



November 7, 2012

Via Email: Leah.Anderson@fin.gc.ca

Leah Anderson
Director, Financial Sector Division
Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Ms. Anderson:

Re: Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations - Canada Gazette, Part I - October 13, 2012

The Canadian Bar Association (CBA) appreciates the opportunity to comment on the draft Regulations amending the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* pre-published in the Canada Gazette, Part I on October 13, 2012. The CBA is a national association of over 37,000 lawyers, law students, Québec notaries and law teachers. Our mandate includes improvements in the law and the administration of justice.

The CBA has been involved in the development of proceeds of crime legislation since it was first considered in Canada, and has frequently commented on proposed legislative and regulatory changes, in particular as those changes impact the legal profession. As the national professional association for lawyers, the CBA supports the federal government's efforts to combat money laundering. We stress that those efforts must occur in the context of protecting the fundamental individual rights and freedoms of all Canadians, and in compliance with Canadian constitutional requirements.

While provisions in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) concerning the legal profession are in force, they are currently inoperative as a result of court rulings and related injunctions. Even though the regime does not now apply to the legal profession, the most recent ruling is under appeal.

While the appeal is not yet settled, the CBA continues to stress the importance of an independent Bar. This is fundamental to the rule of law and the fair and proper administration of justice. The importance of an independent Bar and respect for solicitor-client privilege are at the foundation of Canada's justice system. This is not changed because of the legitimacy of the government objective. Lawyers have demonstrated their willingness to aid the government to fight money laundering, but it is critical that the proper approach remain within the sphere of self-regulation.

Sections 59.41 and 59.42 of the Regulations

The CBA opposes the requirements outlined in Sections 59.4, 59.41 and 59.42 of the Regulations on the basis of requiring privileged information. To the extent that any law or regulation requires lawyers to monitor and collect information about their clients for state purposes unrelated to the lawyer's retainer, the duty of loyalty owed by lawyers to their clients is undermined, and the independence of the Bar significantly weakened.

Compelling a lawyer to become an agent of the state by providing access to confidential or privileged client information is antithetical to our duty to our clients, and would undermine the fair and proper administration of justice. The CBA is dedicated to preserving what has worked well to protect Canada's freedoms and the administration of justice — all clients' right to speak to their lawyers in the confidence that what they say will go no further.

These Regulations attempt to make lawyers agents of the state when self-regulated law societies across Canada have already introduced strict requirements on client due diligence and cash transactions. Law society requirements provide a high standard of diligence and disclosure, and compliance with these requirements is rigorously monitored and audited by law societies across Canada. Measures put in place by the law societies are more than adequate to include lawyers in the fight against money laundering, and, importantly, they can occur while upholding core constitutional values.

We appreciate the opportunity to comment on these Regulations. For our part, the CBA will continue to contribute to the federal government's efforts to combat money laundering and terrorist financing, while also ensuring that the rule of law and the rights of Canadians are preserved.

Yours truly,

(original signed by Robert C. Brun)

Robert C. Brun, Q.C.