



Court File No.: T-1789-12

FEDERAL COURT

Alexander CHAPMAN

Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA,
GUY PRATTE (INDEPENDENT COUNSEL TO THE CANADIAN JUDICIAL
COUNCIL INQUIRY INTO THE CONDUCT OF
THE HONOURABLE LORI DOUGLAS),
THE CANADIAN JUDICIAL COUNCIL, and
THE HONOURABLE LORI DOUGLAS**

Respondents

NOTICE OF APPLICATION

(Pursuant to s.18 and s. 18.1 of the **Federal Courts Act**)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant.
The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this appeal be heard at **Toronto, Ontario.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the **Federal Courts Rules**, and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** of being served with this notice of application.

Copies of the **Federal Courts Rules**, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

SEP 25 2012

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VANESSA GEORGE
REGISTRY OFFICER
AGENT DU GREFFER

Date: _____

Issued by: _____

Address of Local office: Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: Attorney General of Canada
Department of Justice Canada
234 Wellington Street, East Tower, 12th Floor
Ottawa, Ontario K1A 0H8
Attention: Catherine Lawrence and Zoe Oxaal
Phone no.: (613) 948-3463
VIA FAX (613) 954-1920

AND TO: Independent Counsel to the Inquiry Committee of the Canadian Judicial
Council concerning the Honourable Lori Douglas
Borden Ladner Gervais
World Exchange Plaza, 100 Queen Street, Suite 1100
Ottawa, Ontario K1P 1J9
Attention: Guy J. Pratte, Kirsten Crain, and Roberto Ghignone
Phone no.: 613-237-5160
VIA FAX (613) 237-8842

AND TO: Counsel to the Honourable Lori Douglas
Torys LLP
79 Wellington Street West, Suite 3000, Box 270, TD Centre
Toronto, Ontario M5K 1N2
Attention: Sheila Block, Molly Reynolds, and Sarah Whitmore
Phone no.: 416-865-7319
VIA FAX (416) 865-7380

AND TO: Executive Director and Senior General Counsel
Canadian Judicial Council
Ottawa, Ontario K1A 0W8
Attention: Norman Sabourin
Telephone: 613-288-1566 ext. 301
VIA FAX: 613-288-1575

AND TO: Counsel to the Inquiry Committee
Farris, Vaughan, Wills & Murphy LLP
700 West Georgia Street, Suite 2500
Vancouver, British Columbia V7Y 1B3
Attention: George Macintosh
Phone no.: 604-661-9332
VIA FAX (604) 661-9349

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF the decision of Guy Pratte and/or the Canadian Judicial Council to “resign” and/or “accepting” the “resignation”, in the cascading midstream, of the Canadian Judicial Council Inquiry Committee Inquiry into the conduct of the Honourable Lori Douglas pursuant to s. 65 of the *Judges Act*, to commence a proceeding on a day and at a time and place to be set by the Court, pursuant to s.18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c. F-7 as amended, seeking declaratory, prerogative and injunctive relief, from the decision of Guy Pratte, dated August 27th, 2012, of which the Applicant was apprised and informed and which decision was "communicated" on August 28th, 2012, which decision was rendered in Ottawa, by Guy Pratte at World Exchange Centre, 100 Queen Street, Suite 1100, Ottawa, Ontario, K1P 1J9 and the Canadian Judicial Council’s “acceptance”, dated August 27th, 2012, and “communicated” on August 28th, 2012, at the Canadian Judicial Council, Ottawa, Ontario, K1A 0W8.

THE APPLICANT MAKES APPLICATION FOR:

- (a) a declaration that “Independent Counsel” cannot simply “resign”, and the “Canadian Judicial Council” has no jurisdiction to “accept” such resignation, during the full swing of an Inquiry Hearing before the Inquiry Committee, statutorily deemed a “Superior Court”, consisting of, *inter alia*, three (3) Chief Justices appointed pursuant to s. 96 of the *Constitution Act, 1867*, but must seek the leave of the Inquiry Committee, to be “removed from the record”, on the terms and rationale set out by the Supreme Court of Canada in *R. v. Cunningham, [2010] S.C.J. No. 10*.
- (b)
 - (i) an ancillary order (in the nature) of *certorari* quashing the decision(s) to “resign”/”accept resignation”; and
 - (ii) an ancillary order (in the nature) of *mandamus* to Independent Counsel, Guy Pratte, to:

- A/ resume the role of Independent Counsel and proceeding with the Inquiry; or
- B/ in the alternative, bring a motion before the Inquiry Committee, to be removed from the record, with notice to the other parties to the proceeding, the Applicant herein, and the Honourable Lori Douglas, who are given the opportunity to consent and/or oppose the motion;
- (c) in the alternative to (a) and (b) above, the Applicant seeks:
- (i) a declaration that the role of “Independent Counsel” gives rise to a reasonable apprehension of (institutional) bias, and inevitably leads to a structural breach of s. 7 of the *Charter* and natural justice and fairness, in the inherently structural conflict of interest attached to that role;
 - (ii) a further declaration that above and beyond the institutionally embedded “conflict of interest” and reasonable apprehension of (institutional) bias of the “Independent Counsel”, that the “public interest” mandate in section 3(3) of the CJC *Inquiries and Investigations By-Laws* as set out, and articulated by the Inquiry Committee, is, above and beyond being *ultra vires* the *Judges Act*, moreover constitutionally of no force and effect for being “void for vagueness”, contrary to section 7 of the *Charter*, as enunciated by the Supreme Court of Canada, in the bail context, with respect to the tertiary ground of “public interest”, in *R. v. Morales*, [1992] 3 S.C.R. 711, which vagueness does not become any more precise nor concrete, in the “civil” context, under the “residual part” of section 7 of the *Charter*;
- (d) in the alternative to (a) – (c), an order (in the nature) of *mandamus* ordering the Inquiry Committee to resume its hearing, with or without Independent Counsel;
- (e) solicitor-client costs of this application and such further relief as counsel may advise and this Court grant.

THE GROUNDS FOR THE APPLICATION ARE:

- a) that no counsel can simply “walk away” or “resign” from a proceeding in full swing, without seeking the leave of the Tribunal (Court), to be “removed from the record”, in accordance with the principles enunciated by the Supreme Court of Canada in *R. v. Cunningham*, [2010] S.C.J. No. 10;
- b) in the alternative, that the structure and role of “Independent Counsel”, acting in the “public interest”, is both
 - (i) statutorily *ultra vires* the *Judges Act*; and
 - (ii) s. 3(3) of the Canadian Judicial Council Inquiries and *Investigations By Laws* is unconstitutional for violating the vagueness doctrine;
- c) such further and other grounds as counsel may advise and this Honourable Court permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) the Affidavit of or on behalf of the Applicant;
- (b) the materials already filed including any record;
- (c) a memorandum of fact and law;
- (d) such further documentary and/or *viva voce* evidence as counsel may advise and this Court permit.

THE APPLICANT REQUESTS, pursuant to Rules 317 and 318 of the *Federal Courts Rules*, that the Respondents, Guy Pratte and the Canadian Judicial Council, send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the respondents to the applicant and to the Registry:

1. a copy of any and all documents, memos, electronic or otherwise, with respect to Guy Pratte's "resignation" and the Canadian Judicial Council's "acceptance" of it;
2. written reasons for the "resignation" and its "acceptance" as required by, *inter alia*, *Baker v. MCI* [1999] 2 S.C.R. 817 (SCC).

FURTHER BE ADVISED that the Applicant will seek to have the within judicial review heard together with the Applications in the Court in *T-1567-12* and *T-1562-12* arising from the same Inquiry Committee Hearing and the same matter and facts.

THE APPLICANT proposes that this application be heard in Toronto in the English language.

Dated at Toronto this 26th day of September, 2012.



ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
637 College Street
Suite 203
Toronto ON M6G 1B5

TEL: 416-536-7811
FAX: 416-536-6801

Email: rocco@idirect.com

Solicitor for the Applicant

FEDERAL COURT

B E T W E E N:

Alexander **CHAPMAN**
Applicant

- and -

**THE ATTORNEY GENERAL OF
CANADA, GUY PRATTE
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PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
637 College Street
Suite 203
Toronto ON M6G 1B5

TEL: 416-536-7811
FAX: 416-536-6801

Email: rocco@idirect.com

Solicitor for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of SEP 23 2012 A.D. 20____

Dated this _____ day of SEP 23 2012 20____

VANESSA GEORGE
REGISTRY OFFICER
AGENT DU GREFFE