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Our File: 436-015-021

Commissioner Frank Iacobucci
Internal Inquiry into the Actions of Canadian Officials
In Relation to Abdullah Almalki, Ahmad Abou-Elmaati and
Muayyed Nureddin
c/o Mr. John B. Laskin, jlaskin@torys.com
Torys LLP
79 Wellington Street West
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Commissioner Iacobucci,

On behalf of the Canadian Coalition for Democracies, I am pleased to respond to suggestions that certain non-lawyers be granted access to the draft narrative documents currently held, and made available to qualified counsel, at Iacobucci Internal Inquiry offices.

The Canadian Coalition for Democracies (CCD) would object to proposals that non-lawyers be given access to this draft material. There are several reasons for this objection, including the following:

- (1) Your ruling on the matter has made clear the fact that only counsel are to have access to the material in question. The word "counsel" is a term of art, which, in the normal, widely-understood context of public inquiries, is reserved to duly-licensed barristers and solicitors of a pertinent jurisdiction. More significant, perhaps, is the fact that this meaning has been readily-discernible in and throughout the Commission's practice in its public hearings. Indeed, the CCD observes that persons without formal, legal credentials appear not to have served in a sustained representational capacity in public Inquiry appearances before you. Moreover, all concerned have had time to recognize and, if necessary, challenge the conventional interpretation of "counsel" as the word has been

manifest throughout the life – and usages – of the Inquiry. Having had this knowledge of your principled approach, all of those involved in the Inquiry must perforce be presumed to have accepted your clear understanding of the word, its significance, and implications. The CCD submits that it would on this ground be inappropriate to permit, particularly at this late date, an innovative understanding of the word “counsel” that would risk introducing confusion and a possible impression of arbitrariness, into otherwise consistent and understandable Inquiry processes and decision-making;

- (2) Fairness requires that non-lawyers be excluded from the category of those to be granted access to the draft narrative material. Understanding the clear, aforementioned sense of the word “counsel”, the Canadian Coalition for Democracies, and possibly other individuals and entities, have gone to some trouble and expense to secure the services of qualified legal counsel in order to meet representational needs before this Commission of Inquiry. Acting on reliance of this understanding, the CCD has exerted itself financially and in other respects to ensure that its legal counsel, rather than a non-lawyer researcher, would be at all times equipped to apply himself *qua* counsel, in a timely and knowledgeable fashion, to responsibilities of the very sort presented by the narrative review under discussion. The Canadian Coalition for Democracies respectfully submits that it is not for others to rather abruptly, and for reasons of their own convenience, now assert that the word and office of “counsel” has heretofore had only the vaguest and most transitory meaning at this Inquiry;
- (3) Departing from the accepted Inquiry understanding of the word “counsel”, risks inviting more, and equally time-consuming, challenges to accepted practice and terminology, on a variety of fronts;
- (4) Departing from accepted Inquiry understanding of the word “counsel”, risks establishing a precedent that might complicate the understanding of the word for the purpose of future inquiries;
- (5) The giving of “undertakings” by non-lawyers, would not deal satisfactorily with the objections to the proposed granting to non-lawyers of access to the draft narratives. Such an undertaking would not provide the same level of assurance as an undertaking offered by a lawyer. By long tradition in Canada, an “undertaking” given by a lawyer, has a specific sense and import that would not be equalled in its application to a non-lawyer. A lawyer’s failure to live up to that lawyer’s undertaking would invite disciplinary measures from the applicable law society, an improbable development where a non-lawyer would be concerned.

For reasons such as these, the Canadian Coalition for Democracies would object to extending the privilege of the contemplated document-review to non-lawyers.

In the event that Messrs. Almalki, Elmaati and Nureddin were to be exempted from this “lawyers-only” approach, the Canadian Coalition for Democracies would submit that these individuals should have access to narrative material only after they had first given their testimony. Although the CCD would not welcome such an exception, the restricting of access in this way would at least recognize the public interest in ensuring that testimony not be coloured by premature exposure to narrative documents.

Yours sincerely,

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