

March 7, 2001

The Honourable Martin Cauchon, P.C., M.P.
Minister of National Revenue

The Honourable Elinor Caplan, P.C., M.P.
Minister of Citizenship and Immigration

The Honourable Anne McLellan, P.C., M.P.
Minister of Justice
House of Commons
Ottawa ON K1A 0A6

Dear Ministers:

I am writing on behalf of Canadian Bar Association (CBA), concerning the recent acknowledgment by the Minister of National Revenue that Customs inspectors randomly open mail entering Canada, including correspondence between clients and their solicitors, and pass information on to other government departments. We call on the Government of Canada to end its illegal random searches of correspondence immediately, including those covered by solicitor-client privilege.

The CBA is a national association representing over 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

In 1992 a law was passed that empowered government inspectors to open mail weighing over 30 grams without a warrant from a judge. The law requires officials to have reasonable grounds to believe that the package contents might be illegal in order to open it. When questioned in the House of Commons, the Minister of National Revenue acknowledged that random searches of correspondence occur on a regular basis. By the very fact that they are random, such searches fail to meet requirement that an inspector cannot open a package without reasonable grounds to believe that its contents may be illegal.

The importance of the Government's conduct in this matter has much broader implications for rights in our society and is of grave concern to the CBA.

A spokesperson for the Minister of Citizenship and Immigration referred to these random searches as an "investigative tool" designed to protect the public.

Last week, in its decision in *R. v. McClure*, the Supreme Court of Canada stated that the:

[solicitor-client] privilege, by itself, commands a unique status within the legal system. The important relationship between a client and his or her lawyer stretches beyond the parties and is integral to the workings of the legal system itself. The solicitor-client relationship is a part of that

system, not ancillary to it. See *Gruenke*, supra, per Lamer C.J. at p. 289: ‘The prima facie protection for solicitor-client communications is based on the fact that the relationship and the communications between solicitor and client are essential to the effective operation of the legal system.

Thus, while investigative tools are often important to public security, the particular tool of a random search of correspondence covered by the solicitor-client privilege is an illegal tool. History teaches us that the violation of rights and privileges through illegal means on the grounds of public security erodes the security of democratic society, with a greater resulting cost than the benefit that could come from illegal searches.

In light of the above, the CBA asserts that the random searches of correspondence by government inspectors, including correspondence covered by the solicitor-client privilege, are illegal and must cease immediately.

The CBA has already expressed grave concerns about Bill C-11, the *Immigration and Refugee Protection Act*. We are concerned that the same principles and statutory wording allowing government officials to open the mail of all Canadians appear throughout the most important enforcement provisions of the proposed law. We call on the Minister of Citizenship and Immigration to remove these provisions from the Bill.

Finally, we understand that the Privacy Commissioner of Canada has launched an investigation into certain activities of Citizenship and Immigration regarding a database of information. We also request that the Minister of Citizenship and Immigration deliver to the Privacy Commissioner a copy of the national database referred to as the Mail Seizure database, and cooperate with the Privacy Commissioner in the investigation of the database.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Eric Rice', with a long horizontal line extending to the right.

for/
Eric Rice, Q.C.
First Vice President