



November 28, 2022

Via email: nffn@sen.parl.gc.ca

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

Dear Senator Mockler:

Re: **Charter Statement – Bill C-32, *Fall Economic Statement Implementation Act Proposed Income Tax Amendments Compromise Solicitor-Client Privilege***

Thank you for the opportunity to appear before the Senate Committee on National Finance on November 23, 2022 to share our serious concerns on proposed amendments to the Income Tax Act (ITA) in *Bill C-32, Fall Economic Statement Implementation Act* that compromise solicitor-client privilege.

During our appearance, we were asked to comment on the [Charter Statement for Bill C-32](#).

We have now reviewed the Charter Statement and note that the Minister of Justice “has not identified any potential effects that could constitute an unreasonable interference with privacy as protected by section 8 of the Charter” on the additional reporting requirements for trusts.

Regrettably, the Charter Statement is incomplete as it does not mention, let alone analyze, the proposed reporting requirements for legal professionals’ trust accounts and how they interact with protecting solicitor-client privilege. This omission surprised us as we note that Charter Statements on other Bills dealing with solicitor-client privilege include a more detailed analysis of Section 8 of the Charter.

We maintain the position expressed in our submission and reiterated during our appearance on November 23, 2022. We are of the view that the proposed reporting obligations for client-specific trust accounts are inconsistent with section 8 of the Canadian Charter of Rights and Freedoms.

The Supreme Court of Canada has repeatedly confirmed that solicitor-client privilege is a quasi-constitutional right that is fundamental to the rule of law, access to justice and the proper administration of justice.

In the tax context, the Supreme Court of Canada considered the impact of onerous tax disclosure obligations as they apply to lawyers and notaries in respect of their clients in *Canada (Attorney General) v. Chambre des notaires du Quebec*, 2016 SCC 30.

The Court found there was a section 8 Charter violation in similar circumstances to Bill C-32. The Court held that “where the interest at stake is the professional secrecy of legal advisers, which is a principle of fundamental justice and a legal principle of supreme importance, the usual balancing exercise under section 8 [of the Charter of Rights] will not be particularly helpful” (para. 37). Instead, the privilege must be very clearly protected.

The Court added (at para. 74):

It is important to note that clients’ names may appear in accounting records that contain information about amounts received by and owed to a notary or lawyer. In some cases, those names may be privileged, since the fact that a person has consulted a notary or lawyer may reveal other confidential information about the person’s personal life or legal problems.

The proposed reporting obligations for legal professionals’ trust accounts would in some circumstances obligate a lawyer or notary to file a tax return for a trust account established for a particular client. This would disclose, among other things, the name of the client and the amount received from that client. This information would violate the reasonable expectations of clients to privacy and confidentiality in connection with their dealings with lawyers.

Based on the principles in *Chambre des notaires*, it follows that any legislation that could abrogate privilege in this manner would be struck down by the courts.

We also want to take this opportunity to answer several Committee members’ questions on what other measures can be taken to combat tax avoidance and money laundering, especially in light of the revelations in the Paradise, Pandora and Panama Papers.

In our view, beneficial ownership registries are effective tools to catch those who attempt to launder money, evade taxes or commit other financial crimes. In addition, enhancing information sharing and collaboration with international and domestic partners would help the CRA identify high risk cases and investigate accordingly. Similarly, increasing the CRA’s offshore audit capacity to focus on people who avoid taxes by hiding assets abroad is a useful measure.

Thank you again for the opportunity share our concerns about Bill C-32.

Yours truly,

(original letter signed by Steeves Bujold)

Steeves Bujold, he/him-il/lui