

CANADIAN JUDICIAL COUNCIL

IN THE MATTER OF AN INVESTIGATION PURSUANT TO SECTION 63(2) OF THE
JUDGES ACT REGARDING
THE HONOURABLE ASSOCIATE CHIEF JUSTICE LORI DOUGLAS

RESPONSE OF ASSOCIATE CHIEF JUSTICE LORI DOUGLAS TO THE NOTICE OF ALLEGATIONS (Pursuant to section 5(2) of the Inquiries and Investigations By-laws)

A. BACKGROUND

1. On May 29, 2012, Independent Counsel delivered a Notice to Associate Chief Justice Lori Douglas (“Douglas ACJ”), providing her with notice of the allegations that will be raised against her before the Inquiry Committee. In accordance with the Committee’s Order of May 19, 2012, this response will reply only to the allegations and complaints raised by Independent Counsel in the Notice.

2. None of the facts alleged in the Notice have been proven. Moreover, to date, the only public presentation of the facts surrounding the complaints raised against Douglas ACJ has been through the media and fuelled by Chapman. Throughout the entire intense media coverage Douglas ACJ’s has refrained from arguing the case in the public arena. Douglas ACJ has been faced with tremendous embarrassment and humiliation as her bench, the bar and members of the public have been presented with one-sided distorted accounts of the events relevant to the complaints raised against her.

3. This response represents the first time that Douglas ACJ’s account of the events in question will be heard. However, in order to comply with the Committee’s May 19, 2012 ruling this response does not represent a review of the evidence that supports Douglas ACJ’s account. At the hearing, evidence will be presented to the Committee by Independent Counsel and by Counsel for Douglas ACJ .

B. RESPONSE TO THE ALLEGATIONS

(1) Alleged Sexual Harassment of Alex Chapman

4. The Notice of Allegation states that Ms. Douglas knowingly participated with King in the sexual harassment of Chapman. This charge against Douglas ACJ is a complete fabrication. She has been the victim of wrongdoing by both her husband (King) and Chapman.
5. Her husband, in acts of unimaginable betrayal, in pursuit of a mad and undisclosed fantasy, solicited Chapman to have sex with (then) Ms. Douglas. King emailed Chapman intimate photos of his wife and posted certain other intimate photos on a website to which he directed Chapman, all without any knowledge of Ms. Douglas.
6. The Notice of Allegation pleads Ms. Douglas had knowledge of her husband's scheme. Lori Douglas, then a practising lawyer, had absolutely no knowledge of this conduct by her husband. The first disclosure Ms. Douglas had about any of this dreadful conduct was on June 16, 2003 when her husband was compelled to tell her what he had done.
7. The Notice of Allegation pleads that Chapman experienced discomfort and offence. In fact Chapman saw King's aberrant behaviour as an opportunity to obtain money from King and his law firm, to make both himself and his lawyer rich. He caused his lawyer to demand payment from and King and Thompson Dorfman Sweatman (TDS) for a claim of sexual harassment by King Jack. No demand was made of the firm in relation to Ms. Douglas, nor was any claim raised with the firm, King or Ms. Douglas against her.
8. The reference in the Notice of Allegation to two 'social encounters' between Chapman and Ms. Douglas is grossly misleading. Ms. Douglas did not knowingly agree to meet with Chapman to socialize or for any other purpose. King and Chapman had agreed, with no disclosure to Ms. Douglas, that King would invite Ms. Douglas to have a drink with King at a bar. This occurred at about 5 o'clock before she continued home to pick up her 5 year old child. Chapman and King arranged that Chapman would come by, as if by coincidence. Chapman acceded to the plan. The encounter was entirely uneventful. Ms. Douglas then had a 45 minute drive to pick up her son and was home before 6:30 p.m..

There was nothing but small talk at this meeting and Ms. Douglas was not alone with Chapman.

9. The second meeting was set up the same way by King and Chapman, without any notice to Ms. Douglas. When Chapman appeared unannounced and seemingly at random, Ms. Douglas left within a matter of minutes. She left her husband to make his own way back to his car. The allegations by Chapman that Ms. Douglas engaged in inappropriate conduct or conversation are complete fabrications.
10. The Notice of Allegation states that Ms. Douglas knew the conduct would cause Chapman discomfort. As Ms. Douglas had no knowledge of her husband's scheme and fantasy, she could not know anything about Chapman's reaction. Chapman was a willing participant in this despicable scheme, looking to use it as a way of securing a large payment from King and the law firm. In 2003 his lawyer negotiated for a payment which it was said Chapman would accept as a sincere and complete apology completely forgiving King. He was to return the unsolicited documents that had fallen into his possession. Upon settlement he would consider the matter closed.
11. Further Chapman warranted that he was returning all materials provided by King or from the website that Chapman had been directed to by King and he confirmed that he never forwarded to anyone else the materials. Chapman did not, in fact, return the materials and he spread and directed the materials among others who were to hold them on his behalf. As between Chapman and his associates these materials were released to the public unlawfully in 2010 out of malice. Chapman did so because he thought that Associate Chief Justice Joyal was in league with Douglas ACJ and had allegedly forced him to settle one of his actions against the City of Winnipeg police for malicious prosecution at too low a price. Douglas ACJ knew nothing of the matter and Joyal ACJ did not participate in any such improper scheme. Chapman lashed out at woman who had done absolutely nothing to him.
12. In 2010, in an attempt to renew his quest for the millions of dollars he was seeking from King and the law firm, Chapman launched a series of actions against King, the law firm and, now, Douglas ACJ, seeking damages in the aggregate of \$67 million. The actions

were summarily dismissed, with Chapman voluntarily abandoning, with prejudice, the case against Douglas ACJ as there was no basis for it.

13. The Inquiry Committee, in its May 15, 2012 ruling, held that it is in the public interest that even very weak claims be publicly tried and, despite the fact that the Review Panel did not send this claim by Chapman against Douglas ACJ, forward to the Inquiry Committee for public hearing, the Inquiry Committee decided the matter had been brought to its attention and therefore should go forward.

(2) Alleged Failure to Disclose in the Applications Process

14. The Notice of Allegation states that Ms. Douglas answered no to the question on the application form asking about the applicant's past or present. The question does not ask about the past or present of or wrongdoing by a family member. The facts of King's wrongdoing were well known in the legal community. Senior members of the bench and bar made it clear to Ms. Douglas that her husband's conduct did not reflect negatively on her. She was urged by them to apply for judicial appointment as senior members of the bench and bar did not believe that her husband's conduct would reflect negatively on the judiciary. This advice and encouragement was sincerely extended and sincerely received. It was understood that King, without his wife's knowledge, had solicited a client to have sex with her and had, as part of the scheme, placed intimate photos of her on the internet. The advice and encouragement was given in the knowledge that Ms. Douglas was an entirely innocent victim of a husband's betrayal.
15. The judicial appointments committee that considered in 2005 Ms. Douglas' application for judicial appointment was aware of King's conduct and instructed that the lawyer from the Judicial Affairs Council who worked with these committees to contact Ms. Douglas directly regarding the intimate photos that had been placed on the internet. Ms. Douglas answered all of questions asked by the lawyer from the Judicial Affairs Council including questions about the existence of the pictures and what she knew about them as well as inquiries about how Ms. Douglas had been treated at the firm, at the bar and by the bench since the incident. A member of the Minister's staff, who was aware of the fact that her husband had once offered her for sexual services also spoke to Ms. Douglas at the time

her application was being considered. When the committee forwarded to the Minister its recommendation that Ms. Douglas was suitable for appointment to the judiciary, it instructed that the information regarding King and what he had done be flagged for the Minister so that he would be aware of it and, if he so chose, could send the matter back to the committee for more investigation or, alternatively, do whatever he deemed fit.

16. In December 2004 when Ms. Douglas filled out the application form, there had never been any suggestion made to Ms. Douglas of any wrongdoing by her and she knew for a fact that she had committed no wrongdoing. She did not believe she was responsible or accountable for the wrongdoing of a family member who had victimized her or that the response to the question about conduct in the past or present was requiring a description of anti-social behaviour by a member of her family. At this time, she knew her husband had settled Chapman's complaint against him; that he had received all the illegally transferred private images of her; that those images had all been destroyed; that those her husband had illegally posted on the internet had been removed in June 2003; and there had been no suggestion those images were available at all.
17. Prior to this time, in 2003, the Chief Justice of the Manitoba Court of Queen's Bench was aware that nude photos of a private nature had been posted on the internet and had been made available to Chapman, although he had no other details of the photos. He was concerned that the existence of them and the presence on the internet posed too great a risk of blackmail and therefore did not support Ms. Douglas' candidacy. He maintained this objection until the late fall of 2004.
18. By that time, sufficient time had passed with nothing having surfaced regarding the pictures that the Chief Justice no longer opposed the application. After the Chief Justice removed his objection, members of the bench encouraged Ms. Douglas to apply and she did so in December 2004. The chair of the Judicial Appointments Committee was told of all of these facts so that the issue would be canvassed by the committee as it considered Ms. Douglas' application.
19. The Chair of the Judicial Appointments Committee knew there had been pictures of a sexual nature on the internet and that King had left the Thompson Dorfman firm as a

result of an incident of a sexual nature. It was widespread knowledge that there had been an incident and this was an issue addressed by the committee. In the canvass of members of the bench about Ms. Douglas' candidacy, there was support for the appointment. No one said the incident should prevent her application from going forward.

20. The incident was discussed at the committee meeting and people on the committee knew that the pictures were sexual in nature, they had been on the internet and they knew that, in Ms. Douglas' view the matter had been resolved. As noted above, the Committee had Ms. Douglas called and decided the report recommending Ms. Douglas as a candidate would flag the information concerning the incident for the Minister so he would be aware of it.
21. The disclosure required by the judicial application form has never required applicants to disclose private lawful sexual activity and such actions are not disclosed. Nor are such matters as turmoil in an applicant's family, such as a family member with mental issues, criminal or other anti-social behaviour, within the scope of matters that are questioned or a proper matter on which to assess a candidate. A candidate's own criminal, anti-social or mentally unstable behaviour, past or present would be required to be disclosed but the candidate is not measured by the conduct of his or her family members.
22. Confirmation of the irrelevance of this are the judgments of four Manitoba Court of Appeal judges, including the Judge who is the Chair of the CJC's Judicial Conduct Committee. All four judges were made aware in a proceeding in the fall of 2005 that the pictures placed on the internet in violation of Justice Douglas' rights, were graphic, explicit, pictures including bondage and were on a site described as 'hardcore'. These judges sealed the record, recognizing that this description was a violation of her rights. None of them, or anyone else on that court who became aware of this, filed any complaint with the CJC against Justice Douglas, because it was recognized that these pictures were private and the misuse that had occurred in relation to them was not to be laid at the doorstep of this judge and did not compromise her ability to serve.

(3) Alleged Incapacity as a Result of the Public Availability of the Photos

23. The Notice of Allegation alleges that availability of photos on the internet raise the issue of incapacity. First, to the extent photos have ever appeared on the internet, this has not been caused by any conduct of the judge.
24. The photos put on the internet by King have long been removed, taken down in June 2003. They were only put on the internet again because of Chapman's malicious campaign designed, first to harm King through this attack on his wife, and secondly because of Chapman's irrational and misplaced anger at Associate Chief Justice Douglas and (then) Associate Chief Justice Joyal who he believed were conspiring together to force him into a settlement of one of his actions against the Winnipeg police.
25. Chapman, as part of his malicious and wrongful strategy to strike back, resurrected photos of Ms. Douglas he had been paid to return but instead retained.
26. The Notice of Allegation states the photos could be seen by the public as being contrary to the image of the judiciary. Right thinking people do not search out these photos. Right thinking people do not conclude that a woman who has been victimized by her husband is to blame for her husband's conduct and, accordingly, lacks integrity or is not suitable to sit as a judge.
27. The Notice of Allegation raises the issue of public confidence in the judicial system. Our system of justice, including the process for disciplining judges, does not operate on the basis where the victim of wrongdoing by others is punished. The system of justice would be brought into disrepute if the victim of wrongdoing were punished.
28. The Notice of Allegation states that this allegation could justify removal. Under the constitution, judges are appointed with security of tenure during good behaviour from the time of the taking of their oaths of office. Such security of tenure is an essential condition of independence. If a judge can be disqualified through the malicious actions of a disgruntled litigant or the disreputable conduct of a spouse, when the judge is innocent of any wrongdoing, there is a serious threat to judicial independence. There was no wrongful conduct by Douglas ACJ in the performance of her duties as a judge. The

conduct raised in this count of the charge is entirely the conduct of others, not conduct of the judge.

29. If Associate Chief Justice Douglas is to be blamed for the wrongful acts of her husband, Chapman and others and punished through the loss of her constitutionally secure tenure, the system of justice will be brought into disrepute.

(4) Alleged Failure to Fully Disclose Facts to Independent Counsel

30. In the late summer or fall of 2010, Douglas ACJ visibly changed a word in a gardening diary she keeps for her own reference. The adjective that was changed had originally referred to the previous afternoon, not to Chapman. Douglas ACJ admits changing the word out of anger at Chapman's false allegation that had been recently made against her in the media. She had no intention of misleading anyone. She did not anticipate that the diary would be evidence in an inquiry process. At that time, she was instructing counsel to prepare a response letter and did not believe that this matter would proceed to an inquiry on the basis of Chapman's false allegations against her. Douglas ACJ's review of the diary in the fall of 2010 was prompted solely by her attempt to provide her counsel with dates of events for the purpose of the response letter, including the dates of the meetings set-up by King and Chapman referred to above in paragraphs 8 and 9.
31. About a year and half later she was questioned about it in a telephone call in February 2012 and she did not respond accurately to Independent Counsel's colleague. At the time of the telephone call she was at home alone and in no condition to have been trying to respond to questions. She corrected her answer at the earliest practical opportunity and has co-operated fully with Independent Counsel with respect to his concerns on this subject, including providing medical evidence and full access to other private information concerning her condition in February.

Dated at Toronto, this 13th day of June, 2012

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