

## **CANADIAN JUDICIAL COUNCIL**

IN THE MATTER OF AN INVESTIGATION PURSUANT TO SECTION 63(2) OF THE *JUDGES ACT* REGARDING THE HONOURABLE LORI DOUGLAS, ASSOCIATE CHIEF JUSTICE (FAMILY DIVISION) OF THE MANITOBA COURT OF QUEEN'S BENCH

### **NOTICE TO ASSOCIATE CHIEF JUSTICE LORI DOUGLAS OF INDEPENDENT COUNSEL'S INTENTION TO SEEK DIRECTIONS FROM THE INQUIRY COMMITTEE (Pursuant to section 64 of the *Judges Act*, section 5 of the *Canadian Judicial Council Inquiries and Investigation By-laws* and the *Canadian Judicial Council Policy on Inquiry Committees*)**

#### **A. BACKGROUND**

1. The purpose of this Notice is to provide Associate Chief Justice Lori Douglas ("ACJ Douglas") with notice of Independent Counsel's intention to seek directions from the Inquiry Committee with respect to the inclusion in the scope of the present Inquiry of additional allegations pertaining to ACJ Douglas.

2. Today, Independent Counsel is also providing ACJ Douglas with notice of the allegations that will be presented against her before the Inquiry Committee. The allegations set out below were not included in this notice. However, 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*". The *CJC Policy on Inquiry Committees* further provides that "*[s]ubject 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*".

3. If the Inquiry Committee directs Independent Counsel to include the allegations set out below in the scope of the Inquiry, Independent Counsel will provide notice of this to ACJ Douglas as provided for in subsection 5(2) of the *By-laws*.

#### **B. INAPPROPRIATE USE OF THE REPRESENTATIONAL ALLOWANCE PROVIDED FOR UNDER SUBSECTION 27(6) OF THE *JUDGES ACT***

##### **(1) Background**

4. Independent Counsel 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 Canadian Judicial Council ("CJC") over certain expense claims of ACJ Douglas.

5. On October 7, 2013, Independent Counsel wrote to Mr. Sabourin requesting communication of CJ Joyal's complaint in order to determine if, consistent with the CJC *Policy on Inquiry Committees*, direction should be sought from the Inquiry Committee as to whether or not to include CJ Joyal's allegations in the scope of the present Inquiry.

6. On October 16, 2013, Ms. Josée Gauthier, Judicial Conduct Registrar at the CJC, transmitted to Independent Counsel CJ Joyal's letter of complaint and related correspondence from the Honourable Shane Perlmutter, Associate Chief Justice (General Division) of the Manitoba Court of Queen's Bench.

7. Counsel for ACJ Douglas has objected 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 scope of the present Inquiry, *inter alia* by way of correspondence to Mr. Sabourin dated October 16, 2013, by way of correspondence to Independent Counsel dated October 22, 2013 and November 1, 2013, and orally, most recently on August 12, 2014.

8. Counsel for ACJ Douglas was provided with Independent Counsel's view on the objections raised in a letter from Independent Counsel dated October 29, 2013. First, pursuant to the CJC *Policy on Independent Counsel*, Independent Counsel is required to consider "*the relevance of any other complaints or allegations against the judge, beyond the scope of the instant complaint*". In addition, subsection 5(1) of the CJC *Inquiries and Investigations By-Laws* provides that an "*Inquiry Committee may consider any relevant complaint or allegation pertaining to the judge that is brought to its attention*". Finally, the CJC *Policy on Inquiry Committees* provides that "*[s]ubject to the Committee's direction, and subject to fair an proper notice to the judge, such additional allegations could be included in the scope of the inquiry*".

9. Independent Counsel has reviewed CJ Joyal's allegations, but has not benefited from ACJ Douglas' response to these allegations, which counsel for ACJ Douglas has refused to provide to Independent Counsel in light of 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 scope of the present Inquiry.

10. Subsequent to this review, Independent Counsel is of the view that CJ Joyal's allegations are relevant to the ultimate issue to be decided by the CJC in the context of its investigation pursuant to subsection 63(2) of the *Judges Act* regarding ACJ Douglas, namely whether ACJ Douglas has become incapacitated or disabled from the due execution of the office of judge by reason of any of the factors set out in subsection 65(2) of the *Judges Act*.

**(2) Substantive elements of CJ Joyal's allegations**

11. As a chief justice referred to in section 16 of the *Judges Act*, subsection 27(6) of the *Judges Act* provides that ACJ Douglas is entitled to be paid, as a representational allowance, reasonable travel and other expenses actually incurred by ACJ Douglas or her spouse in discharging the special extra-judicial obligations and responsibilities that devolve on the judge, to the extent that those expenses may not be reimbursed under any other provision of the *Judges Act* and their aggregate amount does not exceed in any year the maximum amount of \$10,000.00 (the "Representational Allowance").

12. Since February 2011, ACJ Douglas has not been assigned any administrative duties in relation to the administration of the Family Division of the Manitoba Court of Queen's Bench, such that there cannot have been, since that time, any special extra-judicial obligations and responsibilities that devolved on ACJ Douglas, and that could give rise to expenses eligible for reimbursement under the Representational Allowance, aside from where ACJ Douglas has been asked to make contributions in relation to special Court events, which contributions constitute expenses properly eligible for reimbursement under the Representational Allowance.

13. Despite this, ACJ Douglas has sought, and obtained, reimbursement of expenses from the Representational Allowance that were not related to any special extra-judicial obligations and responsibilities that devolved on ACJ Douglas, including expenses for massages, psychological counselling and air travel to Toronto for the

purpose of meeting with her counsel in respect of the present CJC investigation (the “Impugned Expenses”).

14. When making claims for reimbursement of expenses under the Representational Allowance, ACJ Douglas would have been required to sign a “*Statement of Claimant*” which reads “*I hereby state the expenses claimed were actually incurred by me in discharging the special extrajudicial obligations and responsibilities that devolve upon the holder of the office of the Chief Justice*”. Given the nature of the Impugned Expenses, and the fact that ACJ Douglas has not been assigned any administrative duties in relation to the administration of the Family Division of the Manitoba Court of Queen’s Bench since February 2011, ACJ Douglas made an inaccurate statement to the Office of the Commissioner for Federal Judicial Affairs when seeking reimbursement of the Impugned Expenses

Dated at Montreal, this 4<sup>th</sup> day of September, 2014

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