



CANADIAN JUDICIAL COUNCIL

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

DATE: NOVEMBER 24, 2014

REASONS OF THE INQUIRY COMMITTEE FOR GRANTING THE MOTION FOR ADJOURNMENT OF THE HEARING TO MAY 21, 2015

- [1] The members of this Committee were appointed on March 13, 2014 to replace the former members who resigned on November 20, 2013 in the circumstances that will be summarised hereafter.
- [2] On July 15, 2010, Alex Chapman (“**Chapman**”) files a complaint with the Canadian Judicial Council (“**CJC**”). In summary, the complaint alleges “sexual harassment and discrimination towards Chapman” by ACJ Lori Douglas (“**ACJ Douglas**”) and her husband Jack King (“**King**”).
- [3] The complaint referred to ACJ Douglas engaging in “physical touching” of Chapman.
- [4] It also included reference to “30 extremely distasteful sexually explicit photos” of ACJ Douglas that Chapman said he received via the Internet by King.
- [5] These alleged events were said to have taken place between 2002 and 2003 before ACJ Douglas was appointed a judge in 2005.

- [6] At around the same time in 2010, legal proceedings were taken by Chapman and King before the Court of Queen's Bench for damages and breach of contract and injunctive relief.
- [7] On September 29, 2010, the CJC received two discs from an anonymous source which contained nude photographs of individuals including nude photographs of ACJ Douglas.
- [8] These discs were deemed to be a complaint by the Executive Director and Senior General Counsel of the CJC, Mr. Norman Sabourin.
- [9] On December 22, 2010, after analysing the complaint, the vice-chair of the Judicial Conduct Committee referred the complaint to a Review Panel composed of five judges, which panel was chaired by Associate Chief Justice Deborah K. Smith.
- [10] On July 4, 2011, the five members of the Review Panel unanimously concluded that an Inquiry Committee should be constituted under subsection 63(3) of the *Judges Act* "as the matter may be serious enough to warrant removal".
- [11] However, in their decision, the Review Panel came to the conclusion that the allegation by Chapman of inappropriate touching did not warrant further consideration.
- [12] The Review Panel was also satisfied that there was no information to support the allegation of "sexual harassment and discrimination" by (then) Ms. Douglas.
- [13] This decision was rendered within a year of the filing of the complaint, i.e. July 15, 2010.
- [14] On September 6, 2011, an Inquiry Committee composed of five members was established.
- [15] On May 29, 2012, a Notice of Allegations was provided to ACJ Douglas.

- [16] The Notice of Allegations did not include the complaint about sexual harassment which had been disposed of by the Review Panel, but that complaint was later included at the request of the former Inquiry Committee.
- [17] The former Inquiry Committee determined that the hearings would be held in Winnipeg and set aside the following dates for hearings: June 25-28, July 16-20 and July 23-27, 2012.
- [18] On June 26, 2012, the former Inquiry Committee granted Chapman the intervener status.
- [19] On July 26, 2012, a motion by ACJ Douglas was filed with the former Inquiry Committee seeking to disqualify the members of the former Inquiry Committee on the basis of reasonable apprehension of bias.
- [20] The former Independent Counsel raised concerns about his role as Independent Counsel with the members of the former Inquiry Committee.
- [21] On July 27, 2012, the Inquiry Committee ruled against ACJ Douglas' claim of reasonable apprehension of bias.
- [22] This was the last day the former Inquiry Committee held hearings.
- [23] On August 20, 2012, an application for judicial review was filed by ACJ Douglas as well as by former Independent Counsel of the decision of July 27, 2012.
- [24] Almost a year later, on July 12, 2013, a stay order was issued by the Federal Court of Canada pending the determination of ACJ Douglas' application for judicial review.
- [25] On November 20, 2013, the members of the former Inquiry Committee resigned and issued extensive reasons explaining their decision.
- [26] On March 13, 2014, the members of this Committee were appointed to replace the former members and to continue the matter.

- [27] The members of this Inquiry Committee met on or about March 26-27, 2014 and it was decided to start afresh in order not to be paralysed by the decision subject to judicial review.
- [28] At the end to the day, on March 28, 2014, the decision of the Federal Court on judicial review was brought to the attention of the members of this Inquiry Committee. It dismissed the motion for disqualification on the basis of institutional bias.
- [29] Both the CJC and ACJ Douglas have appealed this decision to the Federal Court of Appeal.
- [30] The CJC appealed that decision on the ground that the Federal Court had no jurisdiction over this matter.
- [31] The appeals have not yet been heard.
- [32] At the end of April, 2014, ACJ Douglas' husband passed away.
- [33] Nonetheless, on May 9, 2014, a case management hearing was held in Toronto and a schedule was established to proceed diligently and in an orderly fashion with any preliminary motions and hearing of this matter.
- [34] Numerous additional case management hearings took place by phone from June to November 2014.
- [35] On August 20, 2014, the Notice of Allegations was sent to ACJ Douglas by Independent Counsel. On that same day, a Notice to seek directions respecting additional complaints was filed.
- [36] On August 26, 2014, during a case management hearing, Independent Counsel submitted that the complaint regarding sexual harassment should not be included in the Notice of Allegations. The members of the Inquiry Committee agreed to that suggestion.

- [37] On September 30, 2014 a ruling was made about the additional complaint. The members of the Committee found that it should not be included in the scope of the present inquiry.
- [38] On October 1, 2014, a motion was filed by ACJ Douglas to dismiss the allegations without resort to a formal evidentiary hearing and also seeking an order that the photographs be declared inadmissible and be returned to her.
- [39] On October 13, 2014, the Committee issued a ruling that these motions be heard as planned on October 27, 2014 at the same time as other preliminary motions to be heard and that the hearing takes place in Winnipeg.
- [40] On October 27-28, 2014, the members of the Inquiry Committee heard these motions as planned. It dismissed two motions orally with reasons to follow and reserved judgment with regards to one motion which was subsequently dismissed.
- [41] On November 4, 2014, the reasons for dismissing the motions were issued.
- [42] On November 6, 2014, a notice of application for judicial review by ACJ Douglas was filed with the Federal Court with regard to the admissibility of the photographs.
- [43] On November 10, 2014, a notice of application by ACJ Douglas to stay the decision of this Inquiry Committee with regard to the admissibility of the photographs was filed.
- [44] The Attorney General of Canada consented to the stay.
- [45] On November 19, 2014, the members of the Inquiry Committee issued a ruling on the disclosure of the medical notes relating to a report to be filed by ACJ Douglas.
- [46] On November 21, 2014, at the very end of the day, an Order staying the decision of the Inquiry Committee regarding the admissibility of the photographs was issued by the Federal Court.

- [47] At the end of last week, counsel for ACJ Douglas asked for a case management hearing which took place on Thursday November 20, 2014 at 3:00 EST during which ACJ Douglas' counsel informed that her client would retire effective May 21, 2015 to end these proceedings and asked if the members of the Inquiry Committee would therefore suspend the hearing until May 21, 2015.
- [48] The purpose of making this long chronology of events, albeit incomplete, is to demonstrate what has been done in this matter and if it is reasonable to expect that more could be achieved in light of ACJ Douglas retiring on May 21, 2015.
- [49] The members of this Inquiry Committee have to determine if it is in the public interest that the proceedings be adjourned taking into consideration ACJ Douglas' decision.
- [50] First, it is obvious that due to pending cases in the Federal Court and the Federal Court of Appeal, this inquiry cannot be completed and its report issued before May 21, 2015.
- [51] Moreover, this is only part of the process since the report of this Inquiry Committee is presented to the members of the CJC who have to approve it and make further recommendation to the Minister of Justice.
- [52] In addition, it would be academic to proceed with the hearing of witnesses without first having the case before the Federal Court resolved.
- [53] All that leads to the conclusion that it is totally unrealistic to foresee a conclusion of this matter before May 21, 2015.
- [54] We agree that it would not be appropriate in this context to pursue this matter.
- [55] Many "dérapages" have occurred since 2010 in this matter.
- [56] Although we have had a body of evidence put before us by affidavit on the preliminary motions, we have not yet heard any evidence relating to the allegations and it would be presumptuous to comment on where that evidence might or might not lead.

- [57] After reviewing and considering all the circumstances, the members of this Inquiry Committee believe it is in the public interest to go along with the common suggestion of ACJ Douglas, Independent Counsel and the CJC to adjourn the hearing until May 21, 2015 on the condition that ACJ Douglas releases to the federal Minister of Justice, with copy to the provincial Minister of Justice, the CJC and this Inquiry Committee, an irrevocable letter electing retirement effective May 21, 2015.
- [58] In light of her position as a judge, ACJ Douglas, through her counsel, acknowledges the duty of reserve and undertakes as a condition of this adjournment not to comment on this matter.
- [59] Therefore, the members of this Inquiry Committee order that the hearing be adjourned until May 21, 2015.

Signed by "F. Rolland"

Chief Justice François Rolland (Chair)

Signed by "A. F. Cullen"

Associate Chief Justice Austin F. Cullen

Signed by "Christa M. Brothers"

Ms. Christa M. Brothers, QC

Ms. Suzanne Côté and Mr. Alexandre Fallon
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Ms. Sheila Block, Molly Reynolds & Sara Whitmore
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