

Montréal

Montréal, April 6, 2013

Toronto

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Ottawa

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BY EMAIL

New York

Mr. George K. Macintosh, Q.C.
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Re : Inquiry Committee regarding the Honourable Lori Douglas – Cristin Schmitz' request for access to the exhibits and any other material filed with the Committee as well as the transcripts of all testimony given in public at the hearing

Dear Confrère:

We are in receipt of your email of March 25, 2013 in which you advised that Ms. Cristin Schmitz from *The Lawyers Weekly* has requested access to the exhibits and any other material filed with the Committee as well as the transcripts of all testimony given in public at the hearing. You requested submissions on my part as to the position the Committee should take with regard to this request, and the present letter seeks to set out these submissions.

As independent counsel to the Inquiry Committee, we are of the view that the Committee should deny Ms. Schmitz' request. Indeed, at this point in time, we feel that the Inquiry Committee has provided sufficient access to the public to information regarding its proceedings, the rulings of the Inquiry Committee, the Notice of Allegations concerning the Honourable Lori Douglas as well as a significant number of documents relating to the subject matter of the present inquiry via the Canadian Judicial Council's website.

Furthermore, the Inquiry Committee hearings which have been conducted thus far were open to the public, including to members of the media, such as Ms. Schmitz. Members of the media were further afforded the opportunity, following the order by the Inquiry Committee with respect to the use of personal electronic devices dated June 22, 2012 to seek permission as a journalist to use personal electronic devices to create and tweet or otherwise transmit, in digital format, information concerning proceedings and the hearing of the Inquiry Committee, subject to certain terms and conditions. Members of the media, including, for example, journalists from the Canadian Broadcasting Corporation, applied for and obtained such permission and have in fact published tweets regarding the

proceedings which are still available on the website of the Canadian Broadcasting Corporation, for example.

Further, on July 16, 2012, the Inquiry Committee issued a ruling regarding the exclusion of witnesses and, in order to give practical effect to said ruling, determined that there would be no publication on the Canadian Judicial Council's website of the daily transcripts of the evidence of the witnesses until all of the evidence has been heard. At the present time, all of the evidence has not been heard by the Inquiry Committee and we are of the view that acceding to Ms. Schmitz' request would undermine the effectiveness of the exclusion of witness order rendered by the Inquiry Committee on July 16, 2012 and, in light of the wealth of information otherwise available to the public regarding the proceedings before the Inquiry Committee, we do not believe that there is at this time a public interest imperative to vary the July 16, 2012 order of the Inquiry Committee.

In closing, we note that in your correspondence of March 25, 2013, you advise that the Inquiry Committee requests that we keep Ms. Schmitz' request confidential, and you also indicate that the present submissions will be circulated to Ms. Schmitz for comment before they are provided to the Inquiry Committee. We are troubled by these two issues and we urge the Inquiry Committee to reconsider the confidential handling of Ms. Schmitz' request, and also urge you to reconsider your intention of providing our submissions to Ms. Schmitz before they are provided to the Inquiry Committee.

On the first concern, it is our view that Ms. Schmitz' request is a procedural matter and past practice of the Inquiry Committee has been to make accessible to the public, via the Canadian Judicial Council's website, all submissions made by persons regarding procedural issues as well as to publicise the rulings of the Inquiry Committee on such submissions.

We do not see any reason for departing from this practice and we submit that it is in the public interest that Ms. Schmitz' request be publicized on the Canadian Judicial Council's website along with the submissions that the Inquiry Committee receives in response to your request of March 25, 2013. We also submit that Ms. Schmitz' submissions in response as well as an eventual ruling of the Inquiry Committee on this matter be also published on the Canadian Judicial Council's website.

On the second concern, we do not see why our submissions would not be provided to the Inquiry Committee immediately upon receipt, rather than providing them only to Ms. Schmitz. We of course have no objection to Ms. Schmitz being provided with a copy of our submissions and being afforded a right to reply to same (indeed, we are of the view that our submissions should be made public on the website of the Canadian Judicial Council). We do not find it appropriate, however, that Ms. Schmitz be provided with our submissions in advance of the Inquiry Committee.

Yours truly,

Osler, Hoskin & Harcourt LLP

A handwritten signature in black ink, reading "Suzanne Côté". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Suzanne Côté
SC/

- c. Sheila Block and Molly Reynolds, *Torys LLP*
Rocco Galati, *Rocco Galati Law Firm Professional Corporation*