

CANADIAN JUDICIAL COUNCIL

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

NOTICE TO ASSOCIATE CHIEF JUSTICE LORI DOUGLAS (Pursuant to section 5(2) of the Inquiries and Investigations By-laws)

A. BACKGROUND

1. In accordance with the Inquiry Committee's Ruling of May 15, 2012, and the Committee's Order of May 19, 2012, the purpose of this Notice is to provide Associate Chief Justice Lori Douglas ("ACJ Douglas") with notice of the allegations that will be presented against her. The particulars in support of these allegations are set out in a separate document also dated May 29, 2012. None of the facts alleged below have been proven before the Committee. This Notice does not set out ACJ Douglas' response to the allegations.

2. At the hearing, and pursuant to his obligations as set out in the Canadian Judicial Council Inquires and Investigations By-laws and the Policy on Independent Counsel, Independent Counsel will present evidence for the Committee's consideration as to whether the alleged conduct (as described below) of ACJ Douglas has rendered her "incapacitated or disabled from the due execution of the office of judge" within the meaning of subsection 65(2) of the *Act*. If this is answered in the affirmative, the second stage is to determine if a recommendation for removal is warranted.¹²

¹ *Reasons of the Canadian Judicial Council In the Matter of an Inquiry into the Conduct of the Honourable Paul Cosgrove*, 30 March 2009 at para. 15.

² Removal is warranted where the conduct is "so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office" (*Re Therrien*, [2001] 2 S.C.R. 3 at para. 147).

B. ALLEGATIONS**(1) Alleged Sexual Harassment of Alex Chapman**

3. In April to June of 2003, Ms. Douglas (as she then was) knowingly participated with her husband and then-law partner Jack King in the sexual harassment of Alex Chapman, Mr. King's client. Among other things:

- a) Mr. King directed Mr. Chapman to a website where Mr. King had posted graphic photos of a sexual nature of Ms. Douglas, together with two ads soliciting black sexual partners for Ms. Douglas;
- b) Mr. King emailed graphic photos of a sexual nature of Ms. Douglas to Mr. Chapman;
- c) Mr. King had various communications with Mr. Chapman about matters of a sexual nature (by telephone, email and in person);
- d) Ms. Douglas had two social encounters with Mr. Chapman, at one of which Ms. Douglas and Mr. Chapman engaged in touching; and
- e) Mr. Chapman's submission to their conduct was an implied condition of the continued provision of legal services to Mr. Chapman by Mr. King.

4. Mr. King and Ms. Douglas' purpose in carrying out the acts set out above was to persuade Mr. Chapman to have a sexual relationship with Ms. Douglas.

5. Ms. Douglas knew or ought to have known that the conduct described in paragraph 3 was unwanted by Mr. Chapman, and would cause him discomfort, offence or humiliation and, in any event, was inappropriate in the context of a solicitor-client relationship.

(2) Alleged Failure to Disclose in the Applications Process

6. On December 17, 2004, Ms. Douglas completed a Personal History Form ("Form") in connection with an application for judicial appointment. One of the questions on the Form was: "Is there anything in your past or present which could reflect negatively on yourself or the judiciary, and which should be disclosed?". Ms. Douglas answered "No".

7. At the time of completing the Form, Ms. Douglas knew or ought to have known that:
- a) In 2002 and 2003, graphic photos of a sexual nature of her (some of which could be seen as demeaning to women) were available on the internet;
 - b) Over a several month period in 2003, Mr. King had tried to entice Mr. Chapman into a sexual relationship with Ms. Douglas, in part by referring him to the photos on the internet and by sending him similar photos;
 - c) Some or all of the matters referred to in a) and b) became widely known in the Manitoba legal community; and
 - d) the facts referred to above were or could be relevant to the assessment of her application for judicial appointment and should have been disclosed.

(3) Alleged Incapacity as a Result of the Public Availability of the Photos

8. Since 2002, photos of a sexual nature of ACJ Douglas (including alterations thereof) have been (and continue to be) available on the internet from time to time. These photos could be seen as inherently contrary to the image and concept of integrity of the judiciary, such that the confidence of individuals appearing before the judge, or of the public in its justice system, could be undermined.

(4) Alleged Failure to Fully Disclose Facts to Independent Counsel

9. Upon being advised of the Chapman Complaint and the initiation of an investigation by the CJC, ACJ Douglas modified a personal diary that described an encounter with Mr. Chapman which she knew or ought to have known was relevant to the Investigation. ACJ Douglas subsequently intentionally made incorrect representations to Independent Counsel about that modification.

10. Any of the allegations set out above, if accepted by the Committee, is: 1) capable of supporting a finding that ACJ Douglas is “incapacitated or disabled from the due execution of the office of judge” within the meaning of subsection 65(2) of the *Judges Act*, and, 2) capable of supporting a recommendation for removal.

Dated at Ottawa, this 29th day of May, 2012

BORDEN LADNER GERVAIS LLP
1100 – 100 Queen Street
Ottawa ON K1P 1J9

Guy J. Pratte/Kirsten Crain
(613) 237-5160 telephone
(613) 230-8842 facsimile

Independent Counsel appointed by the
Canadian Judicial Council

TO: **TORYS LLP**
79 Wellington Street West, Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2

Sheila Block/Molly Reynolds
Tel: 416-865-0040
Fax: 416-865-7380
Counsel for ACJ Douglas