

August 31, 2001

The Honourable A. Anne McLellan, P.C., M.P.
Minister of Justice & Attorney General of Canada
284 Wellington Street, 4th Floor
Ottawa ON K1A 0H8

Dear Minister,

I am writing to thank you for having met informally with the Executive Officers of the Canadian Bar Association during our recent Annual Conference in Saskatoon. It is always beneficial for the Executive to have the opportunity to interact with you on issues of mutual concern at the beginning of the CBA year. I look forward to continuing the dialogue in more formal meetings later in the fall.

While we had not developed a specific agenda for the August 13th meeting, we did discuss several matters which merit further comment at this time.

Solicitor-Client Privilege

Your views on the possibility of exempting lawyers from the new money laundering legislation or regulations were very clear. While the CBA certainly recognizes the need to balance many interests in the development of any legislation, we remain convinced that the public interest would be best served by greater protections for solicitor-client privilege in this context, as in others. Privilege belongs, after all, to the client, not to the lawyer.

The Federation of Law Societies of Canada has indicated its intent to challenge the constitutionality of the *Proceeds of Crime Act*, arguing that the legislation fails to protect solicitor-client confidentiality adequately. The CBA will also continue to push for changes to the law.

In the context of the mail opening initiative under the *Customs Act*, I am aware that your colleague, the Honourable Martin Cauchon, has recently agreed that Customs officials will exercise caution in opening overseas mail weighing over 30 grams, taking into account the weight of packaging, in order to better respect the spirit of the legislation. That is an important first step. I would like to pursue improvements to the legislation along the lines of the notice provision that we discussed during our meeting. The

Competition Act operates on the basis of notice given before privilege is potentially breached so that the onus for breach is on the party seeking the information rather than on the party seeking to protect the client's privilege. You have offered to raise this approach with Minister Cauchon and we would be pleased to participate in those discussions. The outcome might be particularly beneficial in light of the *Lavallee*, *White Oppenheimer Baker*, and *Fink* appeals to the Supreme Court of Canada, dealing with searches of lawyers' offices under section 488.1 of the *Criminal Code*.

Divorce Act Amendments

On behalf of our National Family Law Section, we thank you for the very positive feedback on our brief on the proposed amendments to the *Divorce Act* in the area of custody and access. We agree with you that consideration of these matters must not be allowed to deteriorate into a "gender war". The CBA's Family Law Section has been careful to focus its submissions on the best interests of the children of divorcing families. We will continue to do so, in an effort to facilitate the best possible legislation in this crucial area.

Law and Science

You have suggested that the CBA could play a significant role in clarifying the role of law in the growing area of genetic and reproductive health science. The CBA has a long history of comment on reproductive technology, focusing largely on the constitutional issues raised by previous legislative initiatives. We were heartened to learn that the government remains open to suggestions for improvement to the current draft legislation on reproductive technology. We are studying the draft and will make substantive submissions to the House Committee on Health in due course.

Legal Aid

We were pleased to hear that the provinces and territories are agreeing to participate in the legal aid needs assessment that your Department is funding. While empirical evidence is certainly important, we remain concerned that the actual need for civil legal aid, particularly in the area of family law, will remain unaddressed at least until that research is complete and the "business case" is developed and accepted. We understand the fiscal federalism issues that are engaged by any hint of federal expansion into areas currently under shared jurisdiction, but access to justice cannot continue to be sacrificed to jurisdictional wars.

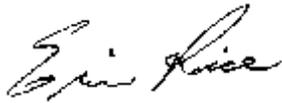
I reiterate our offer to work with you to develop programs that might prevent some of the tragedy experienced by our family law clients and their children. I would urge you, though, to continue your efforts to bring responsibility and accountability to the civil law legal aid regime in this country.

Federal Court Premises

We were pleased to receive a progress report on new premises for the Federal Court of Canada. We look forward to a permanent solution in the near future.

Thank you again, Minister, for attending the CBA's Annual Conference and for meeting with us after your speech and question period. I look forward to on-going collaboration with you and your officials over the coming year.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eric Rice". The signature is written in a cursive, flowing style.

Eric Rice, Q.C.