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Jian Ghomeshi files \$55M lawsuit alleging CBC unjustly fired him because he enjoys sado-masochistic sex

By Tom Blackwell

Ghomeshi shared intimate details of his sex life in strict confidence, only for the CBC to turn around and use the information against him, the suit...

For weeks, says a lawsuit filed Monday, Jian Ghomeshi and his CBC bosses worked in tandem, discussing his sexual fetishes and jointly crafting a response to the "scurrilous" allegations he feared were coming.

A fine line between 'kink' and abuse, experts say¹

To its practitioners, BDSM "heavy play" - consensual couples choking each other, verbally abusing one another and even striking each other - is not considered abusive, hateful or even anti-feminist when done correctly.

But amid allegations that CBC host Jian Ghomeshi sprung such behaviour on unsuspecting dates, BDSM insiders are being careful to note the fine line between "kink" and abuse.

"No matter how you slice it, if the allegations are true, they are not examples of healthy BDSM," said Lady Seraphina, a Calgary-based dominatrix with 10 years experience, writing in an email to the *National Post*.

According to allegations from three women published Sunday in the *Toronto Star*, Mr. Ghomeshi "physically attacked them on dates without consent."

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The star radio host and his employer had a mutual interest in neutralizing a possible charge that he was involved in abusive, non-consensual sex, Mr. Ghomeshi asserts in the \$55-million suit.

Then, without warning, the corporation turned against him, using the intimate information he had divulged in confidence and fears of a "negative public reaction" as grounds to fire him, alleges the statement of claim filed in a Toronto court.

"In doing so, the CBC was making a moral judgment about the appropriateness of BDSM," says the document, referring to the sexual lifestyle known as bondage-discipline, dominant-submissive and sado-masochism.

"Engaging in BDSM is part of the normal continuum of human sexual behaviours, and it is increasingly common that engaging in BDSM would not be seen as either shocking or scandalous to informed North Americans," it says. "Nevertheless based on the CBC's antiquated perspective, [it] terminated Mr. Ghomeshi's employment."

The "breach of confidence" lawsuit adds fuel to a startling labour dispute involving one of the CBC's best-known personalities, and came on the same day that serious allegations against Mr. Ghomeshi by four women were, in fact, published in a Toronto newspaper.

Three of them told the *Toronto Star* they had dated Mr. Ghomeshi, 47, and were subjected to unwanted punching, slapping and choking during sex. Another woman, unnamed like the others, said she had worked at CBC and that Mr. Ghomeshi told her at work "I want to hate f- you" and groped her buttocks. She said she raised the matter with her union representative.

Both the CBC itself and its main union said Monday, however, they had never received a formal complaint against Mr. Ghomeshi.

"We have no record of anyone filing a formal complaint related to this issue at any time," said Carmel Smyth, president of the Canadian Media Guild, in an email response to questions.

The Toronto police service also indicated it was not investigating, and would likely not do so unless someone approached the force directly.

"There are no investigations or complaints against him," said Const. David Hopkinson.

Mr. Ghomeshi was host of the program Q on the CBC's main English radio network, which had become its most popular morning show ever, as well as being aired on numerous National Public Radio stations in the United States.

Signs of trouble in the public broadcaster's ties with Mr. Ghomeshi surfaced last Friday, when the CBC announced that Mr. Ghomeshi would be taking a leave from the program for personal reasons, after the recent death of his father.

Then came the bombshell Sunday that he had been let go, the



Darren Calabrese/National Post Radio host and author Jian Ghomeshi looks through records at Neurotica Records in Toronto Sept. 11, 2012.

CBC indicating that "information came to our attention recently that ... precludes us from continuing our relationship."

Read Jian Ghomeshi's open letter posted on Facebook³

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Hours later, Mr. Ghomeshi posted a lengthy statement on Facebook, admitting that he practised "rough sex" that some might find offensive, but always did so with the consent of his partners. He also revealed that a former girlfriend, in an apparent act of vengeance, was behind an attempt to accuse him publicly of abusive, non-consensual practices.



THE CANADIAN PRESS / CBC Former radio host Jian Ghomeshi is shown in a handout photo.

The lawsuit says Mr. Ghomeshi went to Chuck Thompson, head of media relations, and other CBC managers, telling them in several meetings about both his sexual practices and the possibility that allegations would be levelled against him publicly. At times, CBC actually helped draft statements that could be released in the event the charges surfaced somewhere, the suit says.

The former host has also said he is filing a union grievance of his termination.

In fact, as a union member, that is the only way he can legally contest his firing, said labour lawyers. The lawsuit is not for wrongful dismissal.

"It's unusual he's going this route, for such a large sum of money," said Carissa Tanzola, a Toronto-based labour lawyer.

Employers must have cause to fire unionized employees, and for some occupations - teachers, for instance - that might involve conduct in the person's private life, said Hugh Scher, past resident of the Ontario Bar Association's labour-law section.

Terminating for cause is a high standard to meet, however, as the employer must consider not just one alleged transgressor but the employee's overall record, he said. Some employers find the bar too high to get over, and simply pay the required compensation to see the worker legally out the door, said Mr. Scher.

Whether Mr. Ghomeshi's sex life could provide cause for termination may depend in part on whether the collective agreement touches on the issue, said Ms. Tanzola. The CBC does have a code of conduct that expects employees to treat everyone with "respect and fairness."

As for the law around sado-masochistic sexual practices, a string of court decisions has established that if the sex results in bodily harm, the perpetrator is guilty of sexual assault, whether the partner consented at the time or not.

The topic remains a source of legal debate, though. In a 2011 article, David Tanovich, a University of Windsor law professor, argues for a broader use of consent in BDSM cases, saying it should be allowed as a defence unless the bodily harm is judged serious.

"Those who engage in the practice should not feel stigmatized, be deterred or criminalized," he wrote.

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