF THE INQUIRY COMMITTEE ON INDEPENDENT COUNSEL'S
MOTION TO SEEK DIRECTIONS**

I. INTRODUCTION

- [1] This Inquiry Committee (Committee) was established and its members appointed on March 13, 2014 to inquire into and report its findings to the Canadian Judicial Council (“**CJC**”) in relation to complaints and allegations made against Associate Chief Justice Lori Douglas (“**ACJ Douglas**”). The allegations at issue are set out in the Notice to Associate Chief Justice Lori Douglas (“**Notice of allegations**”) dated August 20, 2014 provided to ACJ Douglas by Independent Counsel.
- [2] Together with the Notice of allegations, Independent Counsel also gave notice to ACJ Douglas of her intention to seek directions from the Inquiry Committee as to whether additional allegations pertaining to ACJ Douglas should be included in the scope of the present inquiry (“**Additional allegations**”).
- [3] The Additional allegations are set out in the Notice to Associate Chief Justice Lori Douglas intimating Independent Counsel’s Intention to Seek Directions from the Committee dated September 4, 2014.
- [4] At a prior case management conference held on August 26, 2014, it was decided that the Notice dated September 4, 2014 would constitute and be considered as being a Motion for Directions as to whether the Additional allegations should be included in the scope of the present inquiry and that this Motion would be decided on the basis of written representations, unless one of the parties requested leave to make oral representations, which they did not.
- [5] For the reasons set out below, the Inquiry Committee finds that the Additional allegations shall not be included in the scope of the present inquiry.

II. THE DIFFERENT STEPS OF THE INVESTIGATION AND INQUIRY PROCESS

- [6] At the outset, it is useful to briefly describe the typical steps of the investigation and inquiry process in relation to complaints made against federally appointed judges.

- [7] The investigation and inquiry process initiated by the filing of a complaint to the CJC is set out in various instruments, namely in the *Judges Act*¹ (the “**Act**”), the *Canadian Judicial Council Inquiries and Investigations By-laws*² (the “**By-laws**”), the *Canadian Judicial Council Procedures for Dealing with Complaints*³ (the “**Complaints Procedures**”) and the *Canadian Judicial Council Policy on Inquiry Committees* (the “**Policy**”).
- [8] Typically, this process tracks the following steps, commonly referred to as being the “screening process” prior to the constitution of an Inquiry Committee:

- a) Receipt of a complaint and file opening: Upon receipt of a complaint in writing, the Executive Director of the Council opens a file, unless the complaint is clearly irrational or an obvious abuse of the complaints process.⁴
- b) Review by the Chairperson or Vice-Chairpersons of the Judicial Conduct Committee: The Executive Director may refer a complaint to the Chairperson or Vice-Chairpersons of the Judicial Conduct Committee for review.⁵

At this stage, the Chairperson may: i) close the file; ii) seek additional information from the complainant; or iii) seek the judge’s comments and those of their Chief justice.⁶

- c) Consideration of Response of the Judge by the Chairperson or Vice-Chairpersons of the Judicial Conduct Committee: After reviewing the response of the judge and their Chief justice, together with any other information received, the Chairperson may: i) close the file; ii) hold the file in abeyance until counselling or remedial measures have been completed; iii) ask an outside counsel to make further inquiries and prepare a report, or iv) refer the file to a Panel.⁷
- d) Consideration of Outside Counsel’s Report: If the Chairperson has retained outside counsel, he must review the latter’s report and may: i) close the file; ii) hold the file in abeyance until counselling or remedial measures have been completed; iii) refer the file to a Panel.⁸
- e) Consideration by a Panel: If a file is referred to a Panel, then after reviewing the file and any written submissions, the Panel may: i) direct that further inquiries be made by Outside Counsel; ii) close the file; iii) hold the file in abeyance until counselling or remedial measures have been completed; or iv) decide that an Inquiry Committee be constituted under section 63(3) of the *Judges Act* provided the matter is potentially serious enough to warrant removal.⁹

¹ R.S.C, 1985, c. J-1, sections 63 and following.

² SOR/2002-371.

³ Procedure for dealing with complaints made to the Canadian Judicial Council about Federally Appointed Judges, October 14, 2010.

⁴ Complaints Procedures, section 2.2.

⁵ Complaints Procedures, sections 3.2 to 3.5.

⁶ Complaints Procedures, section 3.5.

⁷ Complaints Procedures, section 5.1.

⁸ Complaints Procedures, section 8.1.

⁹ Complaints Procedures, section 9.6.

- f) Consideration by an Inquiry Committee: An Inquiry Committee investigates any complaint or allegations made in respect of a judge of a superior court.¹⁰ After an inquiry, the Council shall report its conclusion to the Minister of Justice, and may recommend that the judge be removed from office.¹¹

[9] In light of the Motion for Directions, it is noteworthy that pursuant to subsection 5(1) of the **By-laws**, the Inquiry Committee “*may consider any relevant complaint or allegation pertaining to the judge that is brought to its attention*”.

III. THE NOTICE OF ALLEGATIONS

[10] Without limiting the generality of the content of the Notice of allegations, the allegations at issue therein relate to the following:

- a) an alleged failure to disclose relevant facts in the application process between December 17, 2004, the date of ACJ Douglas’s application for judicial appointment, up to the date of her appointment on May 19, 2005;
- b) an alleged resulting incapacity as a consequence of the public availability of intimate graphic photographs of a sexual nature of ACJ Douglas; the photos having been publicly available from 2002 up to a time which is currently undefined; and
- c) an alleged failure to fully disclose facts relating to the two allegations above to former independent counsel in the context of his investigation.

IV. THE ADDITIONAL ALLEGATIONS

[11] The Additional allegations relate to an alleged inappropriate use of ACJ Douglas’ representational allowance provided for under subsection 27(6) of the *Judges Act*.

[12] Independent Counsel states that she has become aware that the Chief Justice of the Manitoba Court of Queen’s Bench, the Honourable Glenn Joyal (“**CJ Joyal**”), filed a complaint with the CJC over certain expense claims submitted by ACJ Douglas around 2011.

[13] Independent Counsel indicates that although she has reviewed CJ Joyal’s allegations, she has not had the benefit of ACJ Douglas’ response to these allegations, which counsel for ACJ Douglas has refused to provide to Independent Counsel. This refusal is grounded in her objection to Independent Counsel’s jurisdiction to review CJ Joyal’s allegations and to seek directions from the Inquiry Committee with respect to the inclusion of these allegations within the purview of the present Inquiry.

[14] The thrust of the allegations of CJ Joyal’s complaint to the CJC relates to the fact that although ACJ Douglas has not been assigned any specific administrative duties since February 2011 in relation to the Family Division of the Manitoba Court of Queen’ Bench,

¹⁰ *Judges Act*, section 63(2). See also 63(1) which is not relevant here.

¹¹ *Judges Act*, section 65.

she has been reimbursed for certain expenses which she has claimed as part of her representational allowance provided under subsection 27(6) of the *Judges Act*.

- [15] It is relevant to note that the review of CJ Joyal's complaint has been held in abeyance by the CJC. Furthermore, although ACJ Douglas provided comments in relation to this complaint to the Chair or Vice-Chair of the Judicial Conduct Committee, the matter has not been referred to a Panel by the Chair or Vice-Chair of the Judicial Conduct Committee nor has the Judicial Conduct Committee determined whether to dispose of the complaint summarily or not.

V. THE POSITION OF COUNSEL

- [16] Reduced to its lowest common denomination and abstraction made for arguments which are irrelevant for the purposes of this Motion, ACJ Douglas' position is that the Inquiry Committee does not have jurisdiction to consider these additional allegations.
- [17] For her part, Independent Counsel argues to the contrary that the Committee is specifically vested with that jurisdiction and that the Additional allegations engage paragraph 65(2)(b) of the *Judges Act* since, in and of themselves and irrespective of whether they are founded, they are serious enough to warrant removal and should therefore be included in this inquiry for a proper determination.
- [18] At this juncture, Independent Counsel is of the opinion that CJ Joyal's allegations are relevant to the ultimate issue to be decided by the Inquiry Committee in the context of this Inquiry and should be considered therein.

VI. ANALYSIS

- [19] As stated above, pursuant to subsection 5(1) of the **By-laws**, the Inquiry Committee "*may consider any relevant complaint or allegation pertaining to the judge that is brought to its attention*".
- [20] The CJC Policy on Inquiry Committees further provides that "*subject to the Committee's direction, and subject to fair and proper notice to the judge, such additional allegations could be included in the scope of the Inquiry*".
- [21] Irrespective of Independent Counsel's arguments and those of ACJ Douglas as to our jurisdiction to hear the Additional allegations in the context of this matter, the Committee is of the view that the Additional allegations are not "relevant" within the meaning of subsection 5(1) of the By-laws to our inquiry. Indeed, the subject matter of the Additional allegations is far remote not only in substance, but also in terms of time from the allegations which led to the constitution of this Inquiry Committee.
- [22] Furthermore, assuming that the Additional allegations would be relevant to this Inquiry within the meaning of subsection 5(1) of the By-laws, the By-laws and the CJC Policy on Inquiry Committees specifically vest this Committee with the discretion to refuse to consider any other complaint or allegation.

- [23] Again, irrespective of the jurisdictional argument, the complaint of CJ Joyal has begun, but has not terminated its journey within the screening process set out in the Complaints Procedures. This justifies the Committee in exercising its discretion to decline to consider the Additional allegations. Furthermore, there remains a legitimate expectation that ACJ Douglas will exercise the opportunity to address the matter within the screening process. This is so notwithstanding that the complaint of CJ Joyal within the screening process has been held in abeyance by the CJC.
- [24] In exercising its discretion to decline to consider any relevant complaint or allegation, the Inquiry Committee may also consider whether the inclusion of the Additional allegations within the scope of this inquiry would be consistent with the interest of justice and its sound administration. Considering notably the time that has elapsed since the constitution and resignation of a prior Inquiry Committee and the need to bring this matter to a close within reasonable delays, this Committee concludes that it is not in the best interests of the administration of justice to widen the scope of its inquiry.
- [25] Considering the foregoing, the Inquiry Committee does not need to consider and is therefore not making a ruling on the jurisdictional argument raised by ACJ Douglas.

(Signed "François Rolland")

Chief Justice François Rolland (Chair)

(Signed "A. Cullen")

Associate Chief Justice Austin F. Cullen

(Signed "C. Brothers")

Ms. Christa Brothers