



BY E-MAIL

March 18, 2011

Senator Raynell Andreychuk, Chair
Senate Standing Committee on Foreign Affairs and International Trade
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Re: Bill C-61 *Freezing Assets of Corrupt Regimes Act*

Dear Senator Andreychuk :

I write on behalf of the Federation of Law Societies of Canada (the "Federation") to express concern regarding a provision in Bill C-61, the *Freezing Assets of Corrupt Regimes Act* ("Bill C-61" or the "Act") which is now before the Senate Standing Committee on Foreign Affairs and International Trade (the "Senate Foreign Affairs Committee") for study. The Federation's submissions to the Senate Foreign Affairs Committee are set out below.

The Federation is the national coordinating body of the 14 provincial and territorial governing bodies of the legal profession in Canada. Our member law societies are charged with the responsibility of regulating Canada's 103,000 lawyers and 3,500 notaries in Quebec in the public interest. The Federation is a leading voice on a wide range of issues of national and international importance involving justice and regulatory matters critical to the protection of the public.

Current world affairs have highlighted the necessity of having the appropriate tools to freeze assets or restrain the property of corrupt foreign officials and the Federation supports the goals of Bill C-61. We are very concerned, however, that the broad disclosure requirement in section 9 of the proposed legislation would impose duties on legal professionals that are contrary to the independence of the bar, the duty of loyalty and the protection of solicitor-client privilege.

As you are aware, section 9 of Bill C-61 requires all Canadians and every person in Canada to disclose to the Royal Canadian Mounted Police the existence of property in their possession or control that they believe is the subject of an order under the Act. The section also requires disclosure of information about transactions or proposed transactions involving such property. Pursuant to section 10 of the Act, willing contravention of the disclosure requirement is a criminal offence that can result in a fine of up to \$25,000 or a maximum of 5 years in prison.

The disclosure requirement would operate to oblige a lawyer or Quebec notary to breach his or her duty of loyalty to a client and to reveal information that is protected by solicitor-client privilege. The obligation to divulge confidential information to a law enforcement authority would also undermine the independence of the bar. The Bill makes no provision for lawyers and Quebec notaries that would avoid these difficulties.

All information shared between clients and legal professionals in connection with legal advice is privileged. The Courts have held that solicitor-client privilege must be as close to absolute as possible to ensure that clients may communicate openly to their legal counsel to obtain proper legal advice. This is a fundamental principle of the Rule of Law and helps to ensure public confidence in our legal system. Both the codes of professional conduct imposed by law societies and the common law require legal professionals to respect a strict duty of loyalty to clients and a duty to avoid conflicts between their interests and those of their clients.

Members of the legal profession are, of course, prohibited by law from assisting a client in the commission of an offence and would thus be prohibited from assisting in the breach of an order under the Act. This prohibition is reinforced by the ethical rules contained in the codes of professional conduct to which members of the legal profession are bound. In the view of the Federation, however, requiring lawyers and Quebec notaries to report the affairs of their clients to a government law enforcement agency under threat of criminal sanction is anathema to these principles of fundamental importance to the integrity of our system of justice. We note that this view has been upheld by the Courts. In a series of legal proceedings in 2001 and 2002, the Federation obtained court orders exempting legal professionals from the suspicious transaction reporting regime imposed under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.¹ Following those proceedings, the government repealed the regulations imposing reporting requirements on legal counsel.

In our respectful view, the concern which we have identified with the Act as it is now drafted would be addressed by the adoption of the following amendment to section 9:

- (1.1) A person described in subsection (1) is not required to disclose any information that is subject to solicitor-client privilege.

We thank you for taking the time to consider these submissions. The Federation would welcome an opportunity to appear before the Senate Foreign Affairs Committee and to answer any questions committee members may have regarding these important matters.

Sincerely,



Ronald J. MacDonald, Q.C.
President

¹ 2001 BCSC 1593, aff'd 2002 BCCA 49; [2001] A.J. No. 1697 (Q.B.); (2002), 57 O.R. (3d) 383 (S.C.J.); 2002 NSSC 95; 2002 SKQB 153.