

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**FEDERATION OF LAW SOCIETIES OF CANADA**

PETITIONER

AND

**ATTORNEY GENERAL OF CANADA**

RESPONDENT

**PETITION TO THE COURT**

THIS IS THE PETITION OF:

**FEDERATION OF LAW SOCIETIES OF CANADA**  
480 – 445 boul. Saint-Laurent  
Montreal, QC H2Y 2Y7

ON NOTICE TO:

**ATTORNEY GENERAL OF CANADA**  
Justice Building  
284 Wellington Street  
Ottawa, ON K1A 0H8

AND TO:

**ATTORNEY GENERAL OF BRITISH COLUMBIA\**  
Parliament Buildings  
Victoria, B.C. V8V 1X4

Let all persons whose interests may be affected by the Order sought TAKE NOTICE that the Petitioner applies to court for the relief set out in this petition.

IF YOU WISH TO BE HEARD at the hearing of the Petition or wish to be notified of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled “Appearance” in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the “Appearance” to the Petitioner’s address for delivery, which is set out in this Petition.

YOU OR YOUR SOLICITOR may file the “Appearance”. You may obtain a form of “Appearance” at the registry.

IF YOU FAIL to file the “Appearance” within the proper Time for Appearance, the Petitioner may continue this application without further notice.

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time.]

#### TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the Petitioner
  - (i) 2 copies of a response in Form 124, and
  - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
  - (i) one copy of a response in Form 124, and
  - (ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is:

800 Smithe Street  
Vancouver, B.C.  
V6Z 2E1

(2) The ADDRESS FOR DELIVERY is:

BLAKE, CASSELS & GRAYDON LLP  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
Vancouver, B.C.  
V7X 1L3

Fax number for delivery is: (604) 631-3309

(3) The name and office address of the Petitioner's solicitor is:

Josiah Wood, Q.C.  
BLAKE, CASSELS & GRAYDON LLP  
Suite 2600, Three Bentall Centre  
595 Burrard Street, P.O. Box 49314  
Vancouver, B.C.  
V7X 1L3

**The Petitioner applies to this court for:**

1. A declaration that ss. 5(i) and 5(j) of the *Proceeds of Crime (Money Laundering) Act*, S.C. 2000, c. 17 (the "Act") are inconsistent with the Constitution of Canada, and of no force or effect, to the extent that the reference in those subsections to "persons and entities" includes legal counsel;
2. A declaration that ss. 5(i) and 5(j) of the Act be read down so as to exclude legal counsel from the "persons and entities" referred to in those subsections;
3. A declaration that s. 5 of the *Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations*, SOR/2001-317 (the "Regulations") is *ultra vires* the Act and inconsistent with the Constitution of Canada, and is therefore of no force or effect;
4. An order for interim and interlocutory relief suspending the operation of s. 5 of the Regulations until the hearing of this Petition and the release of this court's decision thereon;
5. A declaration that ss. 62 and 63 of the Act be read down so as to exclude legal counsel from the "persons and entities" referred to in those sections;

6. A declaration that s. 64 of the Act is inconsistent with the Constitution of Canada and of no force or effect;
7. A declaration that s. 17 of the Act is inconsistent with the Constitution of Canada and of no force or effect; and
8. Costs.

**The Petitioner will rely on:**

1. Section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11;
2. The *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982, supra*;
3. Rule 10 of the Rules of Court; and
4. Rule 57 of the Rules of Court.

**At the hearing of this Petition will be read:**

1. The affidavit of Jean Whittow, Q.C., sworn on November 7, 2001 and filed in these proceedings;
2. The affidavit of Richard Margetts, Q.C., sworn on November 5, 2001 and filed in these proceedings;
3. The affidavit of Robert J. Fiske, Jr., (U.S.) Attorney at Law, sworn on November 5, 2001 and filed in these proceedings;
4. The affidavit of Eric Rice, Q.C., sworn on November 5, 2001 and filed in these proceedings;
5. The schedules and materials served with this Petition; and

6. Such other and further materials as counsel for the Petitioner may advise.

**The facts upon which this Petition is based are as follows:**

1. The Petitioner is incorporated under the *Canada Business Corporations Act*. The Petitioner's members are representatives of the governing bodies of the legal profession in all of the Canadian provinces and the Yukon and Northwest Territories.

**Overview of Legislation**

2. According to s. 3 of the Act, the Act is intended to enable authorities to detect and deter money laundering, enhance law enforcement, and assist in fulfilling Canada's international commitment to participate in the fight against money laundering.
3. The Act creates and empowers the Financial Transactions and Reports Analysis Centre of Canada (the "Centre") to gather information about money laundering and share it with domestic and international law enforcement agencies.
4. In support of the Centre's information gathering function, a wide range of persons and entities, including "legal counsel", will be required to record and report to the Centre information relating to "suspicious transactions" and "large cash transactions".
5. The Director of the Centre may authorize any person to conduct wide ranging warrantless searches of businesses, including the offices of legal counsel, to enforce compliance with the Act. As well, customs officers are entitled to open any imported or exported mail in search of currency or monetary instruments.
6. Although the entire Act has received royal assent, only certain parts of it have been proclaimed into force. In particular, the provisions relating to the creation and empowerment of the Centre, the regulation-making authority, and the enforcement provisions, among others, are in force.

7. Other portions of the Act will come into force by Order in Council. The first portion of the Act to come into force imposing obligations in regards to the reporting of information will come into force on October 28, 2001, pursuant to P.C. 2001 – 1499, *Proceeds of Crime (Money Laundering) Act, Order Fixing October 28, 2001 as the Date of the Coming to Force of Certain Sections of the Act*, SI/2001-88, C. Gaz. 2001.II.2013 (the “Order”).

8. The Order provides that, *inter alia*, ss. 5, 7, 8, 10 and 11 of the Act will come into force on October 28, 2001.

9. The Regulations supplement the Act. The Proposed *Proceeds of Crime (Money Laundering) Regulations, 2000*, C. Gaz. 2001.I.537 (the “Proposed Regulations”) set out some of the federal government’s proposals in regards to the details of the implementation of the legislation. Some aspects of the Proposed Regulations have been incorporated into the Regulations, which will come into force on November 8, 2001.

10. The federal government has indicated that other aspects of the legislative scheme, including regulations regarding large cash transactions and cross border movements of currency and monetary instruments will be implemented over the course of the next year.

### **Application to Legal Counsel**

11. “Legal counsel” is defined in s. 2 of the Act as “in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor”.

12. Section 5 of the Regulations makes legal counsel subject to the obligations set out in Part 1 of the Act when they engage in any of the following activities on behalf of any person or entity, including the giving of instructions on behalf of any person or entity:

- (a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;
- (b) purchasing or selling securities, real property or business assets or entities; and
- (c) transferring funds or securities by any means.

13. The portion of the Regulations making legal counsel subject to Part 1 of the Act is authorized by ss. 5(i), 5(j) and 73(1) of the Act.

### **Reporting Suspicious Transactions**

14. Section 7 of the Act, which will come into force on October 28, 2001 pursuant to the Order, provides for the reporting of “suspicious transactions”:

Every person or entity shall report to the Centre, in the prescribed form and manner, every financial transaction that occurs in the course of their activities and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence.

15. The “prescribed form and manner” is set out in the Regulations. Section 10 of the Regulations provides that the person shall send a report to the Centre within 30 days after first detecting a fact that constitutes reasonable grounds to suspect that a transaction is related to the commission of a money laundering offence.

16. Section 9 of the Regulations indicates that the information required to be reported to the Centre is set out in the Schedule to the Regulations as the “Suspicious Transaction Report”. A Suspicious Transaction Report must include the following information (except in certain cases where the information is not applicable or the reporting person is unable to obtain the information after taking reasonable measures to do so):

- (a) the type of reporting person or entity;
- (b) the identification number of the place of business where the transaction occurred;
- (c) the full name of the reporting person or entity;
- (d) the full address of the business where the transaction occurred;
- (e) the name and telephone number of a contact person;
- (f) the date and time of the transaction, including the posting date if different;

- (g) the purpose and details of transaction, including the type and amount of funds and other institutions or accounts that are involved;
- (h) the method of the transaction;
- (i) the identification number of the individual who first detected a fact respecting a suspicious transaction;
- (j) complete account details, including account and branch number, type of account, full name of each account holder, date account opened and closed, and current status of account;
- (k) full information on individual conducting transaction, including name, address, country of residence, personal telephone number, government identification (e.g. passport number), date of birth, occupation, employer, business telephone number and address;
- (l) a detailed description of the grounds to suspect that the transaction is related to the commission of a money laundering offence; and
- (m) any other action taken as a result of suspicion.

17. Neither the Act, the Proposed Regulations, nor the Regulations specify what information legal counsel are required to refer to in formulating their grounds for suspicion regarding the transaction.

18. Section 8 of the Act prohibits legal counsel from disclosing to their clients or at all that they have made a Suspicious Transaction Report under s. 7 of the Act, or disclosing the contents of such a report, with the intent to prejudice a criminal investigation, whether or not such an investigation has begun.

19. Section 75 of the Act creates offences for the breach of ss. 7-8 of the Act. A breach of s. 7 of the Act is punishable on indictment by a fine of up to \$2,000,000 and

imprisonment for up to five years. Breach of s. 8 of the Act is punishable on indictment with imprisonment of up to two years.

### **Recording and Reporting Large Cash Transactions**

20. Section 6 of the Act requires every reporting person or entity to keep and retain records relating to certain financial activities.

21. Sections 32-33 of the Proposed Regulations would require legal counsel to record and report a large cash transaction involving \$10,000 or more in coins or notes of Canadian or other currency, unless the amount is received from a financial entity or a public body.

22. Section 9 of the Act requires the reporting of large cash transactions.

23. The information which will be required to be recorded and reported pursuant to ss. 6 and 9 of the Act is not fully determined. However, Schedule 2 of the Proposed Regulations sets out certain information which would be required in a Large Cash Transaction Report.

24. As well, s. 55 of the Act, which is in force as of October 28, 2001, authorizes the Centre to share “designated information” with law enforcement agencies for the purposes of investigating money laundering offences. Section 12 of the Regulations further details “designated information” pursuant to s. 55 of the Act.

25. Section 74 of the Act makes it an offence knowingly to contravene s. 6 of the Act, and prescribes a fine of up to \$500,000 and up to five years imprisonment. Section 77 of the Act makes non-compliance with s. 9 of the Act a strict liability offence with a due diligence defence. The maximum penalty for a contravention of s. 77 is \$500,000 for a first offence and \$1,000,000 for each subsequent offence; there is no provision for incarceration.

26. As noted above, s. 55 of the Act empowers the Centre to disseminate “designated information”. On certain stated criteria, the Centre may disclose information to police forces, the Canada Customs and Revenue Agency, the Canadian Security Intelligence Service, the Department of Citizenship and Immigration, and any international organization or agency of a foreign state with duties similar to those of the Centre, pursuant to ss. 3 and 55 of the Act.

### **Solicitor-Client Privilege**

27. Section 11 of the Act provides that nothing in Part 1 of the Act “requires a legal counsel to disclose any information that is subject to solicitor-client privilege.”
28. The legislation does not specify whether “disclose” applies to the obligation of legal counsel to record information.
29. The extent of solicitor-client privilege is not defined anywhere in the Act, Regulations or Proposed Regulations.
30. Neither the Act nor the Regulations provide any protection for solicitor-client confidentiality.
31. Section 11 of the Act does not apply to Part 2 and Part 3 of the Act.

### **Part 2 of the Act**

32. Section 17 of the Act empowers a customs officer to open and examine mail that is exported or imported, if the officer suspects on reasonable grounds that the mail contains currency or monetary instruments of a value greater than a prescribed amount. The Petitioner says that the prescribed amount is likely to be \$10,000, as indicated in the Proposed Regulations.
33. If the mail weighs less than 30 grams, the officer may only examine it by having it opened in the officer’s presence by the addressor, addressee, or a person authorized by either of those persons.
34. There is no requirement that a customs officer obtain a warrant prior to searching the mail. Nor is there any provision protecting solicitor-client privilege or confidential information, as s. 17 of the Act is within Part 2 and the protection of solicitor-client privilege in s. 11 of the Act only applies to Part 1 of the Act.

### **Part 3 of the Act**

35. Section 62-65 of the Act empower persons authorized by the Director of the Centre to search persons and entities subject to Part 1 of the Act for the purpose of ensuring compliance with the recording and reporting obligations enshrined in that Part.

36. Although these sections are not yet proclaimed into force, they have received royal assent and cannot be changed without parliamentary amendment, and can be brought into force at any time by Order in Council.

37. Section 62 of the Act allows an authorized person, at any reasonable time, to enter any premises other than a dwelling-house, in which the authorized person believes on reasonable grounds that there are records relevant to ensuring compliance with Part 1 of the Act.

38. In doing so, an authorized person may examine data on any computer system on the premises and use copy equipment to reproduce records located on the premises.

39. Persons in the premises must assist the authorized person in carrying out his or her responsibilities and furnish the authorized person with any information with respect to the administration of Part 1 of the Act or its regulations that she or he may reasonably require.

40. There is no requirement that the authorized person obtain a warrant prior to acting under s. 62.

41. Section 63 of the Act empowers an authorized person to enter a dwelling-house with the authority of a warrant issued by a justice of the peace on *ex parte* application if:

- (a) there are reasonable grounds to believe that there are records in the premises relevant to ensuring compliance with Part 1 of the Act;
- (b) entry to the dwelling-house is necessary for a purpose that relates to ensuring compliance with Part 1 of the Act; and

- (c) entry to the dwelling-house has been refused or there are reasonable grounds for believing that it will be refused.

42. Section 64 of the Act allows legal counsel to claim solicitor-client privilege in respect of documents which an authorized person attempts to examine or copy pursuant to ss. 62-63. If the legal counsel claims privilege, he or she must:

- (a) place the document, together with any other document in respect of which the legal counsel at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the authorized person and the legal counsel agree, allow the pages of the document to be initialled and numbered or otherwise suitably identified;
- (b) retain it and ensure that it is preserved until it is produced to a judge as required and an order is issued in respect of the document; and
- (c) provide the authorized person with the name and latest known address of the client so that the authorized person may contact the client to give him or her an opportunity to waive the claim of privilege.

43. After the legal counsel makes a claim of privilege, if the client or legal counsel wish to defend that claim, the person may apply, on three days' notice of motion to the Deputy Attorney General of Canada and within fourteen days after the claim was made, to a judge for an order:

- (a) fixing a day, not later than 21 days after the date of the order, and a place, for the determination of the question of whether the client has solicitor-client privilege in respect of the document, and
- (b) requiring the production of the document to the judge at that time and place.

44. If neither the client nor the legal counsel make the application within the prescribed time limit, a judge, on the application of the Attorney General of Canada, must order that the legal counsel make the documents available to the authorized person.

45. Section 64(8) of the Act provides that no costs may be awarded in regards to an application made under s. 64 of the Act.

46. Section 65 of the Act allows the Centre to disclose to law enforcement agencies any information obtained under ss. 62-63 and that the Centre suspects on reasonable grounds is evidence of a contravention of Part 1 of the Act.

47. The Petitioner estimates that this application will take approximately three days.

DATED: November \_\_, 2001.

---

Solicitor for Petitioner  
Josiah Wood, Q.C

---

Solicitor for Petitioner  
Roy Millen

THIS PETITION is filed and delivered by Josiah Wood, Q.C., and Roy Millen of BLAKE, CASSELS & GRAYDON LLP, Barristers and Solicitors, Suite 2600, Three Bentall Centre, 595 Burrard Street, P.O. Box 49314, Vancouver, B.C., V7X 1L3, tel. 604.631.3300, fax 604.631.3309.