



BY EMAIL

June 3, 2019

The Honourable A. Anne McLellan
Special Advisor to the Prime Minister of Canada
55 Metcalfe Street
Ottawa, Ontario
Canada
K1P 6L5

Re: The roles of the Minister of Justice and Attorney General of Canada

Dear Ms. McLellan,

I write in response to your May 6, 2019 letter inviting the Federation of Law Societies of Canada (the "Federation") to provide input into your review of the joint roles of the Minister of Justice and the Attorney General of Canada.

The Federation is the national coordinating body of Canada's 14 law societies, which are mandated by provincial and territorial statutes to regulate the country's 125,000 lawyers, Quebec's 3,800 notaries and Ontario's nearly 10,500 licensed paralegals in the public interest. Communicating the views of the governing bodies of the legal profession, the Federation is a leading voice on national issues critical to safeguarding the public's right to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.

Issues about the roles and responsibilities of the Minister of Justice and the Attorney General of Canada, including whether or not these roles ought to be held by a single minister, are significant and complex. Unfortunately, the timeline for the review does not permit the Federation time to complete a more comprehensive analysis and present a position on the issues, particularly in light of their importance.

However, the Federation is of the view that there are fundamental principles that your review should take into account, which we have highlighted for your consideration:

- It is a fundamental principle that prosecutorial decisions be made independent of other partisan political considerations. The Supreme Court of Canada, in *Law Society of Alberta v. Krieger* (2002 SCC 65) has recognized this as a constitutional principle.
- The purpose of maintaining prosecutorial independence is to ensure that prosecutorial decisions are made in the public interest in service of the rule of law.

- Under the rule of law, prosecutorial independence is necessary to preserve the principle of equality before the law or “one law for all” as stated by the Supreme Court of Canada in *Reference re Secession of Quebec* ([1998] 2 SCR 217).
- The relationship between the Attorney General and Cabinet in Canada has come to be defined by the “Shawcross principle”, based on the statements the Attorney General of England, Sir Hartley Shawcross, made to the UK Parliament in 1951.
- In exercising its prosecutorial function in the public’s interest, the Attorney General has a duty to ensure that the process is not only fair, but that it is also perceived by the public to be fair – that is, non-politically partisan. In other words, public confidence in the Attorney General’s exercising of prosecutorial functions is an integral part of the principle of prosecutorial independence.

Thank you for contacting the Federation with respect to this important matter.

Yours sincerely,



Ross Earnshaw
President