



COURT OF APPEAL FOR ONTARIO
COUR D'APPEL DE L'ONTARIO

PLEASE ADDRESS ALL COMMUNICATIONS TO:
ADRESSER TOUTE CORRESPONDANCE A:

SENIOR LEGAL OFFICER/AVOCAT PRINCIPAL
OSGOODE HALL
130 QUEEN STREET WEST/130, RUE QUEEN OUEST
TORONTO, ONTARIO
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Tuesday, February 4, 2011
Sent by fax

Mr. Terrence J. O'Sullivan
Lax O'Sullivan Scott LLP
1920 145 King Street West
Toronto, ON M5H 1J8

RE: Smith, Kenneth et al v. Sutts, Strosberg LLP, et al
Court of Appeal File No.: C51893


Dear Mr. O'Sullivan:

As you know this matter was heard on October 25, 2010 and is currently under reserve. The court would like written submissions on why the fees in this case fall to be determined under s. 33(7) of the *Class Proceedings Act*, as presumed in argument advanced on appeal, as opposed to s. 32(4) of the Act. In responding to the question, you may wish to address the fee agreement, the notice of motion, and the notices provided to the class.

The submissions are to be double-spaced and not more than 20 pages in length. Please file them no later than February 28, 2011.

I trust the foregoing is clear but if you have inquiries please do not hesitate to contact me.

Yours truly,



JOHN H. KROMKAMP
Senior Legal Officer,
Court of Appeal for Ontario

JHK/va

c.c.: Court of Appeal panel