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Canadian Judicial Council
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Attention: Mr. Norman Sabourin
Executive Director and Senior General Counsel,
Canadian Judicial Council

Email: nsabourin@judicom.gc.ca
Facsimile: (613) 288-1575

December 20, 2012

Re: **Pending CJC Complaint**

Dear Mr. Sabourin,

I write to acknowledge receipt of your correspondence dated November 26, 2012, received via Canada Post only. Regrettably, your responses have only raised more concerns about the impartiality of the Canadian Judicial Council (CJC), and its capacity to objectively and impartially investigate this matter.

The tenor of your correspondence is openly hostile, and demonstrably biased. It might be prudent for you to seek a legal opinion about your own role in this matter. For example, in your determination that my October 26, 2012 correspondence is allegedly an "***abuse of the complaint process***", you state:

> *Having considered all information, I come to the view that your correspondence constitutes an obvious abuse of the complaint process and therefore falls within the scope of that provision. Accordingly, I will not be opening a complaint file.*

Your statement is absurd. Firstly, my October 26, 2012 correspondence was ***not*** a "complaint." You were told that the said correspondence was for ***informational***

purposes and further instructed that it was ***not*** to be considered a "complaint". You even refer to this fact in one of your quotes.

Secondly, to make matters worse for yourself, you quote a CJC procedural protocol that restricts such decision-making to "complaints" only. You write:

> *The Executive Director shall open a file when a complaint about a named, federally appointed judge made in writing is received in the Council office from any source, including from a member of the Council who is of the view that the conduct of a judge may require the attention of the Council. The Executive Director shall not open a file for complaints which, although naming one or more federally appointed judges, are clearly irrational or an obvious abuse of the complaints process.*

As you can see, there is no provision that allows you to determine that a letter of inquiry constitutes a "complaint". With regard to your finding that by my seeking to obtain information related to the status of any involvement by the CJC in matters concerning Koenigsberg J, you apparently believe I have somehow ***abused*** the complaint process. As such I have these questions:

1. Why is my simple request for information and clarification about potential bias, and the role, if any, the CJC played in matters relating to Koenigsberg J, considered an "*abuse of the complaint process*?"

2. Why would you refuse to open a complaint file, when no such request was made of you?

3. Question 2 begs this query: Did you overstep your authority and jump the gun? Or are you fearful of my pursuit of judicial accountability, and are therefore attempting to block my right to have the misconducts of certain judges investigated?

4. Have you already pre-judged my ***pending*** complaint?

Concerning my three (3) simple but judicially crucial questions, addressing the reasonable apprehension of bias at the CJC in investigating matters relating to Koenigsberg J, your response incites further concern about your own bias. You state:

> *Specifically in respect of Justice Koenigsberg, I can say the following. There has been no inquiry committee constituted under section 63 of the Judges Act to*

> *investigate the judge, nor has there been any complaint made public about the judge.*

Mr. Sabourin, I ***did not*** ask only for information made "**public**" about Koenigsberg J—be assured, my researchers would already have unearthed that. Further, I ***did not*** limit my questions to only that of a constituted "**inquiry committee**." I very deliberately framed my question to capture ***any*** and ***all*** forms of notice, complaint to, and/or investigation by, the CJC, public or not. You then, attempting (I suppose) to justify your refusal to answer my questions, made

vague and non-specific reference to "provisions within the *Judges Act*." You stated:

> *As to whether the Council "requested or directed" anyone to review the judge's conduct, I would advise that, pursuant to the provisions of the Judges Act, any matter involving the conduct of a federally appointed judge is normally a matter for the Canadian Judicial Council to consider.*

I agree that the CJC considers matters involving federally-appointed judges, but nowhere in that statement do you contend that you are prohibited from advising me or the public about information the CJC acquires, or matters it investigates that are known to be true. I believe it is fair to presume that making public the serious matters involving Koenigsberg J—if known to the Council and/or yourself—would be in keeping with the CJC's mandate.

Skirting the crux of my queries and refusing to answer my questions only succeeds in further incriminating the CJC as operating as a gatekeeper, rather than instilling confidence that the CJC is unbiased and takes seriously its purported mandate to hold the judiciary accountable; and as such, your evasion can only further damage public trust and confidence in the judiciary.

Contrary to your assertion that you have addressed my questions, you have only succeeded in raising more. So I will ask you the three simple questions again. A truthful "yes" or "no" answer will suffice for each. There is no need to elaborate. Please advise as to whether or not, apart from any information I have provided, the CJC or any member or associate of the CJC has:

1. Received any form of notice or complaint about Justice Mary Marvyn Koenigsberg of the Supreme Court of British Columbia?

2. Reviewed information and/or Investigated in any capacity Justice Mary Marvyn Koenigsberg?

3. Requested or directed any individual, group or other organization/agency to conduct or review any form of inquiry or investigation into any matter or matters involving Justice Mary Marvyn Koenigsberg?

I would now like to turn to the presumptuous accusations you make in your letter about me—accusations that impute improper motives. You acknowledge that you acquired additional materials from Chief Justice McLachlin's Executive Legal Officer, and have garnered other public information. You also make specific reference to the fact that I characterize Justice Koenigsberg, Chief Justice McLachlin, Justice Ian Binnie and the other 2008 SCC justices who presided over my case as "liars" and "judicial cheats." You take umbrage with these facts. You state:

> *These grave allegations appear to me to have no foundation whatsoever.*

It would be a very serious matter, indeed—if my statements were untrue.

Let me assist you. If you recall—that is if you read objectively the information contained in the Summary Brief I included with my letter—you were confronted with an expanded version of the facts pertinent to this matter. I will mention a few of the highlights:

Fact: When someone, including a judge or judges in this case, publishes or repeats false and defamatory information about me or anyone else; publishes false innuendos; manufactures a false reputation and/or employs tactics of contextual chicanery, they engage in conduct referred to as "lying"—and as such are "liars". This is the case with the aforementioned justices, which is easily and irrefutably provable.

Fact: Justice Koenigsberg, **while presiding over my case**, engaged in the fraudulent conveyance of a personal asset as defined by the BC statute, and further, while so impaired, fraudulently presented herself as a judge of good behaviour and qualified to preside over a proceeding from which she should have recused herself. Koenigsberg J, as such, is a fraudster.

Fact: Chief Justice McLachlin is a judicial cheat. A judicial cheat is a judge, in this one example (there are others), who knowingly violates the right of a litigant to know the legal test they have to meet, by changing or "modifying" the legal test, and then ruling on the case based on a new, previously unknown "modified" standard, instead of sending it back to the trial judge (among other things). When a judge, or a panel of judges, arbitrarily and capriciously moves the legal goal-posts, without advising the teams (litigants and their counsel) of the new rules—prior to the game—it is cheating. ***Ignoring*** the rule of law, procedural

fairness and the constitutional rights of an individual to a fair hearing is "judicial cheating."

Perhaps you would be wise to consider this. The best evidence of the foundational strength of my statements is demonstrated by the absence of any lawsuit against me for having made such public declarations.

I appreciate that stating publicly that the Chief Justice of the High Court is a judicial cheat and a liar inflicts irreparable harm to the reputation of McLachlin CJ and the work of the court (and the CJC, for that matter)—***if*** untrue. If true, you would agree, **serious repercussions should ensue**.

Frankly, McLachlin CJ, Binnie J, Koenigsberg J and Rafe Mair have a responsibility to sue me for the statements I have made—***if*** they are false. I openly admit to publishing these statements widely; in fact, I further willingly divulge that my e-mail list containing those published words, and information like this letter, are distributed to ***thousands*** of lawyers, legal associations, law schools, other global judicial associations, appointed and elected public officials, media, and concerned Canadians. **To date, I have received only *one* exception to my view—and that was yours.**

I note that you offer **no evidence or facts** to support your finding. Contrary to the position you have opined, I have had a tremendous response of affirmation—along with numerous legal binders of information from lawyers from across this country (and elsewhere). It seems that a large sector within the legal community agrees with me, and knows that I was "judicially shafted".

It appears, too, that my criticism of the flawed legal reasoning and misconduct of the SCC in my case is supported by the New Zealand Justice Minister, who makes the same complaint about the writer of my decision, Justice Ian Binnie, now retired from the bench. In her recent media release about recommendations that Justice Ian Binnie made (involving compensating a man alleged to have been wrongly convicted and incarcerated), NZ Justice Minister Judith Collins states:

> ***My concerns are broadly that the report appeared to contain assumptions based on incorrect facts, and showed a misunderstanding of New Zealand law. It lacked a robustness of reasoning used to justify its conclusions.***

Legal experts have echoed these same sentiments in my case. I suggest to you that the absence of any lawsuit against me serves to bolster my cause; and that you are beholden, in the interest of the public's trust, to consider my words to be true—or at the very least, be objective enough to entertain the possibility of merit.

If you choose to be stubborn in your prejudiced view, then I would welcome you to be the first to find some unknown provision in law that permits this form of "cheating." I appreciate your public résumé reflects a persuasive regard for your proficiency in working the cocktail circuit, but little evidence of any provable aptitude in matters relating to the law. Providing me with a legal reference that justifies judicial disregard for fairness would help to counter my current opinion that you are deficient in matters relating to the legal basics—or worse, that you wilfully ignore them when it suits your purposes.

Concerning the serious declarations of judicial lies and mischief, please know I will be copying this correspondence to both Mr Owen Rees, Executive Legal Officer for Chief Justice McLachlin; and to Ms. Barbara Kincaid, General Counsel to the SCC. I encourage you to provide them with additional copies to ensure receipt. I also implore you to inform McLachlin CJ, as Chairperson of the CJC, and anyone else you believe should be aware of my public statements.

You, Mr. Rees and Ms. Kincaid would be remiss in your duties if you failed to inform the Chief Justice about my words. In the absence of any successful forthcoming lawsuit, I trust you will reconsider your position and embrace the fact that your conclusion is unsubstantiated—and in fact, my assertions are true; thus, at a very minimum, they constitute potential judicial misconduct.

Your insinuation regarding my statements about the Chief Justice being a liar and judicial cheat, implying ulterior motives on my behalf, is both irresponsible and amusing. I admit that I am well-known for ***not*** mincing words; so I did have a good chuckle when I read your irrational, assumptive comments. You state:

> "The above raises serious doubt about the true purposes of your correspondence."

Pray tell, Mr. Sabourin, what other purposes could motivate me?

The purpose of my correspondence to you, dated October 26, 2012, was to determine whether or not the CJC has engaged in any form of activity that would constitute a reasonable apprehension of bias, if my complaint were to be investigated. Further, that if such bias, or apprehension of such, exists, I provided you with a suggested remedy: an invitation to make a joint request to the Justice Minister for a Parliamentary Inquiry. I even provided you with the wording.

The purpose of the correspondence you acquired from Mr. Rees—and other public information I have made available—is to seek answers and to inform stakeholders about the facts that bring the administration of justice into disrepute; facts that demand changes—and to capture those who engage in conduct that brings the administration of justice into disrepute; and to establish amendments

that will ameliorate the administration of justice in Canada and better serve our nation.

There is no hidden or ulterior purpose; my motive is quite obvious. I intend to capture as many culprits as possible. So far I have quite a collection. Further, it is my intention to bring about necessary changes to reform the justice system so no other citizen of Canada has to endure the judicial abuse I have experienced—or, at the very least, to reduce the odds of it happening again.

I have been advised by those who monitor the activities of the CJC, and your own work therein, that contrary to the requirements of the *Judge's Act*, you instead perceive your role as one of "gatekeeper". In recent months, I have become quite familiar with your decision-making practices as a result of numerous correspondences and couriered briefings that continue to arrive at my office from other aggrieved CJC complainants. This fictional role that you willingly play regrettably seems to be bolstered—perhaps even directed—by Chief Justice Beverley McLachlin, who clearly twists your assignment into servitude of the judiciary, as opposed to the requirements of the law and the purported declarations made by other judicial associations and governmental institutions. As an example, on January 24, 2004, when the Chief Justice announced your nomination to the CJC, she wrote:

> *The Canadian Judicial Council is very enthusiastic about the nomination of Mr. Sabourin. We are convinced that he will help us move forward in our efforts to expand the activities of the Council, and to fully realize the* ***Council's mandate to uphold a judiciary which makes all Canadians proud****.*

I am unsure where the Chief Justice conjured up the notion that your mandate is to "uphold" the judiciary. The CJC's own website clearly states that the *Judges Act* mandates the CJC "to promote efficiency, uniformity, and **accountability**, and to improve the quality of judicial **service** in all superior courts of Canada."

In your correspondence, you relay information I am well aware of, regarding McLachlin CJ's role as Chairperson of the Council. You state:

> *Second, your letter of 6 October 2012, addressed to the Chairperson of the Council, the Right Honourable Beverley McLachlin, was referred to me by Chief Justice McLachlin's Executive Legal Officer for response. This is in keeping with general practice: Chief Justice McLachlin does not participate in any way in the Council's review of judicial conduct matters. This is because judicial conduct matters could, in some instances, be the subject of litigation and*

could, by way of appeal, be considered by the Supreme Court of Canada.

My correspondence to the Chief Justice was addressed to her ***in her capacity*** as Council Chairperson, and asked about her knowledge of matters ***already known*** to the CJC. I ***did not*** ask her to engage in any form of review.

Question: Is it your position that McLachlin CJ, as CJC Chairperson, would not have knowledge about any matter **already** known to the CJC?

Question: Does the Chairperson of the Council receive reports about matters involving activities engaged in by your office?

You go on to depict one of the most problematic aspects pertaining to the current structure of the CJC—a problem that must be resolved. You correctly point out that litigation can arise out of the CJC complaint process. We have a current example in the three judicial reviews involving Lori Douglas ACJ, and the CJC Inquiry (circus) into the two complaints about her that are before the Federal

Court. Clearly, if those matters fail to find resolution, it is likely that the appeal process would bring the matter before the High Court. That is problematic for McLachlin CJ in her role as both Chief Justice and Council Chair; but could be saved by her recusal from any matters relating to the case—including the determination as to whether or not the SCC would grant leave, and/or the assignment of which justices would hear the matter, if leave were to be granted. The situation you are confronted with is that it is my intention to make a complaint to the CJC about the matters referred to in the Summary Brief that you have previously been provided with—matters that involve the serious misconduct of McLachlin CJ in exceeding her judicial authority; and allegations that she knew (or ought to have known) about matters (not limited to Koenigsberg J), and failed to act. Further, my complaint will name some members of the current SCC bench; as they, by concurring with the decision, justified the adoption of the "modified" test and the failure to adhere to the requirements of judicial fairness, and by flawed reasoning exceeded their judicial authority.

If you fail to accept the complaint, and/or refuse to investigate the matter, I will seek Judicial Review if need be—unless, of course, your reasoning is founded upon an admittance of bias or a possible perception thereof. In this circumstance, I would be agreeable to pursuing an alternative forum for an independent, objective investigation into my complaint that is agreed upon by all affected parties, such as my previously suggested Parliamentary inquiry. As you rightly observe, there is a chance this matter could "be the subject of litigation and could by way of appeal, be considered by the Supreme Court of Canada." An interesting and insurmountable problem when one considers, as you point

out, that the appeal could potentially be considered by members of the very court that is complained of—a court that is provably culpable, in this case.

Question: Having considered now this very probable scenario, Mr. Sabourin, tell me: is my request for you to jointly request a Parliamentary inquiry into this matter so wrong-minded? Or does it present us with an appropriate and prudent solution to the obvious dilemma with which we are both presented?

Question: Do you have any other suggestions?

Question: If someone wants to make a formal complaint about you, Mr. Sabourin, to whom do they address their complaint?

Question: Typically such a complaint would be made to the Chairperson of the Council. How can someone complain about your conduct without the Chairperson having to review matters relevant to reviewing the merits of a complaint?

Mr. Sabourin, be assured that I take no satisfaction in having to alter my life to remedy a very serious problem that has come to light as a result of my engagement with the legal system. I would much rather be dedicating my time and energy to other matters that I value. However, coincidence or providence matters not at this juncture; it is not within my nature to ignore wrongdoing—judicial or otherwise—nor to suffer a shifted burden onto the shoulders of another. Much to my own chagrin, I value my civic responsibilities; and having found myself with an expensive front-row seat—with a spotlight focused on a justice system that flagrantly disregards Canadian sensibilities, mocks the rule of law, abhors fairness, and finds public accountability contemptible—I am compelled, and able, to act.

The irony of this situation is that I would have been quite amenable to have resolved the problems of judicial qualification that arose as a direct result of Koenigsberg's antics; but those who ***were aware***—including the late Donald Brenner, Chief Justice of the BCSC ***and CJC member***—failed to inform me, after being judicially confronted with the facts, that my case had been fatally compromised by the misconducts of my unqualified trial judge. And when I did find out, my attempts to remedy this matter in a professional and less public venue were ignored. A wise man would have seen the writing on the wall. The responsibility for this increasingly public campaign, and the justifiable outrage, falls squarely onto the shoulders of those who chose to turn a blind eye and failed to play fair. The threats and bully tactics being used against me will only escalate the situation; I will not be silenced. Perhaps when this matter is properly investigated, protocols will be established that will result in a more accountable judiciary—one that is worthy of the public's trust and confidence.

I strongly encourage you at this point to step back and reconsider the overwhelming evidence that supports the serious judicial misconducts I have made known to you about Koenigsberg J and certain justices of the SCC—now strengthened by similar criticisms made by New Zealand's Justice Minister against Justice Binnie. There is a path of opportunity available to you that will provide a road to the betterment of justice in Canada—that is, if you have the good sense to set foot upon it.

Be assured this matter is not going away. I appreciate that the gravity of the egregious conduct engaged in by some members of the judiciary in this case will reflect adversely upon the administration of justice—and so it should. I am under no illusions as to the stakes for those you seek to "uphold;"— but **the court is broken**, and I do believe that the truly honourable members of the judiciary should no longer have to suffer the tainted splash that spills over from the robed few who defile the law. More important, though, is that the trust of Canadians should no longer be ridiculed, belittled or taken for granted by pervasive judicial arrogance that refuses to acknowledge the mammoth that squats upon the bench.

I look forward to your clarification and answers.

Yours sincerely,

Kari D. Simpson

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