

**CANADIAN JUDICIAL COUNCIL (CJC)**  
**COMPLAINT REGARDING**  
**ASSOCIATE CHIEF JUSTICE LORI DOUGLAS**

**MOTION RECORD OF DOUGLAS, ACJ**  
**ON THE MOTION TO SET THE VENUE FOR PRELIMINARY MOTIONS**  
**SCHEDULED FOR OCTOBER 27-29, 2014**

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TAB1

**CANADIAN JUDICIAL COUNCIL**

**INQUIRY COMMITTEE PROCEEDINGS**

REGARDING A COMPLAINT AGAINST THE HONOURABLE LORI DOUGLAS

**AFFIDAVIT OF LARA GUEST  
(SWORN OCTOBER 8<sup>th</sup>, 2014)**

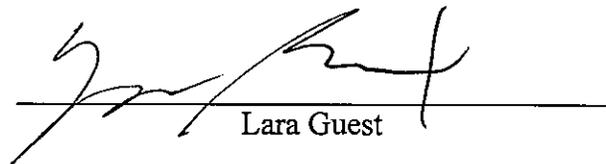
I, Lara Guest, of the City of Toronto, in the Province of Ontario, SWEAR THAT:

1. I am a student-at-law with the law firm of Torys LLP, the lawyers for Douglas, ACJ. I am assisting the Torys team with Douglas, ACJ's matter before the Inquiry Committee and as a result have knowledge of the matters referred to in my affidavit. I previously swore an affidavit in these proceedings on September 30, 2014.
2. As part of my work on this matter, I have reviewed newspaper articles relating to the hearings conducted by the previous Inquiry Committee in May-July of 2012 (the "2012 Hearing"). Attached as Exhibit "A" is a copy of a National Post article by Christie Blatchford regarding the 2012 Hearing, dated June 25, 2012.
3. I have also reviewed certain of the transcripts of the 2012 Hearing. Excerpts of transcripts from the 2012 Hearing held May 19, June 25, and June 26, 2012 are attached as Exhibits "B", "C", and "D", respectively. I have also reviewed the previous Inquiry Committee's Ruling on Alex Chapman's application for standing and funding at the previous Inquiry, which is attached as Exhibit "E".
4. I have reviewed an internet domain name registry statement for the website on which certain photos were posted by Jack King in 2003. A printout of that registry statement is attached as Exhibit "F".

5. Counsel for Douglas, ACJ has also directed me to the “Cybersmoke Blog”, which is located at the following website: <<http://cybersmokeblog.blogspot.ca/>>. I understand from Counsel for Douglas, ACJ and the transcripts of the 2012 Hearing transcripts that the author of “Cybersmoke Blog” is the same Clare L. Pieuk who sought standing at the 2012 Hearing. Attached as Exhibit “G” are two posts from 2012, and attached as Exhibit “H” are posts to the Cybersmoke Blog regarding Douglas, ACJ’s application for judicial review.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario  
this .....<sup>8<sup>th</sup></sup>..... day of October, 2014

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits*  
RACHAEL SAAB

  
\_\_\_\_\_  
Lara Guest



TABA

This is Exhibit "A" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab

## Lori Douglas' sex scandal quickly turns into a circus

[NP fullcomment.nationalpost.com/2012/06/25/christie-blatchford-manitoba-judges-sex-scandal-quickly-turns-into-circus/](http://fullcomment.nationalpost.com/2012/06/25/christie-blatchford-manitoba-judges-sex-scandal-quickly-turns-into-circus/)

### Christie Blatchford: Manitoba judge's sex scandal quickly turns into a circus



WINNIPEG — The Lord does giveth and taketh away and so, just as the Red River Ex was moving out of town Sunday night, so was the circus rolling in the very next morn.

Or so it seemed, at least, at the Canadian Judicial Council inquiry into the conduct of Manitoba Associate Chief Justice Lori Douglas, where in an effort to appear fully transparent and accessible, the five-member committee Monday handed over the floor to a couple of members of the public who proceeded to kick — there's no other word for it — the judge while she was down.

Judge Douglas is facing several allegations of wrongdoing here.

She is accused of having participated in her lawyer husband Jack King's scheme to entice a client of his into having sex with her, and thus of sexually harassing the man; of failing to disclose this in her application for the bench; of altering a diary entry and thus trying to thwart the CJC investigation — and that, as a result of the public availability of intimate sexual pictures of her on the web, posted there by King, she is unable to continue sitting as a judge.

All this is quite grave enough.

Judge Douglas has not been actively sitting since the allegations first hit the fan two years ago. By any measure, she has been publicly embarrassed while the cumbersome CJC process unfolded. Now, she faces the prospect that if she is found to have committed misconduct, she could be deemed unfit and be removed from the bench.

But the inquiry committee nonetheless heard from three people applying for "intervener" standing, status that would allow them to cross-examine witnesses.

At least two of these applications were patently ridiculous. The significant one came from Alex Chapman, the complainant whose allegations lit this fire.

Chapman doesn't come to the matter with a clean slate: he is a regular litigant in Winnipeg, had a criminal record under another name before he won a pardon and, in 2003, when King was handling his divorce and sent him the graphic pictures of his wife (Judge Douglas was then a lawyer at the same firm) and tried to enlist him into a sexual relationship with her, he also tried to squeeze the law firm for \$100,000.

As a result, King lost his job at the firm, paid Chapman \$25,000 out of his own pocket in exchange for a confidentiality agreement and the alleged return of those pictures, and the matter appeared to go away.

Judge Douglas was subsequently encouraged to apply to the bench, and did so, and it appears that virtually everyone involved in the appointments process was made aware of the scandal involving King and Chapman.

But in 2010, Chapman allegedly was forced to settle another one of his lawsuits (this time against the Winnipeg police) and apparently believed the judge in that case was in cahoots with Judge Douglas. Needless to say, Chapman renewed and enlarged his complaints, first with the CBC, and then with the CJC.

Now, represented by Toronto lawyer Rocco Galati, he is seeking intervener status at the hearing. The essence of Galati's argument is that the committee's independent counsel, Guy Pratte, can't wear two hats and be equally tough in what Galati says will amount to a "he said, she said" case.

According to Galati, "some of the conduct by Jack King and Lori Douglas may be criminal."

No one on the panel attempted to tell Hazen her remarks were wildly out of line, or to rein her in.

Galati didn't elaborate except to say that even if the committee concludes Judge Douglas "had no part in the sexual harassment," her knowledge of the confidentiality agreement and the alleged "destruction of emails and voice mails" could be construed as a criminal offence.

Details of these as yet untested allegations apparently are contained in a lengthy affidavit from Chapman filed with Galati's materials, which may or may not be made public.

Then came Clare Pieuk, who runs the CyberSmokeBlog, and who sought intervener status on the grounds that there needs to be "citizen oversight" of the hearing.

Pieuk seems a pleasant character, but with a very generous view of what he could contribute to the proceedings. As he put it once, "As a blogmaster, I have access to a lot of individuals . . . people who feel that in family court they've been treated unfairly."

He spoke for 15 minutes before Catherine Fraser, the Alberta Chief Justice and chair of the committee, attempted to get him to focus.

Pieuk ended by concluding that it "is CyberSmokeBlog's position" that Judge Douglas hasn't honoured her oath.



Next came Cheryl Hazen — a nakedly “disgruntled litigant” as Molly Reynolds, one of Judge Douglas’ lawyers, called her. Judge Douglas was one of a line of judges who had ruled against Hazen in a child-custody matter. She ruled on a motion to vary another judge’s order, and delivered a thoughtful 23-page decision.

Hazen also rambled and was allowed to say the following things before anyone on the committee tried to halt her: that Judge Douglas had “a bias resulting from her inclination for pain and suffering”; that she took “pleasure in pain and suffering”; that she “favours men with sexually deviant lifestyles” in her courtroom; that she is “not abiding by the moral code of society” but sits in judgment of others and that she has “a gross lack of integrity.”

Only then did Chief Justice Fraser interrupt her.

No one on the panel attempted to tell Hazen her remarks were wildly out of line, or to rein her in.

In the end, the committee ruled against Pieuk and Hazen — it will rule on Chapman’s application Tuesday — but not before Judge Douglas’ name had been smeared anew.

Galati and Chapman have doubts about the fairness of this hearing. They surely aren’t alone in that.

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**TABB**

This is Exhibit "B" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

Inquiry Committee  
concerning  
the Hon. Lori Douglas

Comité d'enquête  
au sujet de  
l'hon. Lori Douglas

**Transcript  
of the hearing of  
19 May 2012**

**Procès-verbal  
de l'audition du  
19 mai 2012**

**(v. originale en anglais)**

1 that you identify yourself and let us know what  
2 the nature of that application is. So is there  
3 anyone here who wishes to make any application?

4 MS. HAZEN: I did make an  
5 application to CJC, but I didn't -- I didn't  
6 receive any notice that I would be able to speak  
7 to you.

8 THE CHAIR: I'm sorry, could you  
9 tell us who you are first?

10 MS. HAZEN: My name is Cher  
11 Hazen, H-A-Z-E-N. I had -- the last I sat was in  
12 front of --

13 THE CHAIR: Could I perhaps ask  
14 you to come up further. It's a little difficult  
15 to hear you and if you would like to come up to  
16 one of the areas here to speak, please, and could  
17 you tell us again what your name is for the  
18 record?

19 MS. HAZEN: Cher Hazen, C-H-E-R  
20 H-A-Z-E-N. I last sat in front of Justice  
21 Douglas. It was my -- I don't feel all that  
22 terribly prepared. I sent a letter to the CJC  
23 asking for my case to be looked into as I felt I  
24 had been sexually discriminated against in her  
25 courtroom, that her -- she did not view our

1 evidence impartially or use the judgement that is  
2 imposed on her to make a clear and concise ruling  
3 in my case at all, and I presented the CJC why I  
4 believed that. I haven't heard anything in  
5 response that I was to be presenting today. I  
6 don't have anything written in front of me and,  
7 unfortunately, with all the stress and everything  
8 that goes on, I have a really hard time  
9 articulating on my own and I'd be happy to read  
10 what I read or what I wrote to the CJC if I'm  
11 allowed to do that. It's in an e-mail format on  
12 my cell phone, though. That would need to be on.

13 THE CHAIR: Have you received a  
14 letter from the CJC, Canadian Judicial Council,  
15 with respect to this matter that you've raised  
16 with them?

17 MS. HAZEN: No. No, not that I'm  
18 aware of. I haven't received anything in the  
19 mail or e-mail from the CJC since my initial  
20 complaints, which would have been in 2009, 2010,  
21 where they -- CJC informed me that it wasn't up  
22 to them to do this review, that it was up to the  
23 Court House here in Winnipeg, and the Court House  
24 here in Winnipeg was the ones who had told me to  
25 go speak to the CJC in the first place because

1 they didn't take care of that business.

2 THE CHAIR: Okay, but what you're  
3 saying is you did receive a letter from the  
4 Canadian Judicial Council?

5 MS. HAZEN: In 2010 before this  
6 business came out about -- I was told to -- that  
7 I couldn't challenge her judgement because she was  
8 (inaudible).

9 COURT REPORTER: Because she was?

10 MS. HAZEN: Solid. Like, she was  
11 a solid -- a solid judge, that her ethics, et  
12 cetera, were unquestionable and it seems very  
13 clear that that is not so.

14 THE CHAIR: Okay, one moment.  
15 You mentioned the fact that you did receive a  
16 letter from the Canadian Judicial Council. Do  
17 you have a copy of that letter?

18 MS. HAZEN: I don't. I was not  
19 informed in any means at all that I would be able  
20 to present anything here today. I did not bring  
21 anything, not -- I'm sorry, like, I've been  
22 through this process, through the judicial system  
23 for many years now, but I -- I'm advocating for  
24 myself and it's -- I am uncertain as to what it  
25 is that I required further than what I wrote to

1       you in the first place. I asked specifically  
2       what it is that I needed to bring. I gave that  
3       to you or sent that to the CJC before the May  
4       15th deadline, which I understood was the  
5       deadline in the paper that I'd read the week  
6       before and only find that information out the  
7       week before through the Winnipeg Sun newspaper.  
8       I had tried to e-mail for several days in a row,  
9       not knowing that the e-mail address given in the  
10      Winnipeg Sun was actually incomplete, an  
11      incorrect e-mail address to contact the CJC. But  
12      I hadn't -- I hadn't received anything in return  
13      from you. I'm certain that you have received my  
14      letters of May 15th and prior to that, but I have  
15      not received anything, knowing what it is that I  
16      should bring here to present other than my  
17      testimony.

18                   THE CHAIR: Okay, you're saying  
19      two different things then. You say that you  
20      wrote a letter sometime after 2009 --

21                   MS. HAZEN: Yes.

22                   THE CHAIR: -- expressing  
23      concerns about the Judge's conduct --

24                   MS. HAZEN: Yes, that's right.

25                   THE CHAIR: -- of a case that you

1 were involved in, a family case?

2 MS. HAZEN: Yes, that's right,  
3 mmhmm.

4 THE CHAIR: And you received a  
5 letter from the Canadian Judicial Council, but  
6 you don't have that letter with you?

7 MS. HAZEN: That's right.

8 THE CHAIR: Okay. So let's set  
9 that aside. And I assume that that letter  
10 indicated to you --

11 MS. HAZEN: All it indicated to  
12 me was that you don't deal with that --

13 THE CHAIR: I assume --

14 MS. HAZEN: -- that it's not --  
15 it's not up to you.

16 THE CHAIR: I assume the letter  
17 indicated that if you had disagreed with the  
18 judgement, that you had a right to appeal the  
19 decision to the Court of Appeal.

20 MS. HAZEN: Which I did and it's  
21 my understanding that she's also my appeal judge.

22 THE CHAIR: You did appeal your  
23 decision --

24 MS. HAZEN: I did.

25 THE CHAIR: -- in accordance with

1 the advice you got from the Council, and I take  
2 it that the matter has been disposed of?

3 MS. HAZEN: Yeah, it was prior to  
4 the advice that I got from the CJC, actually.

5 THE CHAIR: But in any event,  
6 that was the way in which the initial concern was  
7 dealt with; it was to suggest to you that your  
8 remedy was to appeal the decision to the Court of  
9 Appeal, that you've done, and that matter is at  
10 an end. So that's one issue. You now are saying  
11 that you tried to e-mail on May 15th of this  
12 year?

13 MS. HAZEN: Yeah. Yes, just  
14 prior to May 15th.

15 THE CHAIR: All right. In order  
16 to make an application to do what? What is your  
17 application?

18 MS. HAZEN: To -- the initial  
19 appeal application that I had made did  
20 indicate -- or in my complaint about being  
21 discriminated against, but that my application  
22 would not be looked at because the appeal judge,  
23 which I'm understanding is her, said that I  
24 wouldn't -- I was told by the Appeal Board that I  
25 wouldn't win. That was my -- that was what I was

1 told by the Appeal Board. So my second  
2 application -- after all this came out in the  
3 press about Mr. Chapman and subsequent  
4 complaints, I again tried to appeal to the CJC.  
5 Having read in the paper possibly two weeks ago  
6 that this appeal -- that this Appeal Board  
7 meeting would be happening on the 19th and that  
8 submissions needed to be in by the 15th, I tried  
9 to resubmit under those circumstances. I'm not  
10 articulating well.

11 THE CHAIR: You're trying to  
12 resubmit your appeal of your decision is what  
13 you're essentially saying?

14 MS. HAZEN: Yes, ma'am.

15 THE CHAIR: Mr. Macintosh?

16 MR. MACINTOSH: Chief Justice  
17 Fraser, thank you. Excuse me, Ms. Hazen, for  
18 just a moment. What I was going to suggest,  
19 Chief Justice Fraser, is perhaps I could speak  
20 with Ms. Hazen during the morning break and see  
21 if I can assist in determining whether it's  
22 useful to proceed here today with her concerns or  
23 whether some alternative process is better. And  
24 so if Ms. Hazen could wait for the morning break,  
25 I could speak with her off the record just

1 privately and see if we can achieve something.

2 THE CHAIR: I think that that  
3 would be useful and, indeed, I would suggest that  
4 perhaps you might wish to do that now because I  
5 propose that we take a break of about 10 minutes.  
6 We will come back and proceed with the -- subject  
7 to what Mr. Pratte and Ms. Block may have, if  
8 they have any issues they wish to raise or anyone  
9 else does. Sorry, there is somebody else. Okay.  
10 Well, thank you then, Ms. Hazen, and we'll have  
11 Mr. Macintosh meet with you. Ms. Block?

12 MS. BLOCK: May I just make one  
13 comment in response to Ms. Hazen. She said that  
14 she was told that the Associate Chief Justice's  
15 ethics were unquestionable. It seems very clear  
16 that was not so. I know I don't have to say this  
17 to this Tribunal, but a complaint is only an  
18 allegation. I'm quoting Justice Sopinka in  
19 Ruffo. It's wrong to deal with a complaint as  
20 evidence, not merely as an allegation. The fact  
21 that Ms. Hazen has read things in the newspaper  
22 does not make them so and, as I say, I know I  
23 don't have to say it to you. But as you have  
24 probably already seen, this case is attracting a  
25 great deal of media attention and if a quote like

1 that got picked up and put in the paper, it would  
2 be very damaging and very unfair. And I want to,  
3 at least to you, say that publicly and perhaps  
4 the Committee will assist me in that regard.

5 THE CHAIR: Thank you, Ms. Block.  
6 Anything you wish to add, Mr. Pratte?

7 MR. PRATTE: Not on this. I may  
8 have a comment on your ruling when we resume, but  
9 not on this, Chief Justice. Thank you.

10 THE CHAIR: Now, I'm sorry, there  
11 is someone else who wishes to speak?

12 MS. DRAGANI: I'm Marisa Dragani  
13 with CBC National Television News, and we are  
14 going to consider putting forth an application  
15 with respect to what you mentioned about using  
16 electronic devices, namely Twitter, and I just  
17 need to contact our legal counsel.

18 THE CHAIR: All right. And  
19 what's your name again?

20 MS. DRAGANI: Marisa Dragani.

21 THE CHAIR: Jordani (ph)?

22 MS. DRAGANI: Dragani,

23 D-R-A-G-A-N-I.

24 THE CHAIR: Any other  
25 applications that anyone is going to propose to

1 make today?

2 MS. LINTZ: Your Honour, I'm not  
3 prepared either because I thought I needed, like  
4 this lady, a confirmation that I could speak.  
5 And I am here as a member of the public who is  
6 very, very concerned about the moral integrity of  
7 judges, of the judiciary, and --

8 THE CHAIR: I'm sorry, could you  
9 please tell us your name?

10 MS. LINTZ: Yes, my name is  
11 Tannis Lintz, L-I-N-T-Z.

12 THE CHAIR: Tammy Lintz?

13 MS. LINTZ: Tannis, T-A-N-N-I-S.  
14 So I have not prepared anything in writing and I  
15 would be happy to speak after the break in terms  
16 of what my interest in being here is today. So I  
17 could prepare a little bit if we are allowed to  
18 make a submission today, which I believe I've  
19 missed the deadline, so I thought I would just be  
20 an observer, but I would like to speak.

21 THE CHAIR: I should probably  
22 clarify the fact that what we're asking is  
23 whether anyone has a formal application that they  
24 wish to make that would fall within the  
25 parameters of something that we would consider.

1 So, for example, individuals -- anyone has the  
2 right, for example, to make an application for  
3 standing in order to make presentations and  
4 submissions, but this is not an open mike session  
5 where we hear from individuals generally about  
6 any concerns that they have about the justice  
7 system or, indeed, about the judge whose conduct  
8 we're inquiring into. This inquiry follows a  
9 certain procedure and that includes hearing from  
10 people who have formal applications to make. If  
11 standing is granted for some purpose, then we  
12 hear representations from individuals. But  
13 otherwise, it has to be within the confines of  
14 that structure because we have as independent  
15 counsel, Mr. Pratte, who is here to present the  
16 case in accordance with the public interest and  
17 he is an extremely experienced, capable counsel  
18 who will have -- who has the ability to do so in  
19 accordance with the By-laws and provisions of the  
20 Act.

21 So what I need to ask you is if  
22 you're making an application for standing, you  
23 would have to then tell us that that's what it is  
24 and make submissions in accordance with that. If  
25 you're not making an application for standing,

1       which would then give you the ability, arguably,  
2       to make submissions, then are you making any  
3       other application, because I think it sounds to  
4       me as if you simply want to make submissions?

5                       MS. LINTZ:  No, I've been  
6       extremely traumatized by the legal system.  And  
7       my ex had Jack King going right up into the trial  
8       and, like this lady, I lost complete relationship  
9       with my children, stripped of all my rights as a  
10      woman, and I was a very good mother, and it is  
11      very concerning to me that there are people in  
12      this position of power, like Lori Douglas, with  
13      this -- these allegations of, to me, immorality  
14      that are judging over other mothers, like myself,  
15      and children's lives and that is where I am a  
16      concerned -- based on my own lived experience --  
17      member of the public.  I'm not sure if that  
18      constitutes standing, but I have had the same  
19      experience as this lady where I have written to  
20      the Judicial Council.  A prominent former member  
21      of the Government, a former Attorney General  
22      wrote to the Judicial Council about my case and  
23      that extreme injustice and prejudice,  
24      discrimination.  I've had two appeals, one with a  
25      lawyer I paid \$30,000 to, and the other I just

1                   MR. CHAPMAN: Yeah, but nothing  
2                   too -- yeah, thank you very much.

3                   THE CHAIR: Thank you. All  
4                   right. Well, then that concludes, at least for  
5                   today, Mr. Chapman's application on standing and  
6                   appointment of counsel. We now wish to turn to  
7                   the next matter before us and that is the  
8                   application by Mr. Pieuk for intervener status,  
9                   and I would ask Mr. Pieuk to come forward and  
10                  also I should ask you to confirm whether I'm  
11                  pronouncing your name properly as well.

12                  MR. PIEUK: Good morning,  
13                  honourable ladies and gentlemen, counsel, members  
14                  of the media. My name -- think of one of those  
15                  single passenger boats, I guess you would call  
16                  them a kayak. It rhymes with kayak. Pieuk.

17                  Before I begin, I'd like to give  
18                  those present a very brief background of who I  
19                  am. I can do it in 30 seconds or less. I'm a  
20                  law-abiding -- you won't find so much as a  
21                  parking ticket against me -- tax-paying citizen/  
22                  media citizen journalist/blog master and, hence,  
23                  I have an interest, I believe, in representing  
24                  the public interest.

25                  I've come with two presentations.

1 The first one is about 90 seconds, the second one  
2 maybe 20 minutes. The 90-second one, I'm here to  
3 request leave to resubmit my application, and I  
4 can cite two or three reasons. One is the letter  
5 from counsel for the Defence, which I received  
6 through Mr. Macintosh. The first paragraph --

7 THE CHAIR: I'm sorry, who are  
8 you speaking of? Counsel? Are you talking about  
9 independent counsel?

10 MR. PIEUK: No, this letter was,  
11 to which I'm referring --

12 THE CHAIR: Are you talking about  
13 Ms. Block?

14 MR. PIEUK: -- dated May 9th,  
15 2012 was from Ms. Block and Ms. Reynolds, and it  
16 had been sent to Mr. Macintosh in response to my  
17 request for standing. Second paragraph --

18 MR. PRATTE: Madam --

19 THE CHAIR: Sorry, one moment.

20 MR. PRATTE: -- I don't want to  
21 interrupt, but I think the terminology of  
22 Defence -- and I'm sure that was not intended --  
23 is probably not appropriate, and maybe if he  
24 wants to just refer to counsel for Justice  
25 Douglas, that we would all know who he's talking

1       about because there is no Defence, Plaintiff,  
2       Accused or anything in this hearing.

3                       THE CHAIR: Thank you so much for  
4       that, Mr. Pratte. Yes, it's just helpful.  
5       Independent counsel and counsel for the Judge, so  
6       you can refer to Judge's counsel and independent  
7       counsel and then it would be helpful for  
8       everybody in the audience to know what you're  
9       referring to, and us too.

10                      MR. PIEUK: Okay, thank you. The  
11       second paragraph of the aforementioned letter  
12       says, "Request for intervener status is premature  
13       as the scope of the hearing is not known." Also  
14       in Mr. Pratte's letter of May 9th -- again, Mr.  
15       Pratte sent it to Mr. Macintosh -- it makes the  
16       same argument. I would also point out when I  
17       began this process several months ago, shortly  
18       after the names of the panel and the public  
19       prosecutor were announced, I wrote to Mr.  
20       Pratte's office, inquiring as to would there be  
21       interveners allowed. The letter I received at  
22       that time -- and it was from Ms. Crain -- said,  
23       "Your letter should set out what you are seeking  
24       and the reasons you feel your request should be  
25       granted." As we've heard this morning, not all

1 of us are lawyers. I certainly am not, have no  
2 formal legal training other than what I've picked  
3 up observing Queen's Bench and Provincial Court  
4 hearings, but I would say or suggest that there  
5 should have been some directions, guidelines.  
6 Based on that letter, I did the best I could in  
7 preparing my submission. And on that basis, I'm  
8 asking for the opportunity to resubmit once the  
9 terms of reference have been announced. Failing  
10 that, I will go into a more detailed presentation  
11 of why I believe cybersmokeblog should be granted  
12 status at the Inquiry.

13 THE CHAIR: Okay, thank you. I  
14 think we understand you've made your submissions  
15 initially. We have heard from both counsel and,  
16 by the way, again you referred to a prosecutor.  
17 There is no prosecutor here. This is an inquiry  
18 and we are inquiring into the conduct of a judge  
19 in this case. There is no prosecutor and no  
20 Defence. So that terminology, if you could try  
21 to keep that in mind as you proceed with your  
22 submissions, it would be helpful.

23 Now, just give me a moment while  
24 I consult with my colleagues as to how best to  
25 deal with this now.

1                   As I understand it, you want to  
2                   resubmit your application, and my understanding  
3                   is that you have what you said was a 20-minute  
4                   presentation that you wish to make. Are you  
5                   prepared to go ahead with that today?

6                   MR. PIEUK: If the request to  
7                   resubmit is denied, yes.

8                   THE CHAIR: Okay, your proposal  
9                   then is to resubmit your application in writing  
10                  after the Notice of Allegations is issued; is  
11                  that what you're saying?

12                  MR. PIEUK: Yes, I'm assuming the  
13                  Notice of Allegations and Terms of Reference are  
14                  one and the same.

15                  THE CHAIR: I think that's a fair  
16                  equivalency to say that. I don't think either  
17                  Ms. Block or Mr. Pratte would disagree with that  
18                  in terms of the concept. So is that your  
19                  proposal then, you want to be able to make  
20                  written submissions after the Notice of  
21                  Allegations has been issued?

22                  MR. PIEUK: Yes, and to save time  
23                  today, if leave is granted for that, then there  
24                  is no need for my more detailed presentation.

25                  THE CHAIR: All right, thank you



TABC

This is Exhibit "C" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

Inquiry Committee  
concerning  
the Hon. Lori Douglas

Comité d'enquête  
au sujet de  
l'hon. Lori Douglas

**Transcript  
of the hearing of  
25 June 2012**

**Procès-verbal  
de l'audition du  
25 juin 2012**

**(v. originale en anglais)**

1 issue here today, and I would ask that you try to  
2 confine your remarks to the standing issue and  
3 not drift into the other issue of the merits of  
4 the case.

5 That's something that will be  
6 argued by those individuals who are given either  
7 standing or intervenor status and allowed to make  
8 submissions on the merits. At this stage that  
9 does not include you. I hope that's clear.

10 There is a difference between the  
11 two issues. Standing is one thing, merits of the  
12 case is another, and we're only dealing with  
13 standing today.

14 MR. PIEUK: Yes, thank you. I'll  
15 quickly finish my article -- my comments on this  
16 part and then raise a couple of other issues.

17 Given that future CJC generated  
18 inquiries are likely to have intervenor  
19 applicants with no formal legal training, such as  
20 me, and unable to afford legal counsel, I believe  
21 it behooves the Canadian Judicial Council and is  
22 in the public interest to produce, as I mentioned  
23 a moment ago, this starter's kit.

24 THE CHAIR: Yeah, I think you  
25 referred to it as a simple annotated citizen

1 advocate roadmap.

2 MR. PIEUK: Yes. If you are  
3 seeking intervenor status, here's what you need  
4 to know. Also that care is taken that people are  
5 not allowed to apply before all relevant  
6 information is submitted. This is what happened  
7 to me when I was here on the 19th. The Notice of  
8 Allegations had not been published. I was able  
9 to argue. Well, I didn't have no complete  
10 information; therefore, I should be allowed to  
11 resubmit. It meant extra work on my part, but I  
12 think if that is carefully followed, it shouldn't  
13 arise again.

14 Also, I think that kind of  
15 starter's kit or basic handbook would be good for  
16 the media because the media are learning too.  
17 Most of them have never been through a process  
18 like this before, so they need a basic guideline  
19 on the conduct of an inquiry. Essentially what  
20 should you know, what should you not know, what  
21 do you do, what do you not do.

22 Now, I'd like to switch to my  
23 final points. One question I would ask --  
24 actually, two -- is if I'm rejected as a  
25 prospective intervenor, is there an appeal

1 process? I don't know. I simply ask the  
2 question. Secondly, if I'm rejected, will there  
3 be any constructive feedback? For example, there  
4 is a couple of complaints before this CJC in  
5 Vancouver which I'm following, and if they go to  
6 inquiry, I would like to apply for intervenor  
7 status. So it will help me tremendously if I'm  
8 rejected here, if I know why, so I don't make the  
9 same mistakes again.

10 I've also raised the issue of a  
11 witness list. When will it be available? I've  
12 yet to receive a comment as to when.  
13 Mr. Macintosh suggested that I contact Mr.  
14 Pratte. I haven't heard back, but I have some  
15 questions in that regard. Who will be on the  
16 witness list? Will it be made available  
17 publicly? When?

18 As to the issue the Chief Justice  
19 raised about procedural bias, my concern was we  
20 had slippage in deadlines. Totally  
21 understandable. If my memory serves me  
22 correctly, Mr. Pratte was supposed to have had  
23 the Notice of Allegations for the 25th of May,  
24 then it was moved to the 29th, then into June,  
25 which is fine. I'm sure he's a very busy

1 gentleman.

2                   We faced a tight deadline, I'm  
3 talking about intervenors, and as part of that,  
4 the intervenors here were given until, I believe,  
5 it was 4:00 Wednesday, June 21st to get our  
6 submissions in. So counsel has had time to study  
7 them and prepare their critiques. We haven't  
8 seen their critiques yet.

9                   When I applied the first time, I  
10 did get a copy of both counsels' view of my  
11 initial submission, which was for dismissal, but  
12 at least it gave me the opportunity to prepare my  
13 arguments and I came here and I was able to  
14 successfully argue I should have another  
15 opportunity to apply. So that's the essence of  
16 my concerns about procedural bias.

17                   I think the best way to close is,  
18 my understanding when a judge is appointed,  
19 Supreme Court of Canada, Provincial Judiciary,  
20 they are required to take an oath, and the  
21 question becomes, has Associate Chief Justice  
22 Douglas maintained that oath, and it's  
23 CyberSmokeBlog's position, no, she has not.  
24 Thank you.

25                   THE CHAIR: Thank you, Mr. Pieuk.

1 Again that last comment again had drifted into  
2 the merits issue. Let me simply say that on the  
3 issue of your concern about timing and deadlines,  
4 that everybody who was involved in this process  
5 has been working to very tight deadlines, and on  
6 occasion, it has been necessary to extend the  
7 time for filing of documents because of issues  
8 that have arisen that required some additional  
9 time in order for counsel to respond to concerns  
10 that have been raised by the committee and vice  
11 versa. So that type of extension of deadlines is  
12 not unusual in these circumstances.

13 In the case of your application  
14 for standing today, I hope that you've been  
15 informed, I'm sure you have been, that there have  
16 been no written submissions filed in response to  
17 your application. Both Mr. Pratte and Ms. Block  
18 were wishing to make oral submissions today, and  
19 that's the basis on which we're proceeding. And  
20 the way it works is you've made your application  
21 and we will now hear from Mr. Pratte and Ms.  
22 Block, and then you will be given an opportunity  
23 to reply to those oral submissions from them.

24 And as you've pointed out, many  
25 of the concerns that they had raised initially

1 about your application for standing I expect will  
2 no doubt be reiterated by them in their  
3 submissions, and you can obviously -- you know  
4 what those things are because you've read their  
5 written submissions on your original application  
6 for intervenor status.

7 Okay. So the process is you're  
8 now finished. We'll hear from the two of them,  
9 but you will be given another opportunity to  
10 reply to that, so if you want to be seated and  
11 take any notes you wish to make of what it is  
12 that they're saying that you wish to reply to,  
13 you'll have an opportunity to do so. I hope that  
14 that's clear.

15 MR. PIEUK: Thank you.

16 MR. PRATTE: So I won't reiterate  
17 what we had said before, but try to simply deal  
18 very, very quickly with the points that have been  
19 made in the submission we received last Thursday  
20 or Friday from Mr. Pieuk and what he said this  
21 morning.

22 THE CHAIR: I don't think you're  
23 speaking into the mic. I think it's turned  
24 around.

25 MR. PRATTE: Is that better?

1 collectively as Exhibit 2. Thank you.

2 EXHIBIT 2:

3 COPY OF JUDGMENT IN THE CASE OF RIAN  
4 HAWES AND CHERYL HAZEN; AND ALSO COPY OF  
5 CERTIFICATE OF NO APPEAL

6 MS. REYNOLDS: Thanks very much,  
7 Chief Justice. I don't propose to take the  
8 committee through the fairly lengthy and, as I  
9 said, thorough reasons in any detail really at  
10 all, but did want to give it to -- there could be  
11 some precision lent to the allegations and the  
12 submissions that we've made in response to Ms.  
13 Hazen's allegations.

14 And the Certificate of No Appeal  
15 is just a simple one-pager at the back of that  
16 package.

17 In sum, this inquiry is not the  
18 correct forum for Ms. Hazen to express her  
19 disagreement with this ruling of Associate Chief  
20 Justice Douglas. We submit that, at best, this  
21 is a misunderstanding of the committee's mandate,  
22 which has led Ms. Hazen to apply for intervenor  
23 status. But her application could also be viewed  
24 as an abuse of process, the collateral attack on  
25 the decisions and process of the Manitoba Courts,

1 or an attempt to attach her unrelated concerns  
2 with the judicial system to this  
3 highly-publicized inquiry into the allegations  
4 that are properly before you.

5 As the committee noted, Ms.  
6 Hazen's allegations with respect to any  
7 proclivity or bias of Associate Chief Justice  
8 Douglas in her role as a judge are entirely  
9 unproven and we submit are without merit.

10 It is regrettable that Ms. Hazen  
11 has used this as a public forum to make  
12 allegations that are not part of the case before  
13 you and which are ill-informed and untrue.

14 As the committee well knows, the  
15 CJC does not have jurisdiction to hear appeals of  
16 judge's decisions. None of Associate Chief  
17 Justice Douglas' conduct in the courtroom, in Ms.  
18 Hazen's or any other case, is at issue in this  
19 inquiry.

20 The findings of the committee on  
21 the subject matter properly before the inquiry  
22 will have no affect on Ms. Hazen's rights or  
23 interests. Ms. Hazen has no distinct perspective  
24 or expertise to add to this proceeding and assist  
25 the committee.

1                   However, Ms. Hazen's  
2                   misunderstanding of the mandate of this committee  
3                   and the scope of these proceedings could well  
4                   interfere with the Committee's work if she was  
5                   granted intervenor status. Her desire to address  
6                   issues outside the jurisdiction of the CJC and  
7                   outside the scope of this inquiry would delay the  
8                   proceedings and abuse the CJC complaint and  
9                   disciplinary process. Therefore, we submit that  
10                  her application should be dismissed.

11                  THE CHAIR: Thank you, Ms.  
12                  Reynolds.

13                  Ms. Hazen, would you like to come  
14                  and reply to the submissions that have been made  
15                  by both counsel? And this is your opportunity to  
16                  address any new points that they've brought up  
17                  that you think should be brought to our  
18                  attention.

19                  MS. HAZEN: To address Mr. Pratte  
20                  that this -- that I do not fit into the narrowed  
21                  walls of what this inquiry is, I would submit  
22                  that Justice Douglas's conduct is conduct -- her  
23                  conduct as a whole, not just in my case. I am a  
24                  microcosm of this. I believe that she has a  
25                  great affect on a great amount of people in her

1 courtroom, and the children that end up going  
2 through there also end up having an effect into  
3 their adult life from the decisions that she  
4 makes in her courtroom.

5                   Aside from what has already gone  
6 past, should she be allowed back on the Bench,  
7 and nobody asked for her immediate recusal.  
8 Anyone coming out of her courtroom with further  
9 judgment would also have effect on the community  
10 as a whole.

11                   To say that I don't have any real  
12 interest here, there have been three applicants  
13 for intervenor standing from the public. If  
14 Mr. Chapman's -- and regardless if Mr. Chapman is  
15 admitted or not, who else is here to represent  
16 the public other than independent counsel who, in  
17 my view -- even though he states that the public  
18 may criticize, who will represent us?  
19 Respectfully, he has already shown that he's not  
20 willing to represent everyone if he wouldn't have  
21 bothered to approach me with -- or anybody else  
22 who has shown a complaint here.

23                   THE CHAIR: I'm sorry, I'm not  
24 following that comment when you say he's already  
25 been shown. What are you referring to?

1 MS. HAZEN: I have approached Mr.  
2 Pratte to discuss my allegations and complaints.  
3 He had no interest in speaking to me nor has he  
4 approached me since I first approached him. It  
5 is my understanding that he has not approached  
6 the other applicants for intervenorship, so far  
7 as I know anyways.

8 As for Ms. Reynolds, to respond  
9 to what she said, I'll point out Justice Douglas  
10 should have recused herself due to her  
11 involvement in the same perversions as my son's  
12 father. Had I known her tendency for the same  
13 depraved behaviours, I would have sought her  
14 recusal the first time I entered her courtroom.  
15 I did complain to the Appeal Board several times  
16 and being refused every time, which is why there  
17 is a Notice of No Appeal sitting before you. I  
18 have indeed felt and feel discriminated against  
19 during -- in appearances before her. That is all  
20 I can add to that.

21 THE CHAIR: Thank you. Any  
22 questions? Thank you so much, Ms. Hazen. I  
23 think at this stage we're going to adjourn for 15  
24 minutes and determine the course of the  
25 proceedings with respect to this application.



**TABD**

This is Exhibit "D" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab



Canadian  
Judicial Council  
Conseil canadien  
de la magistrature

Inquiry Committee  
concerning  
the Hon. Lori Douglas

Comité d'enquête  
au sujet de  
l'hon. Lori Douglas

**Transcript  
of the hearing of  
26 June 2012**

**Procès-verbal  
de l'audition du  
26 juin 2012**

**(v. originale en anglais)**

1 far as possible, will protect Associate Chief  
2 Justice's dignity, privacy, and her rights to a  
3 fair proceeding that the law requires. Much lies  
4 in the balance that is important to all judges  
5 now and to come. Thank you for your attention.

6 THE CHAIR: Thank you so much,  
7 Ms. Block. Any questions that the panel has of  
8 Ms. Block?

9 Now, that concludes the opening  
10 statements and I'm just thinking in terms of  
11 where we go now. It's obviously lunchtime, but  
12 do we have any other matters that we wish to  
13 discuss? We have the documents that were  
14 provided already. We marked them as exhibits.  
15 Sorry, that's been done.

16 MR. JOHNSON: I have a question  
17 that I'd like to ask the committee if it's --  
18 you're agreeable. I'm a member of the public.

19 THE CHAIR: I'm sorry, who are  
20 you?

21 MR. JOHNSON: I'm a member of the  
22 public. It's a public inquiry. What I'd like to  
23 do is --

24 THE CHAIR: I'm sorry, you're a  
25 member of the public. Who are you? What is your

1 name?

2 MR. JOHNSON: My name is Lyle  
3 Johnson.

4 THE CHAIR: I'm sorry?

5 MR. JOHNSON: Johnson, Lyle  
6 Johnson.

7 THE CHAIR: Lyle Johnson. Yes?

8 MR. JOHNSON: What I'd like to do  
9 is have Ms. Block give us a detailed explanation  
10 of what she means by the patriarchy.

11 THE CHAIR: I can't hear what  
12 you're saying.

13 MR. JOHNSON: I'd like a detailed  
14 explanation of what she meant by the patriarchy.

15 THE CHAIR: We're actually in the  
16 process of an inquiry, we have a structure to it,  
17 and the structure doesn't include having  
18 individuals come up to the mic to ask individual  
19 lawyers, whether the lawyers or members of the  
20 committee, to answer questions. So I'm so sorry,  
21 but I'm going to have to ask you to please be  
22 seated.

23 MR. JOHNSON: I apologize for  
24 offending the committee.

25 THE CHAIR: Thank you. Mr. Pieuk?

1                   MR. PIEUK: I would like to  
2                   comment on something Ms. Block said in reference  
3                   to my name.

4                   THE CHAIR: Well, I'm sorry, but  
5                   we're not -- we are in the middle -- I've just  
6                   explained to Mr. Johnson --

7                   MR. PIEUK: Thank you.

8                   THE CHAIR: -- that we're in the  
9                   middle of an inquiry and we do have a process to  
10                  follow and it doesn't include comments. I  
11                  believe I mentioned the first day we started this  
12                  inquiry that we were not holding an open-mic  
13                  session where people come up and make comments  
14                  that they choose to, whether on point or off  
15                  point, but thank you in any event.

16                  I believe that that concludes the  
17                  matters. I'm just going to check with my panel  
18                  members to see if there is anything else we need  
19                  to deal with. One moment, please.

20                  Counsel, I just wanted to ask the  
21                  three of you if there is anything else that you  
22                  wish to raise today? Actually, it's Ms. Block  
23                  and Mr. Pratte.

24                  MR. PRATTE: No, thank you, Chief  
25                  Justice.

1                   THE CHAIR: All right, thank you  
2                   so much. Then this matter is adjourned until  
3                   July 16th at 10:00 a.m. and we'll see you at that  
4                   time. Thank you.

5                   --- Whereupon the hearing was adjourned at 12:55  
6                   p.m. to be resumed on Wednesday, July 16, 2012

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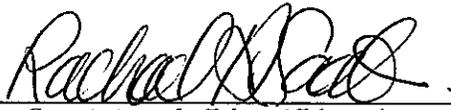
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25



# TABE

This is Exhibit "E" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab



Ruling of the  
Inquiry Committee  
concerning the Hon. Lori Douglas  
with respect to the application of  
Alex Chapman for standing  
and the funding of legal counsel

11 July 2012

Décision du  
Comité d'enquête  
au sujet de l'hon. Lori Douglas  
concernant la demande de  
Alex Chapman pour statut  
d'intervenant et paiement d'avocat

11 juillet 2012

(v. originale en anglais)

11 July 2012

le 11 juillet 2012

**RULING OF THE INQUIRY COMMITTEE ON THE APPLICATION OF ALEX  
CHAPMAN FOR STANDING AND THE FUNDING OF LEGAL COUNSEL**

**I. Background**

**A. Previous Rulings of Inquiry Committee**

[1] Alex Chapman initiated this investigation into the conduct of Associate Chief Justice Douglas (Judge) by making a complaint to the Canadian Judicial Council dated July 14, 2010. At the initial public hearing of this Inquiry Committee, on May 19, 2012, he requested standing at the hearings and the funding of legal counsel to represent him. The Committee at that time ruled that counsel for Mr. Chapman be funded “for the limited purpose of allowing him to make further submissions addressing his application for standing and associated funding”.

[2] Certain conditions were specified in that Ruling, including the requirement that written submissions on his behalf be distributed one week before the date for resumption of the hearing, at which time counsel could also make oral submissions. Mr. Chapman engaged Mr. Rocco Galati as his counsel for this limited purpose (Chapman’s Counsel). In response to his written submissions, both Independent Counsel and Judge’s Counsel made written submissions opposing Mr. Chapman’s application for standing. Chapman’s Counsel, in turn, provided a Reply.

[3] At the resumption of the hearings on June 25, the Committee heard oral argument by all three counsel in support of their respective written submissions. The next morning, the Committee again made an oral Ruling, this time stating that “in the exceptional circumstances here, Mr. Chapman will have certain limited rights of participation in this inquiry”. The limitations that were imposed are listed in the Order at the end of this written Ruling. The Committee also advised it would provide its reasons for its Ruling. These are those reasons.

**B. Scope of Inquiry**

[4] In his written submissions, Chapman’s Counsel argued that the evidence to be adduced in this case would support criminal charges against both the Judge and her husband, Jack King. Three *Criminal Code* offences were identified, namely, breach of trust in s. 122, obstructing justice in s. 139(2) and compounding or concealing an indictable offence in s. 141(1). Chapman’s Counsel stated that: “... the failure of independent counsel to put forward criminal wrongdoing ... requires that the Applicant be allowed to do so by giving him standing”.

[5] In his oral argument, Chapman’s Counsel did not pursue these criminal allegations beyond merely saying that his client had “... put on the table with the review panel investigator that some of the conduct of both Mr. King and Associate Chief Justice Douglas may be criminal”. He suggested, without elaborating, that the failure to allege criminal conduct was a denial of a fair hearing. (See pages 107-8 of the *Transcript of the hearing of 25 June 2012* posted on the Canadian Judicial Council website.)

[6] In light of these submissions, the Committee asked Chapman's Counsel whether Mr. Chapman was seeking to expand the scope of the inquiry if granted standing. He was also asked what that would mean for the structure already established for this Inquiry. It should be noted that the Notice of Allegations that currently exists has previously been the subject of submissions by counsel and refinement. It was pointed out that standing is typically granted to participate in an existing inquiry and not to expand its scope (pp. 108-115).

[7] Chapman's Counsel provided a number of responses. He stated that he would propose to address the issue of criminal conduct but only by way of submissions: "I don't propose to lead any further evidence ... that legal characterization flows from the evidence that the independent counsel will lead" (p. 113). He acknowledged the Committee's broad discretion over this matter: "... You can grant my client standing without allowing him to make submissions on that issue ... or you can expand it or not expand it" (p. 114).

[8] We mention this matter to emphasize that this Committee does not have jurisdiction to make determinations of civil or criminal liability. This Inquiry that has commenced and will continue on July 16 will proceed within the framework of the existing Notice of Allegations as refined by this Committee. The role of Chapman's Counsel will be limited in the manner that was described in the Committee's oral ruling on June 26 and is confirmed in the Order at the conclusion of this Ruling.

## II. No Standing as a Complainant or Witness

### A. Status as a Complainant

[9] In his written submissions, Chapman's Counsel asserts that a complainant "... under s. 63(2) of the *Judges Act*, whose complaint has given way to an Inquiry Hearing, has a *right* to standing and funding, as a party on the same plane as the subject-Judge of the Inquiry". We do not agree. There is no support in the *Judges Act* for such a contention. Section 63(2) merely states that: "The Council may investigate any complaint or allegation made ...." There is no mention of any right to standing by a complainant in relation to such an investigation. By contrast, s. 64 expressly specifies the participatory rights of any judge who is the subject of an inquiry committee established under s. 63(3).

[10] Moreover, this claimed automatic right to standing for a complainant fails to take into account the nature of the investigation process under s. 63(2). This process was explained in detail in our May 15 Ruling and referred to in our subsequent June 22 Ruling. The "evolutionary" nature of that process means that the complaint which initiates the investigation could well lead to broader, narrower or different allegations ultimately becoming the mandate of an inquiry committee. Indeed, a complaint could initiate an investigation and lead to the appointment of an inquiry committee even if the complaint were anonymous. In fact, an anonymous complaint has led to one of the allegations contained in the Notice of Allegations before this Inquiry Committee.

[11] The Council's *Complaints Procedures* do provide that a complainant should be informed,

to a limited extent, of the progress of the Council's consideration of a complaint. But there is nothing in the Council's Policies, *Canadian Judicial Council Inquiries and Investigations By-laws* or in the *Judges Act* itself that would require standing before an inquiry committee to be granted simply on the basis that the person seeking standing made the complaint that initiated the investigation that led to the constituting of that inquiry committee.

[12] Chapman's Counsel argued that since a complainant may have access to judicial review in relation to a complaint, it follows that the complainant should have full standing before an inquiry committee. We agree with Independent Counsel that the potential access to judicial review does not demonstrate a right to standing. Although a person's status as a complainant might well permit judicial review in certain circumstances, no logical basis has been suggested for extrapolating from that possibility any consequential "right" to participate in a related hearing before an inquiry committee.

[13] Chapman's Counsel argued that public inquiries provide a source of analogous procedure. Pointing out that "The rule in most complaint-driven public inquiries is that the complainant has full standing", he submitted that this supported Mr. Chapman's argument for full standing in this Inquiry. He also noted that Donald Marshall Jr., Guy Paul Morin and Thomas Sophonow all received standing in the public inquiries into their wrongful convictions and imprisonment. We do not find this analogy of assistance on this issue since the individuals in question did not receive standing because of their status as complainants. There is no status of "complainant" in a public inquiry; it is not initiated by a complaint but by an order. Marshall, Morin and Sophonow were all granted standing, not because they were complainants, but because they had a "direct and substantial interest" in the subject matter of those respective inquiries.

[14] Independent Counsel argued that professional discipline proceedings were most analogous to an investigation under s. 63(2) of the *Judges Act*. As pointed out, generally complainants in disciplinary proceedings before, for example, a law society or college of physicians and surgeons are not granted standing although limited participation may be granted in exceptional circumstances. As with an investigation into a judge's conduct, the disciplinary tribunal is focussed on the broader public interest. That public interest transcends the interests of an individual complainant.

[15] We have concluded that the mere status of being the complainant whose complaint has initiated an investigation under s. 63(2) of the *Judges Act* does not grant any right to standing before an inquiry committee constituted in the course of that investigation. That said, there may be exceptional circumstances warranting limited participation in an inquiry under the *Judges Act* where the person who has made a complaint also has an interest that goes beyond the status generally of a complainant. That is a separate issue which we address below.

#### **B. Status as a Witness**

[16] Independent Counsel and Judge's Counsel both argued that Mr. Chapman's status at this Inquiry would be merely that of a witness. In their view, the fact that Mr. Chapman's credibility and reputation may be tested is no different from what any witness might expect in any trial or

quasi-judicial proceeding. Thus, that status alone provides no basis for granting him standing.

[17] We agree that the mere fact a witness's credibility and reputation are likely to be attacked does not, as a general rule, provide a legitimate ground for granting standing before an inquiry committee. Were it otherwise, every witness would be entitled to seek standing at every such trial or hearing. This would not only increase costs, it would effectively paralyze the process. More fundamentally, it would not serve the purpose of the inquiry in the first instance which is to determine what is in the public interest. Witnesses before an inquiry committee are in a position comparable to witnesses in a trial or other quasi-judicial proceeding; they are witnesses to the proceedings, not parties.

### III. Are There Any Circumstances in which Standing May be Granted?

[18] The possibility of an inquiry committee granting standing in some circumstances to persons other than the affected judge and independent counsel is contemplated under s. 8(2) of the *By-laws*. It requires that a copy of the inquiry committee's report must be provided "... to the judge, to independent counsel and to any other persons or bodies who had standing at the hearing". However, the *By-laws* do not specify the circumstances in which that standing might be granted.

[19] Independent Counsel left open the possibility that standing might be granted in some circumstances. After submitting that a complainant has no right to standing, Independent Counsel added:

So if there's no right, then does there remain some room for you to grant standing? ... there may be in certain circumstances but these aren't them.

[20] Chapman's Counsel argued that the rare and exceptional circumstances of this case justified Mr. Chapman being given standing quite apart from his status as a complainant or witness. As Chapman's Counsel stated:

It's easy to say that in the appropriate case, somebody can get standing, but if he doesn't on these facts, who out there ever gets standing on inquiry committee hearings?

[21] All counsel agreed that the standard test for granting standing requires that an applicant have a "direct and substantial interest" that goes beyond that of other members of the public. This is the test commonly applied in public inquiries. However, the Committee is of the view that a more stringent test is required for standing before an inquiry committee established under s. 63(3) of the *Judges Act*. Two reasons exist for this conclusion.

[22] First, an inquiry committee has a much more focussed role than the vast majority of public inquiries since it is making a specific inquiry into the specific conduct of a specific judge. Accordingly, this makes it less likely that the fact findings made will negatively impact on others. It must be remembered that the mandate of an inquiry committee is to make findings of

fact and determine "... whether or not a recommendation should be made for the removal of the judge from office" (*By-laws* s. 8(1)). No member of the public has a greater interest in this aspect of the inquiry than any other member of the public.

[23] Second, an inquiry committee has the assistance of an independent counsel to act in the public interest and to gather, marshal and present the evidence in a fair and impartial manner. In the vast majority of cases, the independent counsel will have no difficulty in fulfilling the institutional role imposed on independent counsel by the Council *Policies* and *By-laws*.

[24] Consequently, rarely will there be a basis for an inquiry committee to grant standing to others beyond the judge and independent counsel. That said, we recognize that there will be circumstances, as contemplated in s. 8(2) of the *By-laws*, where standing may be justified. Why is this so? It may be required in order to ensure that the inquiry committee is able to properly fulfill its mandate. That includes determining all the relevant facts relating to the issues raised by the notice of allegations. For this purpose, that necessarily means ensuring that the evidence before the Committee is fairly, frankly and fully presented. To achieve this objective, a grant of standing may be called for in special circumstances.

[25] Standing may also be required in order to ensure fairness, both procedurally and substantively. This does not mean that every complainant should be given standing; that is not the default position. But in the end, the process must not only be fair; it must also appear to be fair. The fair treatment of complainants is crucial to the preservation of public confidence in the process Parliament has established for dealing with complaints against judges. Otherwise, one risks undermining the integrity and legitimacy of that process which has served Canadians well.

[26] Thus, the test that we have adopted for determining whether a person should be granted standing before an inquiry committee under the *Judges Act* is this: *Does the person applying for standing have a direct and substantial interest of an exceptional nature?*

[27] Applying this test to Mr. Chapman's application for standing, we have concluded that he does have a direct and substantial interest of an exceptional nature in these proceedings but only with respect to allegation #1. That allegation relates to his alleged sexual harassment by Lori Douglas while she was in private practice. We offer four reasons for granting standing.

[28] First, Mr. Chapman's character and reputation are clearly in the direct line of fire here to a degree substantially greater than would be the case for a witness generally. In *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System)*, [1997] 3 S.C.R. 440, Justice Cory, delivering the judgment of the Court, stated at para. 55:

... procedural fairness is essential for the findings of commissions may damage the reputation of a witness. For most, a good reputation is their most highly prized attribute.

[29] Judge's Counsel has clearly indicated that her main response to the allegations the Judge faces will be to attack Mr. Chapman. That is illustrated by these excerpts about him in the Judge's Response to the Notice of Allegations:

“... a complete fabrication ... wrongdoing by ... Chapman ... complete fabrications ... a willing participant in this despicable scheme ... materials were released to the public unlawfully ... out of malice ... lashed out at a woman who had done absolutely nothing to him ... malicious campaign designed, first to attack King through this attack on his wife ... irrational and misplaced anger at Associate Chief Justice Douglas ... malicious and wrongful strategy to strike back ... malicious actions of a disgruntled litigant ...”

[30] Woven throughout this Response are allegations that Mr. Chapman’s underlying purpose was to extract a large sum of money from the Judge’s husband by threats to broadly distribute embarrassing photographs of her on the Internet. In essence, he has been described as an irrational, dishonest, malicious and despicable person who is driven by greed. In effect, this approach could be characterized as putting Mr. Chapman “on trial” in these proceedings.

[31] Despite this approach, Judge’s Counsel downplayed any potential impact on Mr. Chapman, arguing that:

The committee will make findings of fact and recommendations with respect to Associate Chief Justice Douglas only. Unlike a public inquiry or a Royal Commission, no findings of wrongdoing by anyone else can be acted on by the Canadian Judicial Council. (pp. 177-8)

[32] That may well be so. But it misses the point. It is true that Mr. Chapman does not have any legal rights that will be affected by these proceedings. Nevertheless, the jeopardy facing Mr. Chapman with respect to his character and reputation is undeniable were this Committee to accept the position advocated by Judge’s Counsel. Also, there is no valid distinction between a finding by this Committee and a finding of misconduct by a public inquiry. Neither has any legal or other official consequence beyond the finding itself and its potential effect on the reputation of the individual about whom it is made. That said, it must be stressed that this Committee has not yet heard any evidence and has certainly made no prejudgment on any of the issues before it.

[33] Independent Counsel also sought to distinguish between adverse findings that might be made by this Committee and a commission of inquiry as a reason for denying Mr. Chapman standing:

... typically a public commission of inquiry has a very wide ranging mandate. It can issue ... s. 13 notices, blaming certain people, including the person that complained, for example ... this case is focused on the conduct of a single judge. And nothing you can do in your report to the Judicial Council can

affect the rights or legal interest or obligation of Mr. Chapman, nothing. ... nor [can the Committee] issue a notice of blame against Mr. Chapman as a commission of inquiry might (pp.143-4).

[34] While Mr. Chapman does not have any legal rights that will be affected by these proceedings, he does have a direct and substantial interest in potential findings in this case about his character that could negatively affect his reputation. More to the point, whether this Committee is required to issue a notice akin to a s. 13 notice is irrelevant to the standing issue. (A notice under s. 13 of the *Inquiries Act*, RSC 1985, c I-11, is similar to the notices required in corresponding legislation in provincial and territorial legislation dealing with public inquiries.) The purpose of that notice is simply to ensure that the principle of fairness is complied with. A public inquiry issues notice to the persons affected that it may make observations in its report about aspects of their conduct so that the recipients of such notice may provide a specific response to such potential findings. But the critical point is this. The fact that an inquiry committee under the *Judges Act* has no statutory obligation to issue a s. 13 notice does not affect the inquiry committee's authority to grant standing. Both a public inquiry and an inquiry committee must act fairly.

[35] In summary, the nature and degree of the attacks upon Mr. Chapman's character and reputation place him beyond the position of persons who might have a direct and substantial interest but not one "of an exceptional nature". The fact that Mr. Chapman faces potential adverse findings about his character which is inextricably linked to his reputation to a very significant degree weighs in favour of this Committee's granting him standing with respect to allegation #1.

[36] Second, contrary to most complaints about judges, allegation #1 relates to a private matter involving conduct off the Bench. Typically, an inquiry committee will have before it extensive documentary evidence, often including a transcript of a hearing or a ruling where many complaints about judicial conduct originate. Thus, there will be few issues of credibility to be resolved. This is particularly so where judicial conduct on the Bench is in question. In these circumstances, verifiable objective evidence usually exists to assist in determining what transpired.

[37] However, in this case, there is limited documentation of the kind often available when the alleged misconduct occurs in court. The positions of the Judge and Mr. Chapman are diametrically opposed with respect to the allegation of sexual harassment. In effect, each claims that the other is lying. It appears that the factual determinations about the conduct involving the Judge, Mr. Chapman and others will depend in large part on findings about the credibility of Mr. Chapman and the Judge.

[38] In his opening statement, Independent Counsel spoke of the "unique" and "unprecedented" circumstances involved here. Given these circumstances, a grant of standing in favour of Mr. Chapman and associated funding for legal counsel ensures that the system is not seen to be skewed in favour of the Judge who has legal representation.

[39] Third, where, as here, an inquiry involves a direct credibility contest between a judge and a complainant over private events where the positions are polarized to the point that each accuses the other of lying, the reality is that independent counsel is placed in an untenable position. Independent counsel is expected, at a minimum, to cross-examine both the complainant and the judge in relation to the same subject matter. From the point of view of public perception of the fairness of that process, the risk is great that no matter how effective an independent counsel might be, there may well be a feeling that independent counsel was “harder” or “easier” on one side than the other. That is the situation with respect to allegation #1. Hence, fairness warrants granting Mr. Chapman standing on the sexual harassment allegation.

[40] Fourth, unresolved issues may remain with respect to Chapman’s solicitor-client privilege with the Judge’s husband and the extent to which it has been waived. Mr. Chapman complained of the personal acts of the Judge towards him at a time when her husband was acting as his lawyer and Lori Douglas was his partner in the same law firm and involved in the family law practice of that firm. Here too, concerns about the fairness of the process justify granting Mr. Chapman standing so that counsel might be retained to protect whatever rights he may have on this front.

[41] For these reasons, we concluded that Mr. Chapman met the standard of a “direct and substantial interest of an exceptional nature”. Thus, we ordered that he be granted standing. However, we restricted Mr. Chapman’s participation in the manner stated in the Order which follows.

#### **IV. Funding**

[42] With respect to whether funding should be provided to allow Mr. Chapman to retain counsel, we determined that it should. On the evidence before us, it was clear that Mr. Chapman had established the need for such funding. No one before us questioned that need. But that alone would not necessarily be sufficient to justify this Committee’s ordering funding for counsel. However, we also concluded that the issues likely to arise during the course of this Inquiry with respect to allegation #1 were sufficiently complex that Mr. Chapman could not properly represent his own interests. Accordingly, we ordered that funding for counsel should also be provided and that was addressed in the Order made.

[43] The Committee examined and explained the role of independent counsel in detail in its May 15 Ruling. This new Ruling by the Committee does not reflect any lack of confidence in the role that Council has defined for independent counsel. Indeed, under the current process, the authority for an inquiry committee to grant standing in exceptional circumstances provides a valuable mechanism to supplement that role when required by fairness.

#### **V. Constitutional Right to Standing**

[44] The written submissions of Chapman’s Counsel contained some arguments in favour of a constitutional right to standing for his client in this case. He did not pursue these in oral

argument. Independent Counsel simply dismissed them as being “of no relevance to your interpretation of the statute, bylaws and the policy”. In view of this Ruling, there is no need for the Committee to address this argument.

## VI. Order

[45] In the exceptional circumstances here, we confirm that Mr. Chapman will have certain limited rights of participation (standing) as follows:

- (a) Chapman’s Counsel will be permitted to participate in the questioning of Mr. Chapman and, among those witnesses currently subpoenaed, Associate Chief Justice Douglas, Mr. King and Mr. Histed;
- (b) Chapman’s Counsel will be permitted to make final submissions;
- (c) Mr. Chapman’s participation through his counsel is confined in all respects to Allegation 1;
- (d) Funding will be limited to one lawyer for this hearing plus reasonable preparation time;
- (e) Fees must be in accordance with the rates prescribed by the Department of Justice; and
- (f) Administrative arrangements are to be established by the Executive Director of the Canadian Judicial Council.

Dated this 11<sup>th</sup> day of July, 2012.

(Signed) “Catherine Fraser”  
Chief Justice Catherine Fraser, Chair

(Signed) “J. Derek Green”  
Chief Justice Derek Green

(Signed) “Jacqueline Matheson”  
Chief Justice Jacqueline Matheson

(Signed) “Barry Adams”  
Mr. Barry Adams

(Signed) “Marie-Claude Landry”  
Me Marie-Claude Landry, Ad. E.

Independent Counsel: Guy J. Pratte and Kirsten Crain  
Counsel for the Judge: Sheila Block and Molly Reynolds  
Counsel to the Committee: George Macintosh, Q.C.  
Consultant to the Committee: Ed Ratushny, Q.C.



TABF

This is Exhibit "F" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab

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Whois Record for DarkCavern.com

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- MeramecCavern.com (\$749)
- GiftCavern.com (\$4,369)
- MitchellCaverns.com (\$6,500)
- MagicCavern.com (\$1,988)
- ComicCavern.com (\$2,395)

Whois & Quick Stats

|                         |   |   |
|-------------------------|---|---|
| <b>Email</b>            | abuse@enom.com is associated with ~11,390,617 domains<br>webmaster@coldcoffee.com is associated with ~164 domains | ↗ |
| <b>Registrant Org</b>   | COLDCOFFEE.COM PRODUCTIONS INC. is associated with ~154 other domains   | ↗ |
| <b>Registrar</b>        | ENOM, INC.  |   |
| <b>Registrar Status</b> | clientTransferProhibited  |   |
| <b>Dates</b>            | Created on 1998-06-12 - Expires on 2015-06-11 - Updated on 2014-05-12   | ↗ |
| <b>Name Server(s)</b>   | NS1.NATIONAL-NET.COM (has 6,881 domains)<br>NS2.NATIONAL-NET.COM (has 6,881 domains)                              | ↗ |
| <b>IP Address</b>       | 69.50.139.144 - 29 other sites hosted on this server  | ↗ |
| <b>IP Location</b>      | 🇺🇸 - Texas - Austin - Wts   |   |
| <b>ASN</b>              | 🇺🇸 AS22384 NATIONALNET-1 - NationalNet, Inc.,US (registered Sep 19, 2001)   |   |
| <b>Domain Status</b>    | Registered And Active Website   |   |
| <b>Whois History</b>    | 223 records have been archived since 2002-12-02   | ↗ |

|                   |  |   |
|-------------------|--|---|
| IP History        | 8 changes on 5 unique IP addresses over 10 years | ➔ |
| Registrar History | 2 registrars with 2 drops                        | ➔ |
| Hosting History   | 4 changes on 4 unique name servers over 11 years | ➔ |
| Whois Server      | whois.enom.com                                   |   |

#### — Website

|               |  |   |
|---------------|--|---|
| Website Title |  The Dark Cavern : INTERRACIAL SEX at it's most hardcore! | ➔ |
| Server Type   | Apache/2.2.9 (Debian) PHP/5.2.6-1+lenny16 with Suhosin-Patch mod_ssl/2.2.9 OpenSSL/0.9.8g prxp_module/1.12.17 pso_module/0.9.19            |   |
| Response Code | 200  |   |
| SEO Score     | 81%  |   |
| Terms         | 711 (Unique: 388, Linked: 83)  |   |
| Images        | 35 (Alt tags missing: 35)  |   |
| Links         | 57 (Internal: 51, Outbound: 6)   |   |

#### Whois Record (last updated on 2014-10-07)

```

Domain Name: DARKCAVERN.COM
Registry Domain ID: 4391594_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.enom.com
Registrar URL: www.enom.com
Updated Date: 2013-06-17 17:54:58Z
Creation Date: 1998-06-12 04:00:00Z
Registrar Registration Expiration Date: 2015-06-11 04:00:00Z
Registrar: ENOM, INC.
Registrar IANA ID: 48
Registrar Abuse Contact Email: abuse@enom.com
Registrar Abuse Contact Phone: +1.4252744500
Reseller: NAMECHEAP.COM
Domain Status: clientTransferProhibited
Registry Registrant ID:
Registrant Name: OWNER OPERATOR
Registrant Organization: COLDCOFFEE.COM PRODUCTIONS INC.
Registrant Street: 3930 E. PATRICK LN
Registrant City: LAS VEGAS
Registrant State/Province: NV
Registrant Postal Code: 89149
Registrant Country: US
Registrant Phone: +1.7027229530
Registrant Phone Ext:
Registrant Fax:
Registrant Fax Ext:
Registrant Email: webmaster@coldcoffee.com
Registry Admin ID:
Admin Name: OWNER OPERATOR
Admin Organization: COLDCOFFEE.COM PRODUCTIONS INC.

```

Admin Street: 3930 E. PATRICK LN  
 Admin City: LAS VEGAS  
 Admin State/Province: NV  
 Admin Postal Code: 89149  
 Admin Country: US  
 Admin Phone: +1.7027229530  
 Admin Phone Ext:  
 Admin Fax:  
 Admin Fax Ext:  
 Admin Email: [webmaster@coldcoffee.com](mailto:webmaster@coldcoffee.com)  
 Registry Tech ID:  
 Tech Name: OWNER OPERATOR  
 Tech Organization: COLDCOFFEE.COM PRODUCTIONS INC.  
 Tech Street: 3930 E. PATRICK LN  
 Tech City: LAS VEGAS  
 Tech State/Province: NV  
 Tech Postal Code: 89149  
 Tech Country: US  
 Tech Phone: +1.7027229530  
 Tech Phone Ext:  
 Tech Fax:  
 Tech Fax Ext:  
 Tech Email: [webmaster@coldcoffee.com](mailto:webmaster@coldcoffee.com)  
 Name Server: NS1.NATIONAL-NET.COM  
 Name Server: NS2.NATIONAL-NET.COM  
 DNSSEC: unSigned  
 URL of the ICANN WHOIS Data Problem Reporting System: [http://wdprs.internic.net](http://wdprs.internic.net/)  
 /

**Tools**

|  |   |
|--|---|
| Whois History  |   |
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| Reverse IP Address Lookup  | ▼ |
| Reverse Name Server Lookup   | ▼ |
| Network Tools  | ▼ |
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| Visit Website  |   |
|  Preview the Full Domain Report |   |
| View Screenshot History  |   |

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|--------------|--------------|
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|--------------|--------------|

The following domains are available through our preferred partners. Select domains below for more information. (3rd party site)

Taken domain.

Available domain.

Deleted previously owned domain.

|                                 |                            |
|---------------------------------|----------------------------|
| <a href="#">DarkCavern.com</a>  | <a href="#">View Whois</a> |
| <a href="#">DarkCavern.net</a>  | <a href="#">View Whois</a> |
| <a href="#">DarkCavern.org</a>  | <a href="#">View Whois</a> |
| <a href="#">DarkCavern.info</a> | <a href="#">View Whois</a> |
| <a href="#">DarkCavern.biz</a>  | <a href="#">View Whois</a> |
| <a href="#">DarkCavern.us</a>   | <a href="#">View Whois</a> |



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TABG

This is Exhibit "G" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab

She said he tried to say .....

Good Day Readers:

Thank you to the gentleman who left us a voice mail message and the individual who sent an e-mail advising the transcripts of the June 25, 2012 Douglas Inquiry were now posted on the Canadian Judicial Council website. We're on the CJC's electronic mailing list and usually get a heads up but not this time. Jeez, hope it hasn't cut us off.

Had to smile. On Tuesday Sheila Block from Team Block-Reynolds was holding forth summarizing how she would present her case once the Inquiry resumes Monday, July 16 at 10:00 a.m. when suddenly we heard our name mentioned. Now that we have the transcripts, we can enter our evidence into the record.

### **Exhibit A: The Transcripts**

**Shiela Block:** It can be photoshopped or as Mr. Pieuk has encouraged, nude photos of the Prime Minister, get those published. It doesn't matter that it isn't him, his face is on the nude, and you can't possibly reach all the people who see it to say hey, that not real.

**The Chair:** ..... Mr Pieuk?

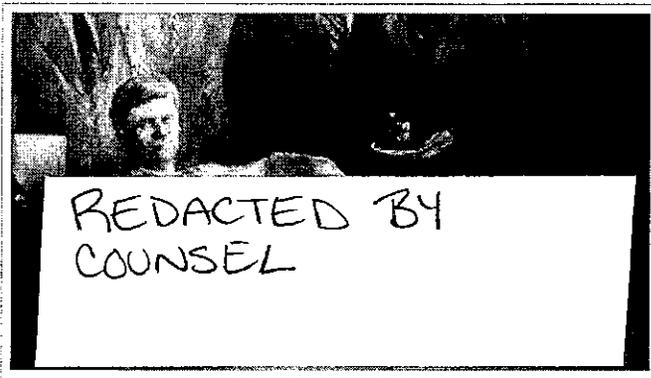
**Mr. Pieuk:** I would like to comment on something Ms. Block said in reference to my name.

**The Chair:** Well, I'm sorry, but were not -- we are in the middle -- just explained to Mr. Johnson --

**Mr. Pieuk:** Thank you.

**The Chair:** -- that were in the middle of an inquiry and we do have a process to follow and it doesn't include comments. I believe I mentioned the first day we started this inquiry that we were not holding an open-mic session where people come up and make comments that they choose to, whether on point or off point, but thank you in any event. (page 225 lines 22-25; page 326 lines 1-15)

### **Exhibit B: The Picture!**



### The Defence

Blog Master Pieuk freely admits on May 18 of this year on his birthday and eve of the opening of the Douglas Inquiry he did, in fact, post this picture on his site as part of the article, *Ever wonder what your member of Parliament would look like nude?*

However, it should be pointed out since federally Canada has no recall laws constituents are stuck with their Member of Parliament for the full term. If they are under performing or not performing there is no way to boot them out on their arse. Based on the Prime Minister's nude painting *CSB* reasoned the only hope voters had was to take up a collection and commission a painting of their MP. If they refused to step down then it would be publicly auctioned off.

And, yes, we did agree to post pictures of any nude paintings received but there were none. Had we received any we would have covered the subject's thing(s) with little red maple leafs much like the American Blog *Above the Law* did a couple years ago with the Lori Douglas pictures.

The law must make a distinction where a person's thing(s) are clearly shown versus where they are covered.

So how say you judge and jury readers, is Mr. Pieuk guilty as alleged by Ms. Block of distributing nude photographs of the Prime Minister?

POSTED BY CLARE L. PIEUK AT 10:15 AM 0 COMMENTS LINKS TO THIS POST 



CYBERSMOKEBLOG.BLOGSPOT.COM  
WEBMASTER: PIEUK@SHAW.CA

FRIDAY, MAY 18, 2012

GOVERNANCE/ACCOUNTABILITY

Ever wonder what your Member of Parliament would look like nude?

Royal Canadian Mounted Police  
Winnipeg Police Service  
Auditor General of Canada  
Auditor General of Manitoba  
Manitoba Ombudsman



...ca  
...parl.gc.ca  
...le.A@parl.gc.ca  
...email@anitaneville.ca  
...Pallister.B@parl.gc.ca  
...BrianPal@mts.net  
...Prentice.J@parl.gc.ca  
...Simard.R@parl  
...info@ra  
...Si

Good Day Readers:

Tired up with your MP's lack of performance? Why not enter our contest? Take up a collection and commission a nude painting. CyberSmokeBlog promises to post all entrants. That will likely be the best money you'll ever invest politically.

Sincerely,  
Clare L. Pieuk

POSTED BY CLARE L. PIEUK AT 11:27 PM

0 COMMENTS:

POST A COMMENT

LINKS TO THIS POST:

CREATE A LINK

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TABH

This is Exhibit "H" referred to in the Affidavit of Lara Guest  
sworn October 8, 2014.

A handwritten signature in black ink, appearing to read "Rachael Saab", written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

Rachael Saab

## **Christie Blatchford: Lawyer quits nude judge inquiry**

Tuesday, August 28, 2012



**Guy Pratte resigned from a Canadian Judicial Council hearing examining the conduct of a senior Manitoba judge**  
(David Lipnowski for National Post)

In an astonishing development, lawyer Guy Pratte has resigned from a Canadian Judicial Council hearing examining the conduct of a senior Manitoba judge.

The abrupt move comes exactly a week after Mr. Pratte, who was the inquiry's so-called "independent counsel," sought to have inquiry decisions overturned by filing for judicial review at the Federal Court of Canada.

In that application, Mr. Pratte asked the high court to set aside aggressive questioning by the inquiry panel's own counsel, George Macintosh, and for an order that he not grill any future witnesses.

### **Related**

- **Lawyer leading inquiry into Manitoba judge's nude photos quits after disagreement over questions**
- **Christie Blatchford: Inquiry decisions in Winnipeg judge case could be overturned**

It was a bold and unprecedented step Mr. Pratte took last week, the first time in the history of the CJC that an independent counsel has so challenged the decisions and authority of an inquiry panel.

Why he would, on the heels of taking that unusual move, suddenly resign remains unexplained.

The CJC released a statement Monday saying only that he had “tendered his resignation” and that the council had “accepted the resignation.” Asked in an email if he was able and willing to talk about it, Mr. Pratte replied, “Unfortunately not.”

And when Postmedia asked for a copy of his letter of resignation, CJC executive director Norman Sabourin replied that it was “a private document.”

Mr. Sabourin pointed out that Mr. Pratte offered his resignation letter not to the committee, but rather to the full CJC. He was appointed by the vice-chair of the judicial conduct committee of the CJC, Chief Justice Neil Wittmann of the Alberta Court of Queen’s Bench, who also appointed the three judges on the hearing panel.

The panel of five — two lawyers round out the numbers — is hearing four allegations against Manitoba Associate Chief Justice Lori Douglas.

At the heart of that case is the allegation that in 2003, when she was a practising lawyer, she participated in the sexual harassment of a black man named Alex Chapman, whose divorce her husband, lawyer Jack King, was handling.

Judge Douglas, who hasn’t yet testified at the hearing, has denied knowing anything about what her husband was doing then — posting intimate and private pictures of her on an XXX-rated website and encouraging Mr. Chapman to join the couple in a threesome.

But Mr. King did testify late last month, as did Michael Sinclair, a former law partner of both Mr. King and Ms. Douglas, as she then was.

The sum of their evidence, uncontradicted when the hearing stopped, was that Ms. Douglas was completely in the dark about her husband’s activities.

It was, in short, evidence that could be considered favourable to the judge.

And it’s that issue — the duty of independent counsel, as Mr. Pratte saw it, to present all the evidence in the case, whether good or not for

Judge Douglas — which has been at the heart of his ongoing battle with the panel.

Behind the scenes, Mr. Pratte has been wrestling for months with his duty as he sees it — as a prosecutor bound to marshal all the evidence for and against an accused person — and his duty as the panel saw it.

In May, he was so disturbed by a panel ruling — it would have limited him to presenting only the “strongest case possible” against Judge Douglas — that he threatened to quit.

The panel then confirmed that he was right, and that he ought to present all evidence, not just evidence that was unfavourable to the judge.

But with Mr. King and Mr. Sinclair, Mr. Macintosh for the first time rose to question witnesses at the direction of the panel, inquiry chair Catherine Fraser, the Alberta Chief Justice, said at the time, of the panel members, who purportedly had follow-up questions in need of clarification.

By this time, Mr. King and Mr. Sinclair, of course, had already been cross-examined by Mr. Pratte or his associate Kirsten Crain and by Rocco Galati, Mr. Chapman’s lawyer.

And Mr. Macintosh was withering in his questions, particularly of Mr. King, and sometimes sarcastic.

By day’s end, in fact, Judge Douglas’s lawyer, Sheila Block, was so incensed by what happened she asked the panel to recuse itself, or withdraw, on the grounds that it was biased against the judge.

Mr. Pratte stopped short of joining her in the demand that the hearing be stopped, but he formally objected to Mr. Macintosh’s unusually active role and said it violated the CJC’s own rules.

The next day, the panel refused to step down, and the hearing concluded as scheduled, with more witnesses — including Judge Douglas — slated to testify when the proceeding resumed.

But then Mr. Pratte last Monday filed his application for judicial review, and within hours, Ms. Block filed one of her own in Toronto.

She seeks a finding that the way the panel has conducted itself — by ordering Mr. Macintosh to cross-examine Mr. King and Mr. Sinclair in the way he did — “gives rise to a reasonable apprehension of bias” against the judge and renders the panel unable to continue.

It is difficult to imagine why Mr. Pratte’s resignation letter would be deemed a private document.

As independent counsel, Mr. Pratte didn’t work for the inquiry panel. His only “client,” in other words, was the public, “in accordance with the public interest,” which is the principle that guides lawyers who take on such tasks.

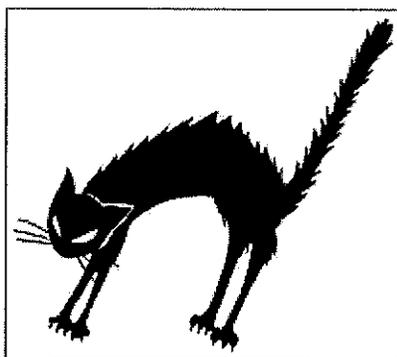
The CJC, its news release Monday said, is looking to appoint a new independent counsel “as soon as possible” so the hearings can continue.

POSTED BY CLARE L. PIEUK AT 5:40 AM 0 COMMENTS LINKS TO THIS POST 

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MONDAY, AUGUST 27, 2012

"Rocky" knocks out "The Cat!"



Good Day Readers:

What we're seeing here is the Canadian Judicial Council's ongoing failure "to get its you know what together."

***"There was a concern that independent counsel might not have fully appreciated their role was to act as an advocate to present the case against the judge," explained the Douglas Inquiry chaired by Alberta Chief Justice Catherine Fraser.***

***"As a result, 'they said "the judges who were the subject of these inquiries had strong representation [from the lawyers retained to defend them] but the case for removal may not have been fully presented." (Counsel rebut CJC criticism - Disagreement over role of independent counsel in past probe of judges: Cristin Schmitx, The Lawyers Weekly, June 8, 2012 Issue)***

So far this Inquiry seems to have had a little something for everyone save for dancing girls which may yet make an appearance before it's over.



Sincerely,  
Clare L. Pieuk



## **Lead lawyer in Manitoba judge sex inquiry quits**

Monday, August 27, 2012

The lead lawyer in the Canadian Judicial Council inquiry looking into a sex scandal involving a Manitoba judge has resigned.

The CJC announced Monday that it has accepted the resignation of Guy Pratte, who was appointed as the independent counsel in the inquiry looking into the conduct of Justice Lori Douglas.

The inquiry has been examining whether Douglas should be removed from the bench over nude photos of her that were posted online by her husband, Winnipeg lawyer Jack King, and over allegations she

was involved with King's solicitation of another man, Alex Chapman, to have sex with her in 2003.

It is looking into what Douglas knew, and whether she should have disclosed the information, when she was applying to be a judge.

She was appointed to the Court of Queen's Bench (family division) in 2005, and later promoted to associate chief justice of the Court of Queen's Bench (family division) in 2009.

Norman Sabourin, the CJC's executive director, would not say why Pratte resigned.

"The important thing now is for us to appoint a new independent counsel," Sabourin told CBC News.

"We want to make sure that the process is not delayed by reason of the change of the person in that position."

### **Photos posted online**

In 2003, Douglas and King were family law lawyers at the same firm when King uploaded the sexually explicit photos, which showed Douglas in bondage gear and performing sex acts, on a website dedicated to interracial sex.

King also emailed photos to Chapman, who had hired King as his divorce lawyer, and asked him to have sex with Douglas.

Chapman complained to the law firm and King settled the matter within weeks by paying Chapman \$25,000 to return all the photos and to never discuss the matter.

Chapman broke that deal in 2010 and complained to the judicial council, insisting Douglas was part of the sexual harassment.

Among the allegations before the inquiry is that Douglas did not disclose the matter when she applied to be a judge. She applied three times before finally being accepted in 2005.

The inquiry, which held hearings earlier this summer, is also examining whether the very existence of the photos precludes Douglas from continuing in her job.

No date has been set yet for the inquiry to continue hearings.

### **Was critical of panel's lawyer**

During the inquiry's latest round of hearings in July, Pratte was critical of how George Macintosh, the lawyer acting on behalf of the inquiry panel, questioned King.

Both Pratte and Sheila Block, the lawyer representing Douglas, said Macintosh was being too aggressive in his questioning of King.

Pratte said the inquiry panel, which includes the chief justices of Alberta, Prince Edward Island and Newfoundland and Labrador, overstepped its bounds by becoming involved in a hearing while also presiding over it.

At the time, Pratte told the panel that if Macintosh's line of questioning did not change, he would remove himself from the inquiry altogether.

Block demanded that the inquiry panel resign based on Macintosh's questioning, which she said showed the panel was biased against Douglas.

Earlier this month, Pratte asked the Federal Court not to end the inquiry, but to prevent Macintosh from asking any more questions and strike his previous questions from the record.

When asked if Pratte's resignation will shake people's confidence in the justice system, Sabourin said that's always a concern.

"I think we want to make sure that the public has confidence in their judiciary," he said.

"The process we have in place is designed to make sure that there is public confidence in the judiciary."

POSTED BY CLARE L. PIEUK AT 3:28 PM 0 COMMENTS LINKS TO THIS POST 

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POSTED BY CLARE L. PIEUK AT 7:56 PM 0 COMMENTS LINKS TO THIS POST 

## Douglas Inquiry Update: Did the Federal Court of Canada and Canadian Judicial Council violate the Charter?

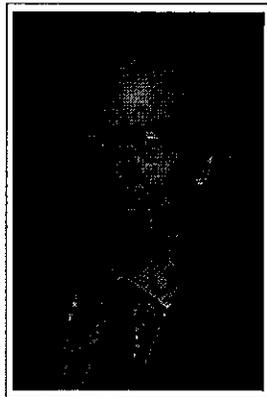
Good Day Readers:

A special thank you to *CyberSmokeBlog* west coast contributor Chris Budgell ([cjbudgell@gmail.com](mailto:cjbudgell@gmail.com)) who sent us the link to this article under the subject line: *And meanwhile at Chaos*

*Headquarters* ..... along with the comments, *The Lori Douglas debacle continues. Sounds like the final scene from a few of my favourite movies.* To which we'd add and on Halloween no less!

Mr. Budgell is a layperson legal researcher par excellence so much so our in-house moniker for him is "Mr. Google."

*CSB* is of the view, the way today's hearing was held raises serious Constitutional and Charter issues, thus, shortly it will be writing to Inquiry Counsel Mr. George Macintosh. The correspondence will be posted, as well as, any response received by the site.



We have had several past dealings with George Macintosh both online and off. You may recall this site's application for citizen intervener standing was turned down. Realistically, unless you are the complainant(s) your chances of being successful are zero and none. While at the Inquiry per se he has always been a gentleman in responding to questions during breaks. Enjoy talking with individuals who were around prior to the advent of the computer.

Citizens for Legal Responsibility  
 Citizens for Responsibility and Ethics in Washington  
 Corrupt Lawyers  
 Crooked Lawyers  
 Defamer  
 Dirty Lawyer Registry - Ontario  
 Ezra Levant  
 He Has No Mandate  
 Injustice Busters  
 Judicial Accountability Initiative Law  
 Judicial Horror Stories  
 Judicial Misconduct  
 Judicial Watch  
 Kangaroo Justice  
 National Coalition for Law Societies Reform  
 No Force, No Fraud  
 Over Lawyered

### PREVIOUS POSTS

A periodic written Oath of Allegiance test for law...  
 Douglas Inquiry Update: It's getting whackier folk...  
 Precisely why the Harper government will be out on...  
 Stephen Harper whips out his CF-18s to show Justin...  
 The Kochs' in Canada!  
 You go girl!  
 All governments are seduced by the expediency of s...  
 How do you know how stupid you are?  
 Drink a little too much eh ...? BTW, how's the pot...

### ARCHIVES

March 2006  
 April 2006  
 May 2006  
 June 2006  
 July 2006  
 August 2006

Please stay tuned.

Sincerely,  
Clare L. Pieuk



## **inquiry into Manitoba judge's sex scandal stuck in legal limbo**

By **Christie Blatchford**, Postmedia News  
October 31, 3012

The federal inquiry into the conduct of Manitoba Associate Chief Justice Lori Douglas is mired in a procedural bog.

That sad truth became undeniable Tuesday as no fewer than 16 lawyers, including some representing the inquiry panel itself and the Canadian Judicial Council that ordered the hearing, took part in a conference call in the Federal Court of Canada before Madam Prothonotary Mireille Tabib.

A prothonotary is a judicial official, akin to a judge, in the Federal Court.

This one had her hands full.

Among the hornet's nest of motions before her was one for one organization (the Attorney General of Canada) to be removed as a respondent to other motions, one for another party (the original complainant who kick-started the whole business) to be added as a respondent and one (from the Superior Courts Judges Association) to be added as an intervener.

It was akin to hearing a joke - a bad one - about lawyers. Question: "How many lawyers does it take to skin a cat?" Answer: "Sixteen, one to do the skinning, 10 to argue if the cat is a victim or a party or a respondent, and five to debate the merits."

The hearing itself, only the ninth in the history of the CJC, was

- September 2006
- October 2006
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- August 2009
- September 2009
- October 2009
- November 2009

examining allegations that nine years ago, before she was named to the bench and as the lawyer she then was, Douglas participated in husband Jack King's sexual harassment of his then client Alex Chapman.

In 2002-03, King had posted intimate pictures of her on a hard-core website and tried to entice Chapman into having a sexual relationship with her; Douglas has always vigorously denied she had any idea what her husband was doing with their private pictures.

Back then, Chapman threatened to sue King and his law firm, settled the complaint for a \$25,000 payout and signed a confidentiality agreement.

But in 2010, Chapman broke the agreement, took his allegations public via the CBC, and expanded them to include Douglas in a formal complaint to the CJC.

The inquiry was the result. The panel, composed of three judges and two lawyers and headed by Alberta Chief Justice Catherine Fraser, began hearing evidence last summer.

The inquiry adjourned, amid heated allegations from Douglas's lawyers that the panel was biased against her, at the end of July when it ran out of scheduled days.

There was optimistic discussion that it might resume this fall.

But in the weeks that followed, the hearing was embroiled in a huge battle over its very integrity, or what some parties allege is the lack of it.

In short order, no fewer than three parties had filed separate applications for judicial review in the Federal Court.

All challenged the panel's impartiality, but the most astonishing one was from Guy Pratte, the panel's so-called "independent counsel," who asked the high court to find the panel had directed its own lawyer, commission counsel George Macintosh, to be too aggressive in his questioning of select witnesses.

Exactly a week later, Pratte abruptly resigned.

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The CJC has refused to release his lengthy resignation letter, even to lawyers at the inquiry.

Since then, allegations have also surfaced that not only did the panel urge Macintosh to be too aggressive with witnesses whose evidence was favourable to Douglas, but also that it simultaneously tried to protect Chapman from too-harsh questioning.

As well, new motions have surfaced.

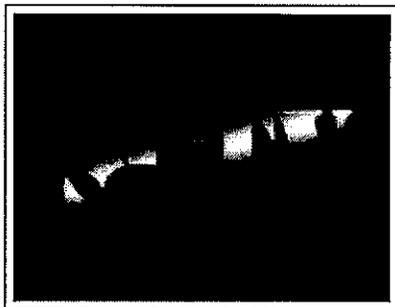
Chapman's lawyer, Rocco Galati, wants his client recognized as a full party at the inquiry. The federal attorney general, named as a respondent in the judicial review applications, wants off the record and for the CJC to be the named respondent, which the lawyers for the CJC oppose. The judges association wants to be added as an intervener.

Meanwhile, of course, Douglas remains in Winnipeg, unable to sit or work, her future in limbo.

Motions resume in Toronto on November 30.

POSTED BY CLARE L. PIEUK AT 2:51 PM 0 COMMENTS LINKS TO THIS POST 

"Ahooooo! ... Ahooooo!" Scary! Scary! Boys and Girls!



Good Day Readers:

Several years ago Toronto's Second City Television (Chicago-based version eventually evolved - Bill Murray, Gildner Radner, etc.) was one of the most popular shows on Canadian Television (1976-1984).

- March 2013
- April 2013
- May 2013
- June 2013
- July 2013
- August 2013
- September 2013
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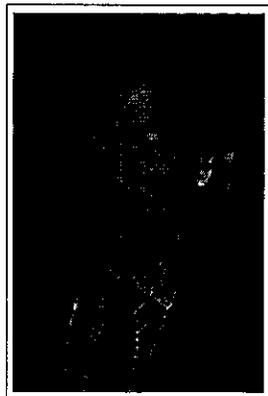


POSTED BY CLARE L. PIEUK AT 9:05 AM 0 COMMENTS LINKS TO THIS POST 

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WEDNESDAY, APRIL 24, 2013

"You're Number One! You're Number One!  
You're Number One! ....."



Good Day Readers:

As is *CyberSmokeBlog's* custom, it likes to regularly surf legal websites and blogs to see what nefarious deeds the legal establish's little critters are up to these days. On one such recent trip *CSB* found:

<http://wwwfarris.com/lawnews/post/bestlawyers-names->

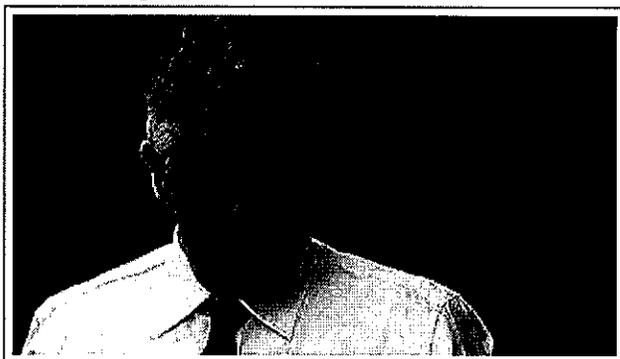
## **george-macintosh-qc-vancouver-2013-legal-malpractice-la/**

As many of you know George Macintosh is Counsel to the Douglas Inquiry. Every time *CyberSmokeBlog* has approached him during breaks or when it unsuccessfully applied for intervener standing, he has always been most accommodating and helpful which has earned him the moniker, "Gentleman George."

Unlike too many lawyers and Crowns *CSB* has had to deal with at The Manitoba Law Courts who seem to possess a misplaced sense of entitlement, Mr. Macintosh is cut from "good black cloth" (Adam Smith, *The Wealth of Nations*) - old school good manners. But he's also good he's very good.

At the behest of the Inquiry Committee, in a move designed to facilitate the process (easier for one person to re-examine a witness than five Panel Members going back and forth), Mr. Macintosh was called upon to re-cross two key witnesses after Independent Counsel Guy "The Cat" Pratte had finished. It seems there was simply too much unanswered or vague testimony left on the table.

One of the re-examines was "Polaroid" Jack King ("Mr. Pictures") married to Manitoba Queen's Bench Associate Chief Justice (Family Division) Lori Douglas.



Too bad cameras are not allowed at the Inquiry. In short, true to his name George Macintosh literally shredded Mr. King on the witness stand doing so in a gentlemanly manner. It was masterful the best *CyberSmokeBlog* has seen to date. What a superb training video it would have made for the boys and girls in law school - *This is how it's done!* narrated by Gentleman George Macintosh.

Is it little wonder shortly thereafter Sheila "The Tank" block lead

Counsel for Ms Douglas' three person taxpayer financed legal team went the equivalent of legally ballistic filing a Motion in the Federal Court of Canada requesting Mr. Macintosh not only be barred from re-examining any remaining witnesses but also asking that the testimony of the two he'd already "scorched" be struck from the record?

Not to be outdone, Complainant Alex Chapman's lawyer Rocco Galati (Mr. Good Guy!) filed his own Motion with the FCC calling for the Canadian Judicial Council to release Mr. Pratte's apparently lengthy resignation letter. He abruptly stepped down as Independent Counsel shortly after the Inquiry recessed during July of last year. Mr. Good Guy too is awaiting a ruling..

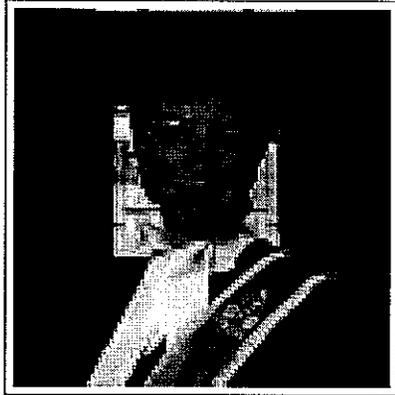


**Alex Chapman (left) and "Mr. Good Guy"**

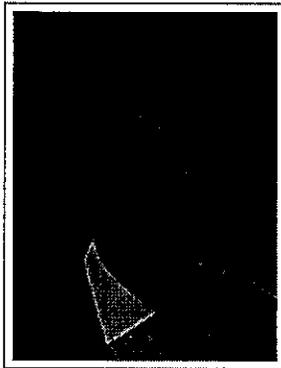


**Inquiry stars "The Cat" (left) and "The Tank"**

All of which brings us to Federal Court of Canada Judge Mireille Tabib who on November 30th of last year was assigned to preside over a full day Hearing of the aforementioned Motions plus a couple others one of which was filed by "The Tank" to quash the Inquiry like a little pain in the ass bug on the basis of an alleged apprehension of bias against her client. So here the "Public" Inquiry sits almost five months later with no update from the CJC's brainchild like a car stalled in neutral.



Readers, meet Mr. John J. L. Hunter of Vancouver BigLaw *Hunter Litigation Chambers*.



On April 14 of this year *CyberSmokeBlog* wrote to Mr. Macintosh (and Stormin' Norman Sabourin, The Council's Executive Director/Senior Legal Council/Head of Gatekeeper Services) pointing out it was rapidly approaching five months and no rulings had yet been handed down on the Motions. Further, given what to most taxpayers would appear to be an inordinate period of time, was the CJC prepared to re-convene without benefit of said rulings while noting in the interim The Council had posted **no updates on its website nor issued any Press Releases?**

Perhaps it's worth noting in the end taxpayers will be footing the bill for the Inquiry's cost and, as such, deserve better service. Gentleman George promptly replied (April 16th - almost same day service just like your shirts!) advising *CSB* he is not Inquiry Council regarding the Federal Court Motions and that we should contact Mr. Hunter which we did the same day. We're still awaiting a reply.

So to you, Sir, we say, "congratulations on your award, and hope to see you at the Inquiry, that is, if it ever resumes."

Sincerely,  
Clare L. Pieuk



## News

31 August 2012

BEST LAWYERS NAMES GEORGE MACINTOSH, Q.C. VANCOUVER'S  
2013 LEGAL MALPRACTICE LAWYER OF THE YEAR

*Best Lawyers*, the oldest peer-review publication in the legal profession, has named **George K. Macintosh, Q.C.** as Vancouver's "Legal Malpractice Law Lawyer of the Year" for 2013.

Only a single lawyer in each community is being honoured as the "Lawyer of the Year" in their respective practice area. The lawyers are recognized as having earned a "high level of respect among their peers for their abilities, professionalism, and integrity."

At the same time, George was selected for inclusion in the seventh edition of *Best Lawyers in Canada* in the practice areas of Bet-The-Company Litigation, Legal Malpractice Law, and Corporate and Commercial Litigation.

George Macintosh leads the litigation group at *Farris* where he has practiced since his call to the Bar of British Columbia. He was appointed Queen's Counsel in British Columbia in 1987, elected as a Fellow of the American College of Trial Lawyers in 1991 and a Fellow of the International Society of Barristers in 2001.

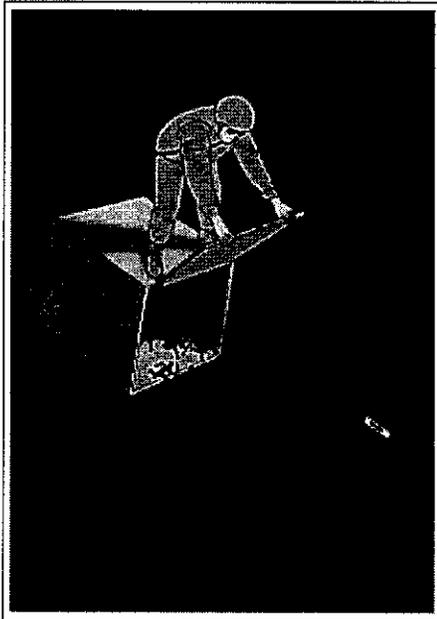


POSTED BY CLARE L. PIEUK AT 10:09 AM 0 COMMENTS LINKS TO THIS POST 

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TUESDAY, APRIL 23, 2013

## "Judge Ron" prepares to open a Canadian judicial Pandora's "Jar!"



**Judge Ron opening his Judicial Pandora's Box on future episodes of *Drive For Justice* as nefarious little legal establishment critters try to make a run for it!**

Good Day Readers:

A couple quick points of explanation. "Judge Ron" is former *Vancouver Sun* Court Reporter Ron Gray narrator for the popular internet series *Drive For Justice* ([www.driveforjustice.com](http://www.driveforjustice.com)). In Episode 30 (*Deep Throat Exposes Koenigsberg's Fraud*) he donned borrowed judicial robes and assumed the role of British Columbia Supreme Court Justice Mary Marvyn Koenigsberg who should have been the subject years ago of a serious Canadian Judicial Council conflict of interest Inquiry years had it been doing its job.



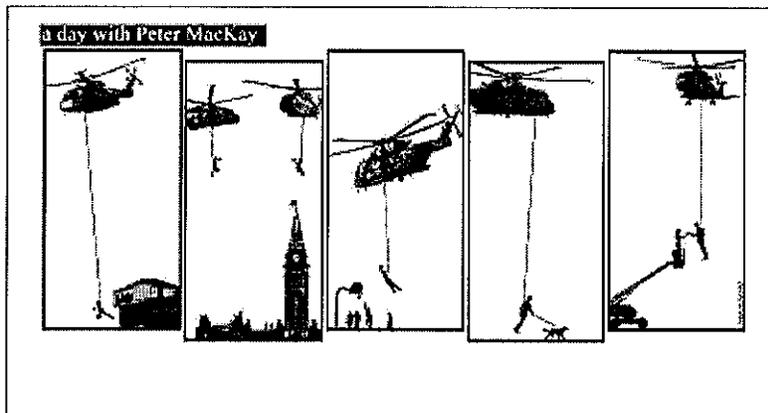
government's intentions to "take direct control of the wages and working conditions of all CBC employees." The majority — 81 per cent — said the CBC should remain independent from government while 12 per cent said they agreed with the government's intentions. The remaining respondents were unsure where they stood on the issue.

Also among survey data were the findings that eight in 10 respondents felt the CBC plays a very or somewhat important role in protecting Canadian culture and that 39 per cent wanted more federal dollars to flow into the CBC.

Friends of Canadian Broadcasting is a non-profit group that operates as a watchdog for the country's audio-visual programming.

POSTED BY CLARE L. PIEUK AT 12:54 PM 0 COMMENTS LINKS TO THIS POST 

## Can "Helicopter Pete" save the mother of all public inquiries?



Good Day Readers:

Will parachuting new Minister of Justice/Attorney General of Canada Peter "Helicopter Pete" MacKay into the Douglas Inquiry really change anything in a Canadian Judicial Council hearing that in the eloquent words of *Trailer Park Boys* Ricky is already "totally ....ed?"

Fancy this. After a Federal Court of Canada judicial review is eventually completed of the apprehension of bias allegation filed by Lori Douglas' taxpayer financed defence "team" such is ruled to be

the case. Then what? A new replacement inquiry panel is re-convened and it's back to square one?

In the alternative, the FCC rules there is no such bias and the inquiry featuring its current cast of players grinds on, and on and on ..... Either way it's taxpayers and not Lori Douglas who are the Big Losers! And what's Helicopter Pete doing while all this is happening?



Sincerely,  
Clare L. Pieuk



## **Tough message directed to AG**

### **"Public interest" is getting short shrift in stalled Douglas inquiry: Justice Snider**

By **Cristen Schmitz**  
July 26, 2013 Issue

A Federal Court judge has warned that it would be “irresponsible” and “close to contempt of court” should the Attorney General of Canada effectively “abdicate” his role as the respondent in a judicial review application launched by a senior Manitoba judge who wants discipline proceedings against her quashed for bias.

On July 12, Justice Judith Snider granted Manitoba Queen’s Bench (Family Division) Associate Chief Justice Lori Douglas’s motion to shut down a Canadian Judicial Council inquiry into Justice Douglas’s conduct until the judge’s bias allegations against the presiding inquiry committee are finally determined as part of her application to Federal Court for judicial review.

Justice Snider also reminded the Attorney General that, as the

respondent, he is obliged to fulfil his role by defending, supporting, explaining or otherwise making arguments with respect to the inquiry committee's refusal to recuse itself a year ago for alleged reasonable apprehension of bias.

At press time, the AG (Rob Nicholson until Peter MacKay replaced him July 15) had been mum on the bias charge. In April, a Federal Court prothonotary declined the AG's request to remove him as the respondent. The AG also took no position on Justice Douglas's request for a temporary stay pending the final outcome of her judicial review application, and consented to appeals of prothonotary rulings barring the inquiry committee's intervention in the judicial review, and restricting the independent counsel's efforts to pick up some of the AG's apparent slack in advocating the public's interest. The controversial inquiry is likely to cost millions.

"As a reluctant respondent, the Attorney General has not been forthcoming on what positions he might take on any particular issue," Justice Snider said. "It is important to note, in spite of this overwhelming silence to date, that we do not know what position the Attorney General may take in the public interest on the merits. We cannot assume that, just because the Attorney General did not oppose the stay, that he will take no position on the judicial review. Indeed, I would view such an abdication as irresponsible, totally contrary to the public interest and close to contemptuous of this court."

Justice Snider upheld prothonotary Mireille Tabib's decision last April not to permit the inquiry committee to intervene since: the tribunal comprising three judges and two lawyers is not better placed than the AG to review and analyze the record before the court; allowing the inquiry to make arguments concerning its own jurisdiction and questioning of witnesses would effectively allow the tribunal to supplement its reasons for refusing to recuse itself for bias; and since its impartiality is directly at issue in the judicial review, it would be harmful if the inquiry committee was perceived as defending its ruling or as adversarial to the judge.

In granting Justice Douglas a temporary stay, Justice Snider accepted that the judge would suffer "irreparable harm to her personal and professional reputation" if the proceedings continued before a tribunal later determined to have a reasonable apprehension of bias. "The sensitive nature of the personal information which may be

disclosed if the proceedings are permitted to continue supports a finding of irreparable harm," she concluded.

Justice Douglas has denied complaints of discrimination and sexual harassment from Alexander Chapman. She is also fighting a charge that nude and sexually explicit photos of her — that she and her husband both say he circulated on the Internet without her knowledge or consent — have damaged her reputation such that she can no longer perform her judicial role.

POSTED BY CLARE L. PIEUK AT 10:23 AM 0 COMMENTS LINKS TO THIS POST 

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FRIDAY, JULY 19, 2013

## "Paging Corporal Greg Horton, Royal Canadian Mounted Police! Paging Corporal Horton!"

Good Day Readers:

Because of significant .... ups recently in the Prime Minister's Office, more and more media attention is being focused on Stephen Harper's inner circle of advisors who undoubtedly influence government decision-making even though they are unelected officials.

Recall how not long ago Corporal Horton filed an affidavit suggesting at least three PMO'ers (Plus God knows who else?) knew of the Wright-Duffy \$90,000 gift even though Stephen Harper has adamantly maintained he was completely oblivious to it until the information was disclosed by the media.

Well, now one of the three has mysteriously disappeared from the Prime Minister's Office. As a public service, let's help Corporal Horton find Christopher Woodcock formerly Director of Issues Management (responsible for putting out fires by reconciling inevitable surprises with the agenda the government is trying to implement).



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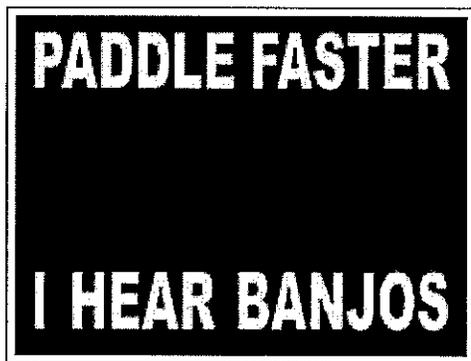
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SATURDAY, NOVEMBER 30, 2013

## Mallick versus Blatchford the duelling banjos!



Good Day Readers:

It seems a tad coincidental that the *Toronto Star's* Heather Mallick and the *National Post's* Christie Blatchford would both have articles today about the moribund Douglas Inquiry. A saving grace is that each have taken a somewhat different approach. If Ms Mallick is to be believed Lori Douglas is the judiciary's answer to Rob Ford while for Ms Blatchford the Canadian Judicial Council's procedures and processes are deeply flawed. Surprise!

Two comments. When the now former Inquiry Committee asked Inquiry Council George "Gentleman" Macintosh from Vancouver BigLaw *Ferris Law* to cross-examine lawyer Jack "Polaroid" King (Lori Douglas' husband now with not so BigLaw Winnipeg's *Petersen King*) - after original Independent Counsel Guy "The Cat" Pratt and Kirsten "The Pain" Crain (BigLaw *Bordon Ladner Gervais* - Ottawa/Montreal/Toronto) had finished, it was with very good cause.

### ABOUT ME

CLARE L. PIEUK  
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Masters Degree (University of Calgary - Economics), Bachelor of Arts (Honours - Carleton University), Diploma Chemical Technology (St. Clair College), Oh yes, almost forgot - one course credit, Wayne State University, Detroit, Michigan

[VIEW MY COMPLETE PROFILE](#)

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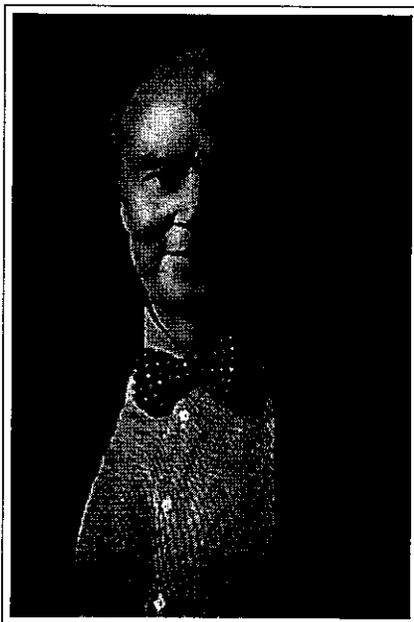
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Manitoba Ombudsman  
Manitoba Human Rights Commission  
Elections Manitoba



**George K. Macintosh, Q.C.**

Way back in July of 2012 when "Gentleman George" finally had at "Polaroid" it seemed every second sentence was, "I can't remember" or "I can't recall" or "I have no recollection" or "I don't know" ..... ad nauseam. Never before has *CyberSmokeBlog* witnessed such memory loss by someone testifying under oath.

From the get go Lori Douglas via her taxpayer funded defence "team" has steadfastly maintained she knew absolutely nothing about the internet pictures it was all the work of her husband but here's where it could get most interesting. Christie Blatchford noted Bill C-13, *Protecting Canadians from Online Crime Act*, is currently before the House of Commons designed to curb the internet distribution of sexually explicit photographs without an individual(s) consent. Undoubtedly, this is a reaction to the proliferation of cyberbullying.

With the Conservatives enjoying a majority, it's likely to pass the required three readings. Hopefully, the Senate will then find the wherewithal to wake up long enough to shake the Mounties' investigation to pass it leaving automatic Royal Assent as the only formality to its passage into law.

[Given the glacial pace at which the Douglas Inquiry is moving could Bill C-13 become law by the time the Inquiry eventually concludes and if so what possible implications could this have for Jack King and his defence?](#)

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It's time for you, Readers, to be the judge and jury. Mallick or Blatchford?

Sincerely,  
Clare L. Pieuk



### **Porn photo judge Lori Douglas just won't go away: Mallick**

**Manitoba judge who was in explicit photos won't quit, and no one can make her go. Meanwhile she's getting paid hundreds of thousands a year to stay at home.**

By **Heather Mallick**, Columnist  
Saturday, November 30, 2013



**Lori Douglas posed for explicit pictures, she says without her knowledge, before she became a judge. She continues to earn \$324,100 plus expenses.**

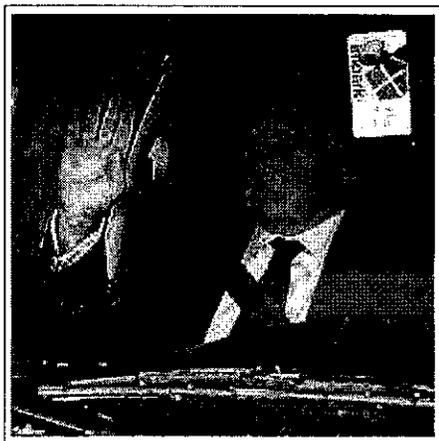
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**Jack King, husband of Manitoba Justice Lori Douglas, posted explicit photos of his wife online in 2003. They're still married.** (John Woods/*The Canadian Press* File Photo)

Manitoba Queen's Bench Justice Lori Douglas is the judiciary's Rob Ford.

She will not resign, no matter how many hearings are held into her deceits, no matter how angry the public is. Judges across Canada — and ethical lawyers hoping to become judges — must be desperately hoping she'll just do the decent thing and go away. She will not.

And as the city of Toronto has learned, there is no way to make an unwanted official depart. She clings to the cliff.

At this point, given that Douglas must know she can never again function as a judge, it is grotesque that she has been sitting at home since September 2010 pulling in a not unpleasant **salary of \$324,100** plus expenses.

The people financially profiting from this ludicrously extended investigation into Douglas's secret history are all on the public tab. No wonder the bright and energetic committee of the Canadian Judicial Council — five senior judges — investigating Douglas resigned en masse November 20, saying the inquiry had gone on for two years and had become excessively time-consuming and expensive. The process may well have to start all over again, with new senior judges.

In the spring, Manitoba Chief Justice Glenn Joyal himself complained to the council about Douglas's **expense claim** for

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therapy. Yes, this happened. She is one of his own judges. No chief justice “can or should be indifferent” to the use of public funds, he said.

It was good to hear.

The problem is not just that Douglas posed for porn photos posted on the Internet in 2003 — she says without her knowledge — by her sinister husband Jack King, but that she said on her application to be a judge that her past was pristine. Then, after an inquiry began, she allegedly altered evidence in her own favour. The list of reasons she cannot be a judge is long.

The inquiry committee, headed by Alberta Chief Justice Catherine Fraser, studied the deeply flawed federal **judicial appointment process**, a gracious and secretive charade that checked no facts and kept no records. At the Winnipeg hearing last year, I heard senior judges search their memories, which were wanting.

It investigated whether Douglas knew that her husband was trying to lure her into sex with his black client. (King, to whom she remains married, is a white lawyer, formerly of Rhodesia. He posted the photos on a website called Dark Cavern, which caters to those hunting for interracial sex.) Douglas did not show up to explain herself.

The committee was populated by brilliant lawyers like its own George Macintosh, whose questioning was as fast and damning as anything in a movie script, and the famously tenacious **Rocco Galati**. And then there were those who were less so, who were petulant and obstructive. But they were all paid well. Time passed.

This week, Douglas’s lawyer has been arguing in **Federal Court** that the committee of judges had no authority to pronounce on Douglas’s conduct.

To which one responds: Who else could do it? Certainly not politicians.

Douglas has been expensing visits to her therapist and flights to Toronto to meet her lawyer. There are shades of the Senate expenses scandal here, people on an ethical borderline. Douglas was said to be

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terribly upset about the committee viewing the porn photos, disregarding the fact that the photos were available online at the time to me and anyone else on the planet who cared to search.

It does not matter whether the poor woman has the right to expense the therapy she doubtless needs. She was sexually humiliated by her awful husband in the most brutal way. I have seen photographs of her manacled to a bed, of her exposing her genitals, both online and via a — careless would be the generous word — display of these photocopied photos in a Winnipeg courtroom by King himself.

Feminists — I am one — have defended Douglas, who has the same right to a thrilling sexual life as we all do. I don't enjoy condemning other women. Women, especially those in the airy professional heights, need support from their sisters. But feminism is not Buddhism, as the feminist Caitlin Moran says, and even a Buddhist would pause over Douglas's tale.

Judges are in a different category. Douglas's own actions fenced in her legal career. She can no longer render judgment in any cases involving, for instance, divorce, privacy, blackmail, non-white defendants, white defendants or the Internet.

She can't even rule on any cases with jail terms, for instance, because a good lawyer might raise the fact that the judge is aroused by handcuffing. Lawyers object to things. It's their job.

Any judgments she made would be appealed, endlessly, just as she is appealing endlessly. A reasonable observer might say that the longer she draws out her case, the longer she earns her massive salary, allowances, expenses and pension rights.

The only good thing to come out of this mess would be a revamped and modernized judicial appointment process that wasn't conducted amid a cozy chatting circle of Winnipeg lawyers, as happened in this case.

Linked in haste, the judiciary and the distraught Douglas must part. A good judge, indeed a good Canadian citizen, would resign.

[hmallick@thestar.ca](mailto:hmallick@thestar.ca)

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## **Christie Blatchford: Handling of Lori Douglas Inquiry into nude photos allegedly damaged integrity of Canadian Judicial Council**

Saturday, November 30, 2013



**In 2002-2003, Jack King had posted intimate pictures of Lori Douglas, left, on the hardcore website and tried to entice Alex Chapman, right, into having a sexual relationship with her; Judge Douglas has always vigorously denied she had any idea what her husband was doing with their private pictures. (CBC; David Lipnowski for *National Post* files)**

The Canadian Judicial Council allegedly has damaged its very integrity and its ability to offer procedural fairness to judges by its handling of the Lori Douglas case.

Ms. Douglas is the Manitoba Associate Chief Justice who remains in limbo as the public hearing into allegations against her collapsed about 16 months ago amid charges the inquiry panel was biased against her.

Judge Douglas is facing four allegations, the most scandalous — and the one that has led to her being described in the cruel shorthand of newspaper headlines as the “nude judge” — that she participated with her lawyer husband Jack King in the sexual harassment of Alex

Chapman, a former client of Mr. King's.

She has always adamantly denied knowing what her husband was doing with their intimate bedroom pictures — he posted them online on a hard-core sex site and tried to engage Mr. Chapman into instigating a sexual relationship with her — and indeed, at the aborted hearing held in Winnipeg in 2012, there was considerable evidence Mr. King had been acting on his own, without Judge Douglas's knowledge or consent.

**Related**

- **Christie Blatchford: Justice Lori Douglas's real sin seems to have been creating awkwardness for her fellow judges**
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- **Christie Blatchford: Manitoba judge's career stalls while possibly biased inquiry into nude photos grinds on**

But in the latest procedural step, her lawyer, Sheila Block, argued this week in Federal Court in Ottawa that not only did the inquiry panel muck up the hearing itself, the CJC by claiming it has a solicitor-client relationship with its "independent counsel" has also vitiated the broader duty of fairness it owes the more than 1,000 federally appointed judges it governs.

The claim of privilege stands in sharp contrast to the CJC's own bylaws and policies, which emphasize that the independent counsel doesn't report to the CJC, take direction from it or owe it the traditional lawyer's duty of loyalty and confidentiality.

The position is also diametrically opposed to what the CJC itself said just three years ago in a report on another disciplinary hearing involving another judge, Paul Cosgrove.

The solicitor-client claim is critical because it means the CJC can give independent counsel "a secret mandate," or marching orders, and then protect the communications detailing the secret orders from disclosure.

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### ***"The strongest case possible***

In fact, Ms. Block told Judge Richard Mosely, that's pretty much what happened in the Douglas case.

The first independent counsel, appointed by the vice-chair of the CJC's judicial conduct committee Neil Wittman, was Guy Pratte.

Even before the hearing began, Mr. Pratte had reason to be concerned: In a ruling, the inquiry committee had ordered him to present "the strongest case possible" against Judge Douglas.

Mr. Pratte objected, noting his role was to act impartially and in the public interest, not as a prosecutor or hired gun.



#### **Guy Pratte resigned from a Canadian Judicial Council hearing examining the conduct of a senior Manitoba judge.**

(David Lipnowski for *National Post*)

He was also directed to add to the formal "notice of allegations" Mr. Chapman's complaint, though it had not been referred to the inquiry panel by the review panel.

(Mr. Chapman, as his testimony at the hearing revealed, is a deeply suspicious, highly litigious man who once sued his own mother and who has a criminal record for arson, theft and uttering threats under his old name — all of which rendered him a rather unreliable fellow in whom to root a complaint of wrongdoing that could see Judge Douglas lose her job.)

The inquiry panel hired George Macintosh as its own lawyer, called committee counsel, and Mr. Macintosh was quickly mired in a new controversy.

Even as the inquiry panel told him on the Q.T. to instruct Mr. Pratte and his co-counsel to “tone down” a determined but hardly harsh cross-examination of Mr. Chapman, it directed Mr. Macintosh to so aggressively cross two witnesses whose evidence was supportive of Judge Douglas — Mr. King and lawyer Michael Sinclair, the managing partner of the firm where Judge Douglas, then a lawyer, and Mr. King both worked — that Ms. Block demanded the committee recuse itself because it was biased against the judge.



**Alex Chapman** (Boris Minkevich/*Winnipeg Free Press*)

The committee refused, evidence continued under protest, and the hearing adjourned as scheduled.

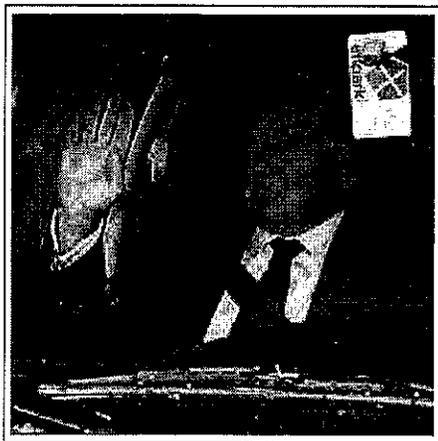
But by August, the thing was wholly off the rails: Both Mr. Pratte and Ms. Block separately applied for judicial review of the panel’s decision, with Ms. Block asking that the inquiry be stopped in its tracks (that was the court proceeding this week).

A week later, Mr. Pratte abruptly resigned.

A new independent counsel was retained, one of her first acts was to withdraw the application for judicial review that Mr. Pratte had filed.

It was when Ms. Block sought to get his letter of resignation — so she

could see why he quit, though everyone who was at the hearing could have guessed — that the CJC asserted solicitor-client privilege for the first time, refusing to disclose the letter on the grounds that it was privileged.



**Jack King leaves court on July 23, 2012. In his two days of testimony, he said that his wife Lori Douglas did not know he posted naked photos of her on the internet.** (Trevor Hagan/*The Canadian Press*)

With the judicial review application looming in Ottawa this week, last week the five-member inquiry panel abruptly resigned in what in a real-world context looked like a snit — a pre-emptive snit at that.

In their 11-page letter, the three judges and two lawyers of the inquiry panel complained that “judges are not entitled to a process that includes unlimited steps and interlocutory privileges for the judge at public expense.”

But since there is no appeal from an inquiry panel decision, it’s hardly a shocker that a judge would fight tooth and nail at every stage of it for a fair shake.

Judge Mosely didn’t indicate Friday when he would release a decision, only that it would need to be in both official languages, which usually tacks on an extra month.

Norman Sabourin, the CJC’s executive director and general counsel, couldn’t say how fast a new inquiry panel could be appointed, only that it’s “likely” there will be one and that it takes time.

All this unfolds as in the background the federal government has moved to criminalize the non-consensual distribution of “intimate images.”

There are many involved in the Lori Douglas case, starting but not ending with her husband and Mr. Chapman, who have had a go at that sort of shameful conduct.

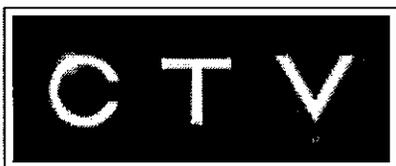
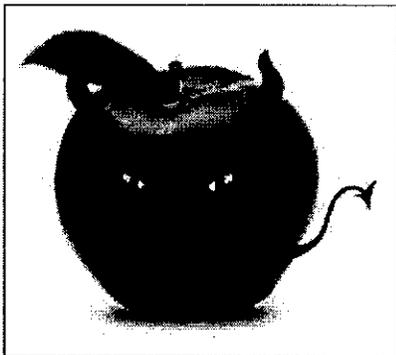
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FRIDAY, NOVEMBER 29, 2013

Rotten to the core?





TAB2

**CANADIAN JUDICIAL COUNCIL**

**COMPLAINT REGARDING  
ASSOCIATE CHIEF JUSTICE LORI DOUGLAS**

**SUBMISSIONS OF THE RESPONDENT, DOUGLAS, ACJ  
ON THE MOTION TO SET THE VENUE FOR PRELIMINARY MOTIONS  
SCHEDULED FOR OCTOBER 27-29, 2014**

October 8, 2014

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## **PART I - OVERVIEW**

1. These submissions are intended to aid the Committee in its determination of the appropriate venue of the Preliminary Motions to be heard October 27-29, 2014.
2. Contrary to Independent Counsel's submissions, this Committee has not yet determined the appropriate venue for the Preliminary Motions. Accordingly, this Committee is entitled to set the location of the Preliminary Motions with a view to all of the relevant factors, including the public interest, efficiency, and cost.
3. Douglas, ACJ submits that neither the public interest, efficiency, or cost favour hearing the Preliminary Motions in Winnipeg, for the following reasons:
  - (a) the events underlying the Allegations are neither solely nor particularly tied to Winnipeg;
  - (b) the case has national implications for judicial conduct, the independence of the judiciary and the treatment of victims of non-consensual distribution of intimate images, and there is no particular regional interest justifying a hearing in Winnipeg;
  - (c) the Preliminary Motions will be heard in open court, and will undoubtedly be covered by the national and Winnipeg media alike;
  - (d) holding the Preliminary Motions in Winnipeg would cause harm to Douglas, ACJ, the community and the administration of justice; and
  - (e) cost and convenience favour hearing the Preliminary Motions in another location.
4. Independent Counsel's objection to hearing the Preliminary Motions outside of Winnipeg rests primarily on the basis of the open court principle. This principle will be observed wherever the Preliminary Motions are held. Accordingly, there is no public interest reason to hold the hearings in Manitoba, and this Committee is entitled to set the venue for the Preliminary Motions with regard to the public interest, cost, convenience, and minimizing harm to Douglas, ACJ and the Winnipeg community.

## PART II - FACTS

### **Background to the Previous Inquiry Committee Proceedings**

5. The allegations against Douglas, ACJ stem from the improper distribution by others of private photographs taken before Douglas, ACJ was appointed a judge. Although Ms. Douglas knew her husband, Jack King, had taken photos for his own use, she did not know that, in 2002 and 2003, he posted some of the photographs he had taken of her on a Texas-based, members-only, password protected internet site and provided to his client, Alexander Chapman, some of these photographs in digital form by email.<sup>1</sup> Pursuant to a settlement between Chapman and King, Chapman agreed to either return or destroy the photographs.<sup>2</sup> Unbeknownst to Ms. Douglas or King, Chapman wrongfully retained the photographs. In 2010, Chapman distributed the photographs without Douglas, ACJ's consent, including by sending them to the Canadian Broadcasting Corporation and posting them on a website hosted in Sweden.<sup>3</sup>

6. Chapman made a complaint to the Canadian Judicial Council located in Ottawa, triggering the complaints process that resulted in the constitution of the previous Inquiry Committee proceedings.

### ***Previous Independent Counsel's Notice of Allegations***

7. The NOA presented by Mr. Pratte did not include the allegation that Douglas, ACJ had sexually harassed Chapman. That allegation had not been referred by the Review Panel to the Inquiry Committee. Without seeking submissions from counsel, the Inquiry Committee directed previous Independent Counsel to add the Chapman complaint to the NOA.

### **The 2012 Hearing**

8. The public hearings of the Inquiry Committee began on May 19, 2012 in Winnipeg. Over the course of the hearings there was significant attention from national media, such as The Toronto Star, The Globe & Mail, The National Post and newspapers across the country.

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<sup>1</sup> Affidavit of William Gange sworn September 30, 2014 ("Gange Affidavit"), paras. 4-6, Douglas ACJ's Motion Record on the Motion to Strike ("MTS Record"), Vol. 1, Tab 3.

<sup>2</sup> Gange Affidavit, paras. 9-10, Ex. B, MTS Record, Vol. 1, Tabs 3, 3B.

<sup>3</sup> Gange Affidavit, paras. 18-19, MTS Record, Vol. 1, Tab 3.

9. The first day of the hearing was preoccupied with various applications for standing from members of the public, and was described by one columnist in attendance as a “circus”.<sup>4</sup> Among others, the complainant, Alex Chapman, brought an application for standing at the Inquiry. On June 25, 2012, and over the objection of both Douglas, ACJ’s counsel and Independent Counsel, the Inquiry Committee granted limited standing and funding to permit Chapman to have his own lawyer – Rocco Galati – appear and examine witnesses at the hearing relating to the harassment allegation.<sup>5</sup>

10. The Inquiry Committee also heard applications for standing from two disgruntled litigants who had appeared before Douglas, ACJ in matters unrelated to the allegations. One litigant alleged that she had been “sexually discriminated against” by Douglas, ACJ, and that Douglas, ACJ had not viewed the evidence in her case “impartially”.<sup>6</sup> She acknowledged that she had complained to the CJC and that the CJC had informed her that the complaint was outside of its mandate.<sup>7</sup> In light of the public and media in attendance at the hearing, it became necessary for Douglas, ACJ’s counsel to clarify on the record that comments made by members of the public who sought to air their grievances before the Inquiry Committee, as well as formal complaints and allegations are not to be treated as evidence or facts. It was necessary to address the unproven nature of the comments being made by members of the public in the proceedings in order to prevent the damage and unfairness that could result from such allegations being reported as facts by the media.<sup>8</sup>

11. Another disgruntled litigant sought standing “as a member of the public who [was] very, very concerned about the moral integrity of judges”, but later stated that her ex-husband had been represented by Jack King in family law proceedings and that she had “lost [her] relationship [with her] children” as a result of those proceedings.<sup>9</sup> She stated that she sought standing because

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<sup>4</sup> Affidavit of Lara Guest sworn October 8, 2014 (“Guest Affidavit”), Ex. A, Douglas ACJ’s Motion Record (“Motion Record”), Tab 1A.

<sup>5</sup> Inquiry Committee Ruling on Alex Chapman’s Standing and Funding, para. 27, Guest Affidavit, Ex. E, Motion Record, Tab 1E.

<sup>6</sup> Transcript of the Inquiry Committee Hearing held May 19, 2012 (“May 19 Transcript”), pp. 20-21, Guest Affidavit, Ex. B, Motion Record, Tab 1B.

<sup>7</sup> *Ibid.*, p. 21.

<sup>8</sup> *Ibid.*, pp. 27-28.

<sup>9</sup> *Ibid.*, pp. 29, 31.

“it is very concerning to me that there are people in this position of power, like Lori Douglas, with this—these allegations of, to me, immorality that are judging over other mothers, like myself, and children’s lives and that is where I am concerned—based on my own lived experience...”<sup>10</sup> The Chair of the Inquiry Committee felt it necessary to clarify to the gallery that the proceedings were not “an open mike [*sic*] session where we hear from individuals generally about any concerns that they have about the justice system, or, indeed, about the judge whose conduct we’re inquiring into.”<sup>11</sup>

12. Subsequently, the Inquiry Committee twice heard submissions for intervener standing by a self-described “tax-paying citizen/media citizen journalist/blog master” who stated that he therefore had an interest “in representing the public interest.”<sup>12</sup> The previous Inquiry Committee received evidence that the blogger had commented approvingly on a nude painting purporting to be of Stephen Harper and then solicited his readers to commission nude pictures of their members of Parliament for public distribution. He further acknowledged that he viewed the intervention application process as a game and that he intended to seek intervener status in other CJC proceedings in Vancouver. The blogger used the Committee’s time during the hearing of preliminary motions to seek constructive feedback to improve his application for his subsequent attempts to intervene in judicial conduct inquiries.<sup>13</sup>

13. The disruptions from members of the public in Winnipeg continued even during opening statements before the previous Inquiry Committee. Immediately following counsel’s opening statement of behalf of Douglas, ACJ, a member of the public attempted to ask questions of counsel and the Committee on the basis that “it’s a public inquiry.” The Committee again spent time explaining that the structure of the hearing did not “include having individuals come up to the mic to ask individual lawyers, whether the lawyers or members of the committee, to answer

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<sup>10</sup> *Ibid.*, p. 31.

<sup>11</sup> *Ibid.*, p. 30.

<sup>12</sup> *Ibid.*, p. 51.

<sup>13</sup> Transcript of the Inquiry Committee Hearing held June 25, 2012 (“June 25 Transcript”), p. 204, Guest Affidavit, Ex. C, Motion Record, Tab 1C; CyberSmokeBlog Posts dated May and June 2012, Guest Affidavit, Ex. G, Motion Record, Tab 1G.

questions.” This explanation was immediately followed by a request by the blogger who had been denied intervener standing to comment on the opening statements made by counsel.<sup>14</sup>

14. As counsel for Douglas, ACJ submitted to the previous Inquiry Committee in the course of those preliminary motions, the disgruntled litigants and citizen bloggers who attended the hearing in Winnipeg sought to use the public forum of the hearing to interject unfounded allegations unrelated to the case to be heard by the Committee.<sup>15</sup> Such interjections delayed the proceedings and carried the potential to abuse the inquiry process and prejudice Douglas, ACJ.

### **The Preliminary Motions**

15. On October 1, 2014, Douglas, ACJ filed her motion to strike the Allegations and to have the private photographs declared inadmissible and returned to her possession (the “Preliminary Motions”). These submissions address where the Preliminary Motions should be heard.

## **PART III - ARGUMENT**

16. Contrary to Independent Counsel’s submissions, this Committee has not yet determined the appropriate venue for the Preliminary Motions. There is accordingly no burden on Douglas, ACJ “to establish a reasonable apprehension that the coming hearings cannot take place in a serene environment.”<sup>16</sup> Rather, this Committee is entitled to set the location of the Preliminary Motions with a view to all of the relevant factors, including the public interest, efficiency, and cost. In any event, these “balance of convenience” factors are the same as those that are to be considered by this Committee on a motion for a change of venue.<sup>17</sup>

17. Douglas, ACJ submits that none of the relevant factors favour hearing the Preliminary Motions in Winnipeg:

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<sup>14</sup> Transcript of the Inquiry Committee Hearing held June 26, 2012 (“June 26 Transcript”), pp. 311-313, Guest Affidavit, Ex. D, Motion Record, Tab 1D.

<sup>15</sup> June 25 Transcript, p. 239, Guest Affidavit, Ex. C, Motion Record, Tab 1C.

<sup>16</sup> Independent Counsel’s Written Representations on the Venue of the Preliminary Motions dated October 6, 2014, para. 42.

<sup>17</sup> *Manitoba Court of Queen’s Bench Rules*, Man Reg. 553-08, rr. 14.08(6), 47.02; *Sandney v. Sandney*, 1998 CarswellMan 289 at paras. 16, 19 (Q.B.), Douglas ACJ’s Book of Authorities (BOA), Tab 1; *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 13.1.02; *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 16(3) [*Federal Courts Act*].

- (a) the events underlying the Allegations are neither solely nor particularly tied to Winnipeg;
  - (b) the case has national implications for judicial conduct, the independence of the judiciary and the treatment of victims of non-consensual distribution of intimate images, and there is no particular regional interest justifying a hearing in Winnipeg;
  - (c) the Preliminary Motions will be heard in open court, and can be covered by the national and Winnipeg media alike;
  - (d) holding the Preliminary Motions in Winnipeg would cause harm to Douglas, ACJ, the community and the administration of justice; and
  - (e) the costs and inconvenience associated with hearing the Preliminary Motions in Winnipeg militate against setting the venue in that location.
18. These factors are discussed in more detail below.

**A. The Events Underlying the Allegations are not Tied Solely to Winnipeg**

19. The events underlying the allegations in this Inquiry (the Judge's completion of her application for judicial appointment, the availability of the photographs on the Internet, and a teleconference between Douglas, ACJ and Independent Counsel), are neither solely nor particularly tied to Winnipeg. Accordingly, there is no reason to assume that Winnipeg is the appropriate venue to hear the Preliminary Motions.

20. *Allegation 1 has no particular connection to Winnipeg.* Allegation 1 relates to Douglas, ACJ's alleged failure to disclose certain facts on her application for judicial appointment. The mere fact that Douglas, ACJ completed her application to become a federally-appointed judge in Winnipeg is insufficient to support Independent Counsel's assertion that the Preliminary Motions should be held in Winnipeg (nor does the fact that the application was sent to Ottawa for consideration by the Minister of Justice dictate that the Preliminary Motions be held in Ottawa).

21. *Allegation 2 has no particular connection to Winnipeg.* Allegation 2 relates to the fact that "graphic photos of a sexual nature" of Douglas, ACJ have been posted by others on the

internet.<sup>18</sup> The facts underlying this allegation have little connection to Winnipeg – indeed, the evidence suggests that the websites on which the photographs were posted are hosted in Texas (with respect to King’s posting in 2003)<sup>19</sup> and Sweden (with respect to the 2010 posting that occurred after Chapman threatened King with posting if he did not relinquish his claim for costs).<sup>20</sup>

22. *Allegation 3 has no particular connection to Winnipeg.* Allegation 3 relates to a teleconference between Douglas, ACJ and the previous Independent Counsel. Again, the facts underlying this allegation have no particular connection to Winnipeg justifying Independent Counsel’s argument that the Preliminary Motions should be heard in that jurisdiction. The teleconference took place between previous Independent Counsel in Ottawa and Montreal, Douglas, ACJ in Winnipeg, and counsel for Douglas, ACJ in Toronto.

23. *No Chapman complaint.* The facts underlying the alleged harassment of Chapman are not in issue in this Inquiry. The previous Inquiry Committee’s consideration of whether there is an under-resourced complainant in Winnipeg who may seek standing is of no relevance to the current proceedings. Almost all of the proceedings of the previous Committee on May 19, June 25-26, and July 16-27, 2012 dealt with the Chapman complaint, which is no longer an allegation being pursued. No live evidence is to be heard at the Preliminary Motions. Accordingly, there is no concern that a party’s or witness’s ability to participate in the Preliminary Motions will be prejudiced by setting the venue outside Winnipeg.<sup>21</sup>

## **B. This Case has National, not Regional, Implications**

24. The issues that arise in this Inquiry are of national importance, and the Inquiry proceedings concern a federally-appointed judge. The proceedings are undertaken by the CJC, a national body headquartered in Ottawa, which oversees judges across the country. Both of these factors attenuate Independent Counsel’s assertion that the Preliminary Motions must be held in Winnipeg.

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<sup>18</sup> Notice of Allegations, para. 7.

<sup>19</sup> Domain Registry Search dated October 7, 2014, Guest Affidavit, Ex. F, Motion Record, Tab 1F.

<sup>20</sup> Gange Affidavit, para. 19, MTS Record, Vol. 1, Tab 3.

<sup>21</sup> *Ridley v. Ridley* (1989), 37 C.P.C. (2d) 167 at para. 20 (Ont. H.C.J.), BOA, Tab 2.

25. *The issues are of national importance.* The issues that will be considered in the Preliminary Motions – namely, whether a person is incapacitated from the due execution of the office of a judge because intimate photographs of that judge have been made publicly available without that person’s consent, or because that person does not disclose in the judicial appointments process that she was the victim of such conduct – are issues of national importance with implications for the independence of the judiciary and the integrity of the system of justice as a whole. These are not issues of peculiar importance to Winnipeg residents – indeed, their national importance is underscored by the fact that the previous proceedings attracted significant coverage from the national media.

26. *Douglas, ACJ is a federally-appointed judge.* This Inquiry concerns a federally-appointed judge. It is undertaken by a delegated body of the Canadian Judicial Council, the national administrative body charged with oversight of all federally-appointed judges (including members of the Federal Court and the Supreme Court of Canada), with its head office in Ottawa. The work of the CJC and this Inquiry Committee is not akin to the laying of an indictment to be heard by a provincial court with limited territorial jurisdiction. The ultimate decision as to removal in the judicial discipline process is made by Parliament, by way of a joint sitting in Ottawa.

27. In determining the appropriate venue in which the CJC should hear its proceedings, analogy may be drawn to its supervisory court. As a “federal board, commission, or other tribunal”, the Federal Court is charged with judicial review oversight of CJC decisions.<sup>22</sup> The Federal Court has jurisdiction to consider cases where (i) there is a statutory grant of jurisdiction by the Federal Parliament; (ii) there is an existing body of federal law which essential to the disposition of the case; and (iii) the law on which the case is based is the “law of Canada” as the phrase is used in s. 101 of the *Constitution Act, 1867*.<sup>23</sup> It may sit “at any time and at any place in

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<sup>22</sup> *Douglas v. Attorney General*, 2014 FC 299 at paras. 124-126, BOA, Tab 3 (under appeal to the Federal Court of Appeal) [*Douglas Judicial Review*].

<sup>23</sup> *ITO-Int. Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 2 S.C.R. 752 at 766, BOA, Tab 4.

Canada”<sup>24</sup> – the place of sitting is arranged to “suit, as nearly as may be, the convenience of the parties”.<sup>25</sup>

28. Further, various steps in any case before the Federal Court may take place in different locations within Canada. The application for judicial review in respect of the previous Inquiry Committee’s decision not to recuse itself is an apt example. The previous Inquiry Committee made its decision in Winnipeg. In the judicial review, one motion was heard in Toronto, other motions and the application itself were heard in Ottawa, and the Federal Court of Appeal has proposed to hear the upcoming appeal in Montreal.<sup>26</sup> The venues for those proceedings were set in consideration of the convenience of the parties and the Courts, and the availability of judicial resources. Like the Federal Court, this Inquiry Committee may sit anywhere in the country, and has discretion to determine where it may sit with regard to the convenience of its members and the parties.

### **C. The Motions will be Heard in Open Court**

29. Independent Counsel appears to conflate the issue of venue with the open court principle, particularly in her submission that the harm that will be done to Douglas, ACJ and her family “is not sufficient to counterbalance the public interest imperatives which dictate that the hearings be held in Winnipeg.” Douglas, ACJ acknowledges the importance of the open court principle to the administration of justice, and that the Preliminary Motions will be heard in open court.<sup>27</sup>

30. Media access is “fundamentally important” to preserving the open court principle.<sup>28</sup> These proceedings have attracted significant attention from the Canadian media.<sup>29</sup> To the extent that the Preliminary Motions may attract attention of the public, interested individuals in Manitoba and across Canada can easily follow the proceedings through various media outlets whether they are being reported from Winnipeg or elsewhere.

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<sup>24</sup> *Federal Courts Act*, s. 15.

<sup>25</sup> *Federal Courts Act*, s. 16(3).

<sup>26</sup> *Douglas Judicial Review*, BOA, Tab 3.

<sup>27</sup> *Nova Scotia (AG) v. MacIntyre*, [1982] 1 S.C.R. 175 at 186, BOA, Tab 5.

<sup>28</sup> *Edmonton Journal v. Alberta*, [1989] 2 S.C.R. 1326 at 1339, BOA, Tab 6 [*Edmonton Journal*].

<sup>29</sup> *Canadian Judicial Council Inquiry and Investigation By-laws*, S.O.R./2002-371, s. 6(1).

31. Independent Counsel acknowledges (at paragraph 25 of her written representations) the “practical reality” that “[i]t is only through the press that most individuals can really learn of what is transpiring in the courts...”,<sup>30</sup> but asserts that a “Manitoba resident” should not be precluded from attending the hearing in person in Winnipeg.<sup>31</sup> As set out above, this case has national implications and has drawn national interest. There may well be individuals in every province who would attend the Preliminary Motions if they were held in their hometowns. The potential interest of a small number of individuals in any particular city should not be determinative of the venue for the Motions when the other factors set out in this submission militate so strongly against holding the proceeding in Winnipeg.

**D. Holding the Motions in Winnipeg Would Cause Harm**

32. As set out above, this Committee has not yet determined the appropriate venue for the Preliminary Motions, and there is no burden on Douglas, ACJ “to establish a reasonable apprehension that the coming hearings cannot take place in a serene environment.”<sup>32</sup> In any event, there is ample evidence from the context of the previous Inquiry Committee proceedings (set out above at paragraphs 8-13) that Winnipeg will not be a “reasonably serene environment” in which to conduct the Preliminary Motions, and that holding the Preliminary Motions in that location will result in harm to Douglas, ACJ and the community.<sup>33</sup>

*Harm to Douglas, ACJ if the Motions are heard in Winnipeg*

33. Holding the Preliminary Motions in Winnipeg would cause significant harm to Douglas, ACJ without substantially enhancing the public interest. The Federal Court has commented that irreparable harm has already been caused to Douglas, ACJ by virtue of the forced disclosure of Douglas, ACJ’s intensely private information.<sup>34</sup> The harm caused by a process that involves the further re-victimization of Douglas, ACJ by the use, viewing, or discussion of the non-consensually distributed photos is demonstrated in the evidence filed in support of the

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<sup>30</sup> *Edmonton Journal* at 1340, BOA, Tab 6.

<sup>31</sup> Independent Counsel’s Written Representations on the Venue of the Preliminary Motions dated October 6, 2014, paras. 25-26.

<sup>32</sup> Independent Counsel’s Written Representations on the Venue of the Preliminary Motions dated October 6, 2014, para. 42.

<sup>33</sup> *R. c. Charest*, [1990] J.Q. no. 405 at para. 112 (C.A.), BOA, Tab 7.

<sup>34</sup> *Douglas v. Attorney General (Canada)*, 2013 FC 776 at para. 29, BOA, Tab 8.

Preliminary Motions. The Independent Counsel and the Inquiry Committee ought to seek to avoid contributing to such re-victimization and harm and to respect Douglas, ACJ's privacy and dignity. While the disclosure of certain personal information in the Preliminary Motions is unavoidable, there is potential to *create* additional harm if the proceedings are held in Winnipeg, where Douglas, ACJ and her family reside and where they may be sought out or cornered by members of the public or media. Holding the Preliminary Motions in a venue some distance from Douglas, ACJ's home may assist in preventing more of the deep disruption that these proceedings have had on her and her family's lives.

34. Avoiding unnecessary harm to Douglas, ACJ in selecting the venue for the Preliminary Motions is consistent with Independent Counsel's mandate. The Policy on Independent Counsel instructs that in adopting positions on the issues in the Inquiry "it must be kept in mind that the judge could continue to serve as a judge in the future" and therefore "expressions about the judge's credibility or motives should be carefully considered."<sup>35</sup> Inherent in this reminder to Independent Counsel is the reality that harm to the system of justice and judicial independence could be inflicted by unnecessary damage to the respondent judge's reputation in the event the judge continues to serve after the Inquiry concludes. Ensuring public confidence in the judiciary requires that unnecessary reputational damage to the respondent judge be avoided through a dignified proceeding. This is an important goal for both the CJC and Douglas, ACJ. Holding the Preliminary Motions outside of Manitoba will assist in achieving this goal.

***Harm to the Community and the Administration of Justice if the Motions are heard in Winnipeg***

35. Further, holding the Preliminary Motions in Winnipeg would harm that community and the administration of justice. The previous Inquiry Committee's proceedings, held in Winnipeg, were described by one columnist as a "circus".<sup>36</sup> As described above, a handful of disgruntled and disruptive individuals in Winnipeg attempted over the course of several days to interrupt the proceedings, provide their views on issues completely unrelated to the Committee's task (and prejudicial to Douglas, ACJ), offer commentary on unproven allegations, and question counsel on their opening statements. These interjections distracted the focus of the Inquiry, wasted time

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<sup>35</sup> Canadian Judicial Council *Policy on Independent Counsel*, BOA, Tab 9.

<sup>36</sup> Guest Affidavit, Ex. A, Motion Record, Tab 1A.

in the proceedings and may have prejudiced Douglas, ACJ in view of other members of the public in the gallery or through media reporting of the unfounded assertions that were offered. Those individuals are not representative of the public interest that the open courts principle seeks to promote. Rather, they were disgruntled family law litigants and a local blogger with vendettas against the justice system and local public figures. Holding the proceedings elsewhere would allow greater focus on the important issues raised in the Preliminary Motions, rather than promoting the element of local spectacle that occurred in the previous proceedings in Winnipeg.

36. Independent Counsel argues that the Motions should be heard in Winnipeg in order to permit “non-traditional media sources that emanate from concerned individuals in the community who cannot afford to travel to the hearings” to provide coverage.<sup>37</sup> The blogger who sought intervener standing is an example of such non-traditional media. That individual consumed considerable time during the 2012 hearing, through repeated applications to intervene, purported procedural challenges, and attempts to insert unsolicited comments on counsel’s opening statement into the public record. Conversely, the blogger covered the judicial review proceedings that arose from the previous Inquiry Committee’s process but which were heard in Ontario with the same regularity and detail, without attending personally and causing disruption and distraction.<sup>38</sup>

37. Independent Counsel relies on her predecessor’s submissions that a substantial part of the damages were sustained in Winnipeg, “referring to harm to Mr. Chapman but also to reputational harm to the local judiciary and to the dignity of the office of the judge.”<sup>39</sup> No harm to the local judiciary or the dignity of the office of the judge as a result of the allegations has been established. However, the Preliminary Motions themselves, and the evidence filed in support of those Motions, address the harm that can be done to the administration of justice, public confidence in the judiciary and to Douglas, ACJ and other women if the Allegations put forward by Independent Counsel are permitted to proceed to a hearing. That harm must be considered in determining where to set the venue for these Motions.

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<sup>37</sup> Independent Counsel’s Written Representations on the Venue of the Preliminary Motions dated October 6, 2014, para. 30.

<sup>38</sup> CyberSmokeBlog Posts dated August 2012 to November 2013, Guest Affidavit, Ex. H, Motion Record, Tab 1H.

<sup>39</sup> Independent Counsel’s Written Representations on the Venue of the Preliminary Motions dated October 6, 2014, para. 7.

38. The sensationalized nature of the previous Inquiry Committee's proceedings are a caution to this Inquiry Committee. Douglas, ACJ seeks a dignified, respectful process which minimizes the damage of the proceeding to her family, her personal well-being, and the community. Indeed, the Preliminary Motions are designed to address the important issues at stake in this proceeding in such a dignified and respectful manner; determining an appropriate venue for these Motions is an important step to achieving this end.

**E. The Expense and Location of Participants Militates Against Winnipeg**

39. If the Motions are held in Winnipeg, Independent Counsel, Committee Counsel, all of the members of the Committee, representatives of the CJC, and Justice Douglas's counsel would have to travel to participate. It would be cost effective and convenient if at least one of the participants in the Motions did not have to transport lawyers and material to another location for the Motions, book accommodations and incur other associated travel and food costs. No *viva voce* evidence will be given on the Preliminary Motions; accordingly, there is no concern that potential witnesses from Winnipeg will be inconvenienced.

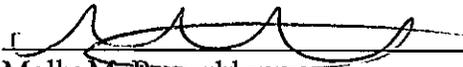
40. Proportionality and efficiency weigh in favour of holding the Motions in a jurisdiction closer to where most of the counsel and the Committee Members are located. Douglas, ACJ proposes that the Preliminary Motions be heard in Toronto, or Montreal, cities which are between the two coasts from which Ms. Brothers and Cullen, ACJ will be travelling, more accessible for the Chair of the Committee and where Independent Counsel and Douglas, ACJ's counsel have offices. Alternatively, the Motions could be heard in Ottawa, where the CJC is headquartered.

**PART IV – CONCLUSION**

41. Douglas, ACJ respectfully requests that the Preliminary Motions be heard in Toronto, Montreal, Ottawa or some other jurisdiction outside of Manitoba.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
\_\_\_\_\_  
Sheila Block

  
\_\_\_\_\_  
Molly M. Reynolds

  
\_\_\_\_\_  
Sarah Whitmore

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**APPENDIX A  
Statutory Provisions**

***Manitoba Court of Queen's Bench Rules, Man Reg. 553-08***

**Transfer by defendant**

**14.08 (1)** Where an action is commenced in a centre other than the judicial centre nearest the place,

- (a) where the cause of action, in whole or in part, arose;
- (b) where a defendant resided at the time the proceedings were commenced; or
- (c) where a defendant carried on business at the time the proceedings were commenced;

a defendant may, by requisition, require the registrar at the center in which the action was commenced to transfer the action to the judicial centre nearest one of the places referred to in clauses (a), (b) or (c).

**Transfer ordered by court**

**14.08 (6)** Notwithstanding subrule (1), the court may on motion and at any time order that an action be transferred to any judicial centre which better serves the convenience of the parties.

**Order changing place of trial**

**47.02** A judge may, on motion, order that the trial be held at a place other than that required by rule 47.01 where the judge is satisfied that,

- (a) the balance of convenience substantially favours the holding of the trial at another place; or
- (b) it is just that the trial be held at another place.

***Rules of Civil Procedure, R.R.O. 1990, Reg. 194***

**PLACE OF COMMENCEMENT**

**Statute or Rule Governing Place of Commencement, Trial or Hearing**

**13.1.0 (1)** If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process.

**Choice of Place**

**(2)** If subrule (1) does not apply, the proceeding may be commenced at any court office in any county named in the originating process.

## **TRANSFER**

### **Motion to Transfer to Another County**

**13.1.02 (1)** If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced.

**(2)** If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

(a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or

(b) that a transfer is desirable in the interest of justice, having regard to,

(i) where a substantial part of the events or omissions that gave rise to the claim occurred,

(ii) where a substantial part of the damages were sustained,

(iii) where the subject-matter of the proceeding is or was located,

(iv) any local community's interest in the subject-matter of the proceeding,

(v) the convenience of the parties, the witnesses and the court,

(vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

(vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,

(viii) whether judges and court facilities are available at the other county, and

(ix) any other relevant matter.

**(3)** If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications.

### ***Federal Courts Act, R.S.C. 1985, c. F-7***

#### **Sittings of the Federal Court**

**15. (1)** Subject to the Rules, any judge of the Federal Court may sit and act at any time and at any place in Canada for the transaction of the business of the court or any part of it and, when a judge so sits or acts, the judge constitutes the court.

#### **Arrangements to be made by Chief Justice of the Federal Court**

**(2)** Subject to the Rules, the Chief Justice of the Federal Court shall make all arrangements that may be necessary or proper for the holding of courts, or otherwise for the transaction of business of the Federal Court, and the arrangements from time to time of judges to hold the courts or to transact that business.

### **Hearings in different places**

(3) The trial or hearing of any matter in the Federal Court may, by order of that court, take place partly at one place and partly at another.

### **Sittings of the Federal Court of Appeal**

16. (1) Except as otherwise provided in this Act or any other Act of Parliament, every appeal and every application for leave to appeal to the Federal Court of Appeal, and every application for judicial review or reference to that court, shall be heard in that court before not fewer than three judges sitting together and always before an uneven number of judges. Otherwise, the business of the Federal Court of Appeal shall be dealt with by such judge or judges as the Chief Justice of that court may arrange.

### **Arrangements to be made by Chief Justice of the Federal Court of Appeal**

(2) The Chief Justice of the Federal Court of Appeal shall designate the judges to sit from time to time and the appeals or matters to be heard by them.

### **Place of sittings**

(3) The place of each sitting of the Federal Court of Appeal shall be arranged by the Chief Justice of that court to suit, as nearly as may be, the convenience of the parties.

### ***Canadian Judicial Council Inquiry and Investigation By-laws, S.O.R./2002-371***

6. (1) Any hearing of the Inquiry Committee shall be conducted in public unless, subject to subsection 63(6) of the Act, the Inquiry Committee determines that the public interest and the due administration of justice require that all or any part of a hearing be conducted in private.