



November 29, 2022

By Email (nffn@sen.parl.gc.ca)

The Honourable Percy Mockler
Chair, Standing Senate Committee on National Finance
Senate of Canada
Ottawa, ON
K1A 0A4
Canada

Dear Senator Mockler,

RE: Bill C-32, Proposed *Income Tax Act* Amendments on Trust Reporting Infringe Upon Solicitor-Client Privilege

This letter is supplementary to the Federation of Law Societies of Canada's written submission to the Senate Standing Committee on National Finance (the "Committee"), dated November 21st, 2022.

Charter Statement

The Federation has reviewed the Minister of Justice's Charter Statement on Bill C-32, tabled in the House of Commons on November 21st. We maintain that the trust reporting provisions of Bill C-32 that target trust accounts of legal professionals are unconstitutional and would violate Section 8 of the Charter.

While acknowledging that "[t]he requirement to provide information about trusts potentially engages section 8 of the Charter" the Minister's Charter Statement concludes:

"In reviewing the relevant provisions, the Minister has not identified any potential effects that could constitute an unreasonable interference with privacy as protected by section 8 of the Charter."

The Federation is surprised that the Charter Statement does not mention, let alone engage in any robust analysis of the implications of the trust reporting provisions for solicitor-client privilege within the context of Section 8 of the Charter.

The Federation further states that the Minister's conclusion is clearly contrary to the Supreme Court of Canada's decision in *Canada (Attorney-General) v Chambre des Notaires*, 2016 SCC 30 ("*Chambre des Notaires*"). In *Chambre des Notaires*, the Supreme Court noted that the protection afforded to solicitor-client privilege "in the context of a s. 8 analysis is invariably high regardless of whether the seizure has occurred in a criminal or an administrative context" (para. 34).

In *Chambre des Notaires* the Supreme Court also held that the requirement to produce information protected by professional secrecy (the civil law equivalent of solicitor-client privilege) for the purpose of enforcing tax requirements constituted an unreasonable interference with privacy and violated Section 8 of the Charter. In reaching this conclusion, the Court cited defects in the legislation that also exist in Bill C-32:

- An inappropriate burden is placed solely on the legal professional to safeguard a client's right to solicitor-client privilege (paras.53-57); and
- Compelling disclosure of the information being sought is not absolutely necessary as required to justify any infringement on solicitor-client privilege (paras. 58-61).

Given the existence of the same defects in Bill C-32, the provisions on trust reporting as they apply to the trust accounts of legal professionals (i.e. the proposed section 150(1.2)(c) of the *Income Tax Act*) would breach the protections against unreasonable search and seizure set out in Section 8 of the Charter.

Communications with the Department of Finance

The Federation has raised its concerns about the constitutionality of the proposed trust reporting requirement for legal professionals with the Department of Justice on several occasions, including during consultations on draft legislation from Budget 2018 and Budget 2021. The Federation made written submissions to the Department of Finance in October 2018 and April 2022 and had meetings and email communications with department officials beginning in 2018 to repeat our concerns.

Request to appear before the Committee

We noted with interest the questions posed by Senators to representatives of the Canadian Bar Association during their November 23rd appearance before the Committee. A number of those questions related to regulatory matters that would have been more appropriately directed to the Federation including those about the rules established and enforced by the law societies on trust accounts and other measures to prevent legal professionals from facilitating fraud, money laundering, and other dishonest or illegal client activity, as well as international regulatory trends in these areas. The Federation is the national association of the regulators of the legal profession in Canada, which together regulate more than 136,000 lawyers, 4,200 notaries in Quebec and Ontario's nearly 10,600 licensed paralegals in the public interest. It is the law societies, acting collaboratively through the Federation, that have developed and implemented the regulations of apparent interest to the Senators. As the national voice of the regulators, the Federation is best placed to provide the answers to the Senators' questions.

In the circumstances, we reiterate our request to appear before the Standing Committee to address the serious problems with the trust reporting requirements under Bill C-32 as they relate to legal professionals.

Sincerely,



for
Jill Perry, KC
President