



B.C. Supreme Court says Canada's law society rules to fight money laundering are effective

September 28, 2011

The regulation of the legal profession by Canada's law societies provides an effective and constitutional anti-money laundering and terrorist financing regime, the British Columbia Supreme Court has ruled.

In a judgment handed down September 27, 2011, the Court also said the application of the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the related regulations to the legal profession violate section 7 of the *Canadian Charter of Rights and Freedoms*, and is therefore unconstitutional.

The case was brought to Court by the Federation of Law Societies of Canada with support from the Law Society of British Columbia, the Barreau du Québec, the Chambre des notaires du Québec, and the Canadian Bar Association as intervening parties.

The Federation argued the federal legislation is unnecessary because Canada's law societies have already implemented rules requiring legal professionals to identify their clients, and to not accept large amounts of cash from clients except in certain circumstances. The Court accepted these arguments, and held that all legal professionals are exempt from the legislation.

"We are pleased that the court has recognized the important and proactive role the law societies are playing in the fight against money laundering" the President of the Federation of Law Societies, Ronald J. MacDonald, Q.C. said.

"Canada's law societies share many of the same objectives as the federal government in fighting money laundering, and in keeping with their public interest mandate they have implemented rules and rigorous enforcement measures to deal with any allegations of unethical conduct or money laundering that may involve members of the legal profession".

The Federation's model "no-cash" and "know-your-client" rules are two key components of the law societies' initiatives to fight money laundering. Members of the legal profession are prohibited from accepting more than \$7,500 in cash to guard against trust accounts being used for illegal activities. They are also bound by strict "know-your-client" rules to ensure that they are providing advice only to bona fide clients whose identity can be reliably ascertained. The model rules are available on the Federation web site, www.flsc.ca.

The Federation also argued before the Court that the federal legislation is unconstitutional because it interferes with the rights of clients to obtain legal advice in confidence.

"When they consult their legal advisor, Canadians expect their communications will be held in strict confidence" the Federation President added. "But law societies also recognize that the legal profession must not be used to facilitate money laundering activities. Canada's law societies promote these two objectives by adopting rules which protect the public and put clients first, while respecting basic constitutional values."

News Release (page 2)

Section 7 of the *Charter of Rights and Freedoms* provides that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The B.C. Supreme Court decision says federal money laundering legislation jeopardizes the liberty of clients, because lawyers would be required to collect information from their clients to establish a paper trail for law enforcement agencies to access, and this is contrary to the expectations of confidentiality Canadians have when they communicate with legal professionals.

The Court ruled that lawyers, Quebec notaries, and legal firms in Canada be excluded from the list of persons and entities subject to the federal legislation. The parties had previously consented to a court order agreeing that the legislation would not be applied to the legal profession pending the resolution of the constitutional challenge, so the Court’s decision preserves that status. The parties also agreed in advance that the decision from the B.C. Supreme Court would be binding across Canada.

The Federation was represented in the proceedings by John Hunter, Q.C., of Hunter Litigation Chambers, and Roy Millen of Blake, Cassels & Graydon LLP.

The Federation of Law Societies of Canada is the national coordinating body of the 14 law societies mandated by provincial and territorial law to regulate Canada’s 100,000 lawyers and Quebec’s 3,500 notaries in the public interest. It is a leading voice on issues of national and international importance relating to the administration of justice and the rule of the law.

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