



By facsimile to 416-327-2339
Original by mail

January 17, 2008

Ontario Judicial Council
P.O. Box 914
Adelaide Street Postal Station
31 Adelaide St. East
Toronto, Ontario M5C 2K3

Dear Sir/Madam:

Re: Conduct of Mr. Justice Jon-Jo Douglas

We write to you to lodge formally a complaint regarding the conduct of Mr. Justice Jon-Jo Douglas, of the Ontario Court of Justice (Central East Region), in the recent proceeding of *R. v. Wilde* (accused charged with sexual assault allegedly committed upon the complainant during incarceration at the Central North Correctional Centre).

According to news reports on January 2, 2008, during this proceeding in December 2007, when it was discovered that the complainant is living with HIV and hepatitis C, Mr. Justice Douglas then ordered that the complainant witness be masked and/or testify electronically from another courtroom. The news reports quote Mr. Justice Douglas as stating to the Crown attorney:

"Either you mask your witness, and/or move us to another courtroom or we do not proceed."

News reports also indicate that:

"Immediately following a break his court staff came out in blue rubber gloves and enclosed paper exhibits the witness had touched in sealed plastic bags."

Furthermore, it is reported that, when this treatment of the witness was challenged by the Crown attorney, even to the point of obtaining expert medical evidence that HIV and hepatitis C are only transmitted through contact with certain body fluids, Mr. Justice Douglas rejected this evidence about well-established, non-controversial facts and "ordered the trial proceed with the witness masked."

We are also concerned at the suggestion in these reports that the Superior Court of Justice tacitly allowed such discriminatory conduct to pass with little comment. It is reported that when the Crown attorney moved for a mistrial based on this treatment of its witness, Mr. Justice Douglas refused repeatedly, and the Crown then applied to a higher court for a decision on the matter. According to news reports, the Superior Court of Justice:

“dismissed the Crown's application, noting it is the trial judge's jurisdictional right to conduct safety precautions in the courtroom "even if his decision could be said to be wrong," wrote Superior court Justice Margaret Eberhard.”

We enclose herewith copies of the relevant news reports — from the *Toronto Sun*, the *Barrie Examiner*, the *London Free Press* and CNews (CANOE.ca) — on the conduct of Mr. Justice Douglas in this proceeding and the disposition of the mistrial application by the Superior Court of Justice.

The *Ethical Principles for Judges*, published by the Canadian Judicial Council, approved by the Ontario Judicial Council, and adopted by the Ontario Court of Justice in 2005, form part of the ethical standards for judges of this court. According to the following passages excerpted from those *Ethical Principles*:

Statement: *Judges should conduct themselves and proceedings before them so as to assure equality according to law.*

Principles:

1. Judges should carry out their duties with appropriate consideration for all persons (for example, parties, witnesses, court personnel and judicial colleagues) without discrimination.
4. Judges, in the course of proceedings before them, should disassociate themselves from and disapprove of clearly irrelevant comments or conduct by court staff, counsel or any other person subject to the judge's direction which are sexist, racist or otherwise demonstrate discrimination on grounds prohibited by law.

Commentary:

2. Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, reaches a correct result but engages in stereotyping does so at the expense of the judge's impartiality, actual or perceived.
3. Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.

4. As is discussed in more detail in the “Impartiality” chapter, judges should strive to ensure that their conduct is such that any reasonable, fair minded and informed member of the public would justifiably have confidence in the impartiality of the judge. Judges should avoid comments, expressions, gestures or behaviour which reasonably may be interpreted as showing insensitivity to or disrespect for anyone. Examples include irrelevant comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect.

The HIV & AIDS Legal Clinic (Ontario) (www.halco.org) is a charitable, not-for-profit community-based legal clinic serving low-income people living with HIV/AIDS. It is the only such legal clinic in the country, and has extensive, frontline experience in addressing the day-today legal issues faced by people living with HIV. The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) is a charitable, not-for-profit organization that promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. It is the only national organization working exclusively or primarily on AIDS-related legal issues in Canada, and one of the world’s leading organizations in the field, with an extensive body of human rights-based research and analysis on a range of legal and policy issues related to HIV/AIDS.

As lawyers working on HIV-related legal issues, we are deeply troubled by these reports of this sort of conduct by a judge (and other courtroom staff), which appear to depart significantly from the professional, ethical standards that are required. This is, we think, a particularly extreme example of unacceptable conduct by a judicial officer. Yet it seems unlikely that misinformation about HIV/AIDS, and hence the potential for bias and overtly prejudicial conduct, is limited to just this instance. Indeed, that the Superior Court would let such conduct pass without reprimanding the trial judge (at least as reported publicly) is of concern, as this should have been an opportunity to articulate clearly and unequivocally that such shockingly discriminatory thinking and practice by a judge and courtroom staff is unacceptable and falls below minimum standards of conduct.

We urge the Ontario Judicial Council to conduct an appropriate investigation into these reports of this particular incident and to take appropriate steps to address the conduct of the judge in question, as well as considering a broader response to this manifestation of HIV-based stigmatization and discrimination. In particular, we suggest that it would be appropriate to examine the extent to which judges receive information about HIV/AIDS, and related legal and human rights questions, in the course of judicial education. In numerous other jurisdictions, judges and magistrates have received training on these issues. Given our organizations’ particular expertise on HIV/AIDS and the law, we would be happy to discuss further with you, or with the Education Secretariat of the Ontario Court of Justice and similar bodies such as the National Judicial Institute, how to overcome HIV-related prejudice in the courtrooms of Ontario and Canada.

We look forward to hearing from you, and would be pleased to discuss further with our concerns about this particular case and our broader recommendation for some substantive judicial education on HIV/AIDS and human rights.

Sincerely,



On behalf of:

Richard Elliott
Executive Director
Canadian HIV/AIDS Legal Network
1240 Bay St., Suite 600
Toronto, ON M5R 2A7
Tel: 416-595-1666 ext. 229
Email: relliott@aidslaw.ca

Ryan Peck
Executive Director
HIV & AIDS Legal Clinic (Ontario)
65 Wellesley St. East, Suite 400
Toronto, ON M4Y 1G7
Tel: 416-340-7790
Email: peckr@lao.on.ca

Cc: The Hon. Mr. Justice Jon-Jo Douglas, Ontario Court of Justice

The Hon. Madam Justice Margaret Eberhard, Superior Court of Justice

The Hon. Mr. Justice Gregor Regis, Regional Senior Judge for Central East Region, Ontario Court of Justice

The Hon. Annemarie E. Bonkalo, Chief Justice, Ontario Court of Justice

The Hon. Mr. Justice Michael Brown, Regional Senior Judge for the Central East Region, Superior Court of Justice

The Hon. Heather Forster Smith, Chief Justice, Superior Court of Justice