

CJC investigating Guelph provincial court judge

BY SHANNON KARI - For Law Times
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Photo: Guelph Mercury, Guelph, Ont.

The Criminal Lawyers' Association filed a complaint with the Ontario Judicial Council against Guelph, Ont., Justice Norman Douglas.

The cloud of uncertainty hanging over the reputation of a provincial court judge in Guelph, Ont., is expected to remain there for at least several more months.

The Ontario Judicial Council has begun an investigation into the conduct of Justice Norman Douglas following a formal complaint alleging bias, filed in February by the Ontario Criminal Lawyers Association (CLA).

Two members of the 12-person council are investigating the complaint. They are expected to forward recommendations to a four-person review panel this spring. However, even if the panel ultimately recommends Douglas face a disciplinary hearing, that proceeding won't begin until late this year or early 2006.

The CLA filed the complaint as a result of two Superior Court decisions last year that found

the former prosecutor and long-time provincial court judge had a reasonable apprehension of bias in impaired-driving proceedings. It is only the second time the CLA has filed a formal complaint to the judicial council since its disciplinary process was revamped in 1994.

The rulings related to comments made by Douglas in impaired driving cases in which he questioned the decisions of higher courts and the defences put forward by criminal lawyers on behalf of their clients.

Superior Court Justice Kenneth Langdon said Douglas "showed a patent distaste both for those who defend cases of [impaired drivers] and for the law that the court is obliged to administer."

A few days before the deadline to appeal Langdon's ruling last August, Douglas sent a series of e-mails to senior officials at the Crown Law Office in Toronto.

Douglas asked in the e-mails whether there would be an appeal of the Superior Court decision. "If this case isn't appealed, I'm going to have to find a way around it, or I'm going to be hit with recusal motions on every case — about 10 a week," wrote Douglas. In another e-mail, Douglas wrote "this is a great opportunity to have the Court of Appeal say something about how these cases are backlogging our courts."

John Pearson, the regional director of Crown operations in Hamilton, Ont., responded quickly and sent an e-mail that asked, "do you

want me to discreetly find out if an appeal is being contemplated?”

Communication with a judge about a specific case is contrary to the policies of the ministry, but in another e-mail, Pearson asked his colleagues if he should forward this information to the judge.

Two other Crown attorneys also sent brief e-mails to Douglas, informing him that a decision had already been made to appeal Langdon’s ruling and that there should be no further contact with the Crown Law Office.

A few weeks later, in a lengthy ruling, Douglas criticized Langdon’s findings. This led Guelph lawyer Owen Haw to file a rare “writ of prohibition” motion in Superior Court after Douglas refused to remove himself from an impaired-driving proceeding.

Superior Court Justice David Corbett ruled in favour of the motion and found that Douglas had “descended into the fray” and was seen as a “protagonist” because of his personal views about the state of the law related to impaired driving offences.

The e-mails sent by Douglas were “completely inappropriate” and the judge had no business in engaging in a “point-by-point analysis” of Langdon’s ruling, said Corbett, in his decision released Oct. 13, 2004.

Douglas was unavailable for comment on this article as he is out of the country on vacation. He continues to sit as the only provincial court judge in Guelph, although he is no longer hearing impaired-driving cases (no date has yet been set for the Court of Appeal to hear the appeal of Langdon’s ruling).

Haw concedes it has been an uncomfortable period for the judge and defence lawyers in the city.

“It is not a good environment for the administration of justice,” said Haw.

He said, however, that it is essential for the judicial council to conduct a thorough investigation. “We need to find out one way or the other if Justice Douglas’s conduct has been appropriate.”

The defence lawyer and former prosecutor also suggests the Ontario Court of Justice should consider a circuit for its judges so they are not always sitting in the same city. Haw notes Superior Court judges and justices of the peace are on a circuit within their region.

While Douglas is not at present presiding over impaired-driving cases in Guelph, his rulings are continuing to run into problems in the Superior Court.

Justice Casey Hill sharply criticized Douglas in a decision released Feb. 18 that overturned an impaired-driving conviction imposed last spring.

In his written reasons in R v. Read, Hill said he was “unable to comprehend” the “path of reasoning” used by Douglas in a key part of his judgment.

“Appellate review of the critical part of the trial court’s reasons is defeated by either a lack of discernible logic in the reasoning or the reasons proceeded on a flawed analysis by the court — either amounting to reversible error in the circumstances,” wrote Hill.