

**CANADIAN JUDICIAL COUNCIL  
INQUIRY COMMITTEE**

**IN THE MATTER REGARDING  
ASSOCIATE CHIEF JUSTICE LORI DOUGLAS**

**NOTICE OF MOTION**

The Respondent, THE HONOURABLE LORI DOUGLAS, will make a motion to the Canadian Judicial Council Inquiry Committee on October 27, 2014.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an order:

- (a) summarily dismissing Allegations #1 and #2 from the Notice of Allegations;
  - (b) striking Allegation #3 from the Notice of Allegations for a lack of jurisdiction, or in the alternative summarily dismissing Allegation #3;
  - (c) returning Douglas ACJ's photographs, and if necessary, declaring that the photographs are inadmissible;
  - (d) sealing the confidential private medical evidence filed by Douglas ACJ in support of this motion;
  - (e) that the hearing of the motions take place outside of Manitoba;
- or such other relief as this Inquiry Committee may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Relief Sought in respect of Allegations #1 and #2**

- (a) Allegation #1 relates to an alleged failure by Douglas, ACJ to disclose on her application for judicial appointment events that led to her being the victim of the non-consensual distribution of intimate images she consented to her husband Jack King taking for his private use (“the Photos”).
- (b) Allegation #2 relates to the public availability of the Photos. The Photos were only made available to the public through breaches of Ms. Douglas’ consent, privacy, and trust. Those breaches led to her being the victim of the non-consensual distribution of intimate images.
- (c) Since the time of the Review Panel’s report in this matter, legislative, social, and academic changes have contributed to a growing awareness of the harms occasioned to victims of the non-consensual distribution of intimate images and the need to punish the perpetrators and protect the victims. In particular:
  - (i) Parliament has introduced legislation to criminalize the non-consensual distribution of intimate images through amendments to the *Criminal Code* in Bill C-13;
  - (ii) Public opinion has developed to recognize that victims of the non-consensual distribution of intimate images should not be punished or blamed and that the perpetrators have committed morally reprehensible invasions of privacy that ought to be punished; and
  - (iii) Academic research has been conducted into the debilitating harms suffered by victims of the non-consensual distribution of intimate images.
- (d) The prior Inquiry Committee in this matter heard evidence that Ms. Douglas was entirely unaware of her husband’s conduct with the Photos; was not involved in and did not consent to any dissemination of the Photos; and was considered by the chair of the Judicial Appointments Committee that reviewed her application for judicial appointment, Justice Freedman, to be the victim in the series of events that resulted in the dissemination of the Photos.

- (e) In respect of paragraph (d), Independent Counsel concluded that there was no basis for submitting the Chapman sexual harassment allegation to further investigation or inquiry.
- (f) As a result of the facts set out in paragraphs (c)-(e) there is no basis on which a finding that Ms. Douglas' failure to characterize, on her application for judicial appointment, her past victimization as a matter that could reflect negatively on her or on the judiciary could support a recommendation for removal pursuant to s. 65 of the *Judges Act*.
- (g) The facts set out in paragraphs (c)-(e) show the Photos have been made publicly available without Douglas, ACJ's knowledge or consent and in violation of her privacy rights. This conduct by others has caused serious irreparable harm to Douglas, ACJ as the victim of the non-consensual distribution of the Photos. Such conduct by others is not capable of supporting a recommendation for removal pursuant to s. 65 of the *Judges Act*.
- (h) In addition to the waste of judicial and public resources associated with conducting an inquiry hearing into allegations that are incapable of supporting a recommendation for removal, conducting a formal hearing into Allegations #1 and #2 would:
  - (i) threaten judicial independence;
  - (ii) undermine public confidence in the judiciary;
  - (iii) frustrate the purposes of the Canadian Judicial Council and judicial discipline; and
  - (iv) cause further serious irreparable harm to Douglas, ACJ and the public interest.

**Relief Sought in respect of Allegation #3**

- (i) Allegation #3 relates to an alleged failure by Douglas, ACJ to make full disclosure to the previous Independent Counsel appointed to present the case to the previous Inquiry Committee.

- (j) This Inquiry Committee has no jurisdiction to consider Allegation #3 as it is neither a complaint by an Attorney General nor a complaint that has proceeded through the multi-tiered complaint review process.
- (k) No complaint has been submitted to the CJC with respect to the facts alleged in allegation #3. Neither the Executive Director of the CJC, the Chair of the Judicial Conduct Committee, nor a Review Panel have reviewed the allegation. There has been no determination that the matter may be serious enough to warrant removal of Douglas, ACJ such that it should be investigated by the Inquiry Committee.
- (l) Allegation #3 alleges that Douglas, ACJ knew or ought to have known that the diary entry was relevant to the CJC's investigation. The diary entry subject to Allegation #3 is not evidence in this Inquiry Committee proceeding and is not evidence related to Allegations #1 or #2 in the Notice of Allegations.
- (m) Allegation #3 alleges that Douglas, ACJ modified an entry in her personal diary. At the time of the modification, the diary was not evidence in any CJC proceeding. The entry was changed by Douglas, ACJ at a time when there was no reasonable anticipation that her personal diary would subsequently be subpoenaed one year later, disclosed to Independent Counsel, the former Inquiry Committee and the CJC and posted publicly by the CJC on its website.
- (n) In any event and in the alternative, the facts alleged in Allegation #3 could not support a recommendation for removal on any of the grounds set out in s. 65(2) of the Judges Act on the evidence relied on in this motion.
- (o) To conduct an inquiry hearing on Allegation #3 in these circumstances would be a waste of judicial resources and inconsistent with the public interest, the rights of the respondent judge, and the fair, expeditious and most cost-effective resolution of CJC proceedings.
- (p) The Judges Act, the CJC By-Laws, the CJC Complaints Procedure and the CJC Policies on Independent Counsel and Inquiry Committee.

### **Return of the Photos and Declaration of Inadmissibility**

- (q) The Photos were only made public as a result of the victimization of Douglas, ACJ both before her appointment as a judge and after.
- (r) The Photos are evidence of acts by persons other than Douglas, ACJ that are soon to be criminalized through the amendments to the *Criminal Code* proposed in Bill C-13.
- (s) The Photos are not evidence relevant to any of the allegations in the Notice of Allegations.
- (t) There is no issue that the Photos exist, have existed from time to time on the Internet, and are of an intimate nature. The suggestion that the Photos must be viewed by the Inquiry Committee in order to render a recommendation to the Council is premised on harmful, sexist stereotypes about women's sexuality.
- (u) Each of the past viewings of the Photos, in particular by Douglas, ACJ's judicial colleagues on the CJC, has caused Douglas, ACJ significant irreparable harm.
- (v) Further viewing of the Photos would cause significant irreparable harm to Douglas, ACJ and to the public interest.
- (w) Any probative value the Photos may have (a fact which is denied) is significantly outweighed by the prejudicial effects that would result from viewing the Photos.

### **Confidentiality of the Medical Evidence**

- (x) Part of the evidence sought to be relied on is sealed as it is private medical evidence which should not be publicly filed or posted on the CJC website.

### **Venue of the Hearing of the Motions**

- (y) Holding the hearing of the motions in Winnipeg, Manitoba would cause significant harm to Douglas, ACJ and to the public interest.
- (z) Proportionality and efficiency concerns weigh in favour of holding the hearing of the motions in a jurisdiction closer to where most of the counsel and the Inquiry Committee members are located.

- (aa) Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The affidavit of Lara Guest, sworn September 30, 2014;
- (b) The affidavit of William Gange, sworn September 30, 2014;
- (c) The confidential medical report, dated September 30, 2014;
- (d) The expert report of Dean Lorne Sossin, dated September 29, 2014;
- (e) The expert report of Professor Mary Anne Franks, dated September 30, 2014;
- (f) The expert report of Professor Jane Bailey, dated September 30, 2014; and
- (g) Such further and other evidence as counsel may advise and the Inquiry Committee may permit.

October 1, 2014



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TO: **Independent Counsel**