

For immediate release

**JUDGE ADMITS INAPPROPRIATE TREATMENT OF
HIV-POSITIVE WITNESS**
*Investigation by Ontario Judicial Council prompts admission,
request for education of judges*

TORONTO, January 12, 2009 — The complaint against the discriminatory conduct of an Ontario judge, launched a year ago by the Canadian HIV/AIDS Legal Network and HALCO, the HIV & AIDS Legal Clinic (Ontario), has been vindicated and the committee responsible for judges' training in Ontario will be asked to include HIV in future educational sessions.

On January 6, 2008, the Legal Network and HALCO lodged a formal complaint with the Ontario Judicial Council regarding the conduct of Justice Jon-Jo Douglas of the Ontario Court of Justice (Central East Region). During a December 2007 trial, when it was revealed that a witness had HIV and hepatitis C, Justice Douglas ordered that the witness wear a mask or give his testimony remotely from another courtroom. Media also reported that court staff donned rubber gloves and enclosed exhibits touched by the witness in sealed plastic bags.

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

As a result of the complaint lodged by the Legal Network and HALCO, a subcommittee of the Judicial Council conducted an investigation and submitted a report to a review panel. In the Council's response, it revealed that subcommittee members recognized that "Justice Douglas treated a witness differently." Furthermore, members "noted that judges should not be influenced by stereotypes, myths or prejudices." They agreed that Justice Douglas' conduct "suggested that he may need further education about the transmission of HIV/AIDS." The review panel referred the matter to the Chief Justice of Ontario for discussion with Justice Douglas.

In its final decision, the Judicial Council found that Justice Douglas has "taken steps to address those concerns, and that he has learned from the experience," including seeking education about HIV from a local AIDS organization. He has

“acknowledged that his behaviour was inappropriate” and expressed regret for any harm resulting from his behaviour.

“We are pleased that the Ontario Judicial Council has recognized this conduct is unacceptable,” said Ryan Peck, Executive Director of HALCO. “There is no place for such misinformation and prejudice anywhere, especially in the justice system. People living with HIV deserve equal, respectful treatment.”

The Chief Justice of Ontario has also indicated that the Court’s education committee will be asked to include material on HIV/AIDS in future educational sessions for judges.

“We encourage the Education Secretariat of the Ontario Court of Justice to honour this request and look forward to assisting them with efforts to ensure that judges have accurate, comprehensive information about HIV,” said Richard Elliott, Executive Director of the Legal Network.

To read the decision of the Ontario Judicial Council, visit www.aidslaw.ca/media.

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About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) 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. The Legal Network is Canada’s leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

About the HIV & AIDS Legal Clinic (Ontario)

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-to-day legal issues faced by people living with HIV.

For more information, please contact:

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ONTARIO JUDICIAL COUNCIL
CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

PRIVATE & CONFIDENTIAL

January 6, 2009

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Dear Mr. Elliott and Mr. Peck:

Re: Your complaint against the Honourable Justice Jon-Jo Douglas

Further to your letter of complaint against the Honourable Justice Jon-Jo Douglas, the Ontario Judicial Council has now had an opportunity to investigate and review this matter. As you know, your complaint arose from Justice Douglas' conduct and comments during a criminal trial before him with respect to a charge of sexual assault during which a witness stated that he had Hepatitis C and was HIV positive.

A subcommittee of the Judicial Council, made up of a provincially-appointed judge and a community member, conducted the investigation into your complaint and submitted its report to a review panel of the Judicial Council which reviewed the subcommittee's findings. The review panel was made up of four additional members of the Council, including two provincially-appointed judges, one lawyer and a community member. None of the members of the review panel had prior knowledge of the complaint or were told the names of those involved. In total, your complaint was reviewed by six different members of the Council.

The members of the investigating complaint subcommittee reviewed the complaint, transcripts of the proceedings and a transcript from an application for an order for a writ of prohibition that arose from the trial. The subcommittee also requested and received a response from Justice Douglas to the allegations. All of the materials were very carefully considered by the subcommittee.

The complaint subcommittee reported that their review and investigation showed that:

- In the particular case, based on his own beliefs with respect to safety issues, Justice Douglas treated a witness differently. The subcommittee members noted that judges should not be influenced by stereotypes, myths or prejudices.

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- When one of the parties provided evidence to the court challenging those beliefs, Justice Douglas dismissed them without allowing submissions to be made. The subcommittee observed that a judge has a responsibility to refrain from prejudice, and to accord every party full right to be heard according to the law. This requires hearing submissions courteously, refraining from prejudice or behaviour that could be seen as prejudice, and then deciding impartially.
- Justice Douglas' conduct suggested that he may need further education about the transmission of HIV/AIDS.

The investigating complaint subcommittee reported on their findings to the review panel. After serious consideration, the review panel decided to refer the matter, pursuant to subsection 51.4(18)(c) of the *Act*, to the Chief Justice for discussion with Justice Douglas.

Following the report from the Chief Justice on her meeting with Justice Douglas, the Judicial Council observed that it was clear that Justice Douglas genuinely reflected upon his conduct, that he now fully understands the concerns with his conduct, that he has taken steps to address those concerns, and that he has learned from the experience.

Justice Douglas has acknowledged that his behaviour was inappropriate. He deeply regrets his actions and that he acted in such a manner without adequate knowledge of the transmission of HIV/AIDS. He appreciated that he needed to build his understanding about HIV/AIDS and he initiated steps to do so, including seeking information from and attending at Casey House to build a better understanding. As you know, Casey House Hospice is a world-renowned facility, affiliated with St. Michael's Hospital that provides a continuum of care for persons infected and affected by HIV/AIDS through a range of palliative and supportive care services in residential hospice and community programs. Staff who work with the patients daily provided Justice Douglas with a better understanding of the science, of the disease and of the people affected by the disease.

The Chief Justice advised that Justice Douglas has expressed his apologies for his conduct, with sincere regret for any harm his behaviour may have caused to the witness in the proceeding or to others with HIV/AIDS, and for any impacts that his behaviour may have had upon the public.

With respect to the manner in which Justice Douglas treated the witness and conducted the proceedings, the Council noted that Justice Douglas has seriously reflected upon his behaviour and regrets his actions. The Council was satisfied that he appreciates the responsibility of a judge to conduct himself in accordance with the standard expected by the public, without prejudice, impartially, courteously and in a manner that accords every party a full right to be heard according to the law.

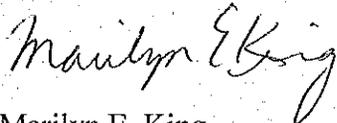
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The Council indicated that the Chief Justice noted that although a lack of understanding on the transmission of HIV/AIDS is not an institutional problem on the bench of the Ontario Court of Justice, the education committee will be asked to consider including HIV/AIDS in the context of any future educational session on pandemic management in the courtroom.

After considering the report from the Chief Justice and the steps taken by Justice Douglas, the review panel determined that no further action was required and the file was closed.

Thank you for bringing this matter to the attention of the Ontario Judicial Council.

Yours truly,



Marilyn E. King
Registrar

FOR THE ONTARIO JUDICIAL COUNCIL

cc: The Honourable Justice Jon-Jo Douglas