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Our File No.: 009836-0003

May 23, 2013

## BY EMAIL

The Lawyers Weekly  
c/o Parliamentary Press Gallery  
Room 350-N, Centre Block  
Parliament Hill  
Ottawa, ON  
K1A 0A6

**Attention: Cristin Schmitz**  
**Ottawa Bureau Chief**

Torys LLP  
79 Wellington Street West, Suite 3000  
Box 270, TD Centre  
Toronto, ON  
M5K 1N2

**Attention: Sheila Block**

Dear Sirs/Mesdames:

### **Re: Request of The Lawyers Weekly**

In a brief email dated March 25, 2013, Cristin Schmitz of The Lawyers Weekly sent to the Inquiry Committee a request for access to exhibits filed with the Committee and transcripts of the proceedings before the Committee. The Committee asked counsel to present their positions with respect to the request. Ms. Block, on behalf of A.C.J. Douglas, replied on March 28, Mr. Galati, on behalf of Mr. Chapman, on April 4, and Ms. Côté, as independent counsel, on April 6. Ms. Schmitz replied on April 24. Each of those submissions, along with this letter, will be placed on the CJC website for public review.

Osler, Hoskin & Harcourt LLP  
1000 de la Gauchetière Street West  
Suite 2100  
Montreal, QC  
H3B 4W5

**Attention: Suzanne Côté**

Rocco Galati Law Firm  
Professional Corporation  
1062 College Street, Lower Level  
Toronto, ON  
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**Attention: Rocco Galati**

### **Transcripts**

On July 16 of last year, in the course of the public hearing, the Committee ruled that there would be no publication on the CJC website of the hearing transcripts. Witnesses who had not yet testified were excluded from the hearing to ensure that their testimony would be based on their own recollections, uninfluenced by what previous witnesses had said in their testimony. The July 16 ruling was intended to prevent witnesses who had not yet testified from studying the transcripts of earlier stages in the hearing and thereby circumventing the decision to exclude witnesses in the first place.

The Lawyers Weekly, in its submissions, points out that in asking for access to the transcripts, it is only asking, in effect, for what other journalists and the public could hear if they were able to attend the hearings in Winnipeg. The Lawyers Weekly proposed a solution which would give it access to the transcripts without jeopardizing the July 16 ruling, or the reason behind it. The Lawyers Weekly asks that it be given access to the transcripts, available for it to use as background, and to be quoted in stories, on condition that it not publish the full transcripts in any manner or otherwise provide them to any prospective witness or indeed, anyone else. It stated that Ms. Schmitz would be prepared to give an undertaking to that effect.

The Committee accepts that approach. Ms. Schmitz will be permitted to attend at the CJC offices to review the transcripts of the testimony for use as background and to be quoted in stories it publishes, on condition that it not make the transcripts available to any prospective witness, or anyone else, and that it give an undertaking in advance to that effect. As a practical matter, if The Lawyers Weekly representative needs to take all or any portion of the transcripts to the offices of The Lawyers Weekly, the undertaking from Ms. Schmitz will continue to have application, and The Lawyers Weekly will pay for any costs of making transcripts available to it.

In this way, the Committee seeks to maintain confidentiality over the transcripts for the purpose of not tainting the testimony of witnesses who are yet to be called, while giving practical support to the principle of open court.

### **Exhibits**

Exhibits are a different matter, and the Committee is not persuaded that further access should be given to them. The Committee notes that a substantial volume of documentary exhibits has already been made public, as can be seen on the CJC website with respect to the Douglas inquiry. Other exhibits, which have not been made public, are, by their nature, highly confidential and have been released to no one.

The Lawyers Weekly cites *R v. Canadian Broadcasting Corp.* 2010 ONCA 726 in support of its application for access to further exhibits. There, the CBC obtained access to exhibits from a

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preliminary inquiry. In that case however, at the time of the access application, the preliminary inquiry had come to an end because the Crown had decided to drop the charges. The Ontario Court of Appeal's ruling recognized that if releasing the exhibits would have resulted in a potential harm or injury to a recognized legal interest, it likely would have come to the opposite conclusion. In the Committee's view, there is here potential harm or injury to a recognized legal interest, which requires the Committee to keep sealed those exhibits which have been sealed to this point.

Yours truly,

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Per:



George K. Macintosh, Q.C.

GKM/smw

cc: Canadian Judicial Council

**Attention: Norman Sabourin**