



## Money-Laundering Chronology of Events

April 2003

**Money Laundering – Chronology of Events** – is a document maintained by the Federation Office in collaboration with the office of the Canadian Bar Association. The document outlines the steps taken by the legal profession in Canada since 1998 to challenge the requirement that lawyers report confidential information of their clients to the federal government. The Federation and the CBA have vigorously challenged such reporting requirements.

June 12, 1998

**CBA makes first objection to erosion of solicitor client confidentiality in money laundering legislation**

In June 1998, Barton Rosborough, then Chair, CBA National Criminal Justice Section, responds to the Solicitor General Canada on proposals to create a Suspicious Transaction and Cross-Border Currency Reporting regime. Mr. Rosborough urges further consultation with the CBA prior to introducing legislation to ensure that principles of solicitor-client confidentiality and privilege are protected in any contemplated legislative amendments.

November 26, 1998

**CBA writes to the office of the Solicitor General Canada**

On November 26, 1998, Isabel J. Schurman, then Chair, CBA National Criminal Justice Section, writes to the Office of the Solicitor General Canada in regards to the Suspicious Transaction Reporting and Cross-Border Currency Reporting regime. Ms. Schurman asks that the CBA be included in consultations on a more detailed legislative proposal. She says:

The inclusion of lawyers in the category of persons required to report poses a number of difficulties. The proposed legislation is likely inconsistent with the duty of confidentiality which lawyers owe to their clients. The Codes of Professional Conduct issued by each Law Society in Canada imposes on lawyers a duty of confidentiality with respect to information emanating from a client. The proposed law would put lawyers in a position of being required to act in an unethical manner according to their Codes of Professional Conduct.

Spring, 1999

**CBA meets with Solicitor General to discuss confidential draft legislation**

In spring 1999, the CBA National Criminal Justice Section and Financial Institutions Committee meet with officials from the Solicitor General's office to discuss confidential draft legislation on a money-laundering regime. The CBA expresses concerns that the proposals could damage the confidential relationship between solicitor and client by requiring lawyers to report their clients based on a "suspicion" of money laundering, and would have a

December 10, 1999	<b>CBA writes to Ministers of Justice and Finance</b>	<p>chilling effect on legitimate commercial transactions.</p> <p>On December 10, 1999, Eugene Meehan, then CBA President, writes to The Hon. Anne McLellan, P.C., M.P., then Minister of Justice and Attorney General of Canada, and Hon. Paul Martin, P.C., M.P., Minister of Finance, in regard to anticipated reintroduction of legislation pertaining to suspicious transactions, saying:</p> <p style="padding-left: 40px;">The requirements of the Bill would fundamentally alter the very foundation of the solicitor-client relationship. This relationship is premised upon the protection of both privilege and confidentiality. Clients must be able to seek the assistance of a lawyer knowing that the information that they pass to the lawyer will remain with the lawyer and go no further. Uncertainty in the integrity of the privilege or confidentiality will create uncertainty in and undermine the solicitor-client relationship...We recommend that lawyers' financial dealings with clients be specifically excluded from the ambit of any future proposed legislation to do with suspicious transactions.</p>
January- April, 2000	<b>CBA meets with federal government</b>	<p>Throughout early 2000, the CBA has a series of confidential meetings with representatives from Finance Canada, Justice Canada and Solicitor General, to provide technical drafting assistance. It continues to urge the omission of lawyers' dealings with their clients from the ambit of the Bill.</p>
April 11, 2000	<b>CBA voices its objections to the House of Commons Finance Committee</b>	<p>In April 2000, the CBA presents a detailed submission on Bill C-22, the <i>Proceeds of Crime (Money Laundering) Act</i> to the House of Commons Standing Committee on Finance. The CBA warns that the legislation would require lawyers to act in a manner inconsistent with their professional and legal duties to preserve solicitor-client confidentiality, recommending that lawyers be specifically excluded from the ambit of any legislation concerning suspicious transactions. The CBA continues:</p> <p style="padding-left: 40px;">The social cost of conscripting the legal profession into the role of state investigators against their own clients is profound. Clients must be able to seek the assistance of a lawyer knowing that the information they communicate will remain with the lawyer and go no further. Uncertainty in the integrity of the privilege or confidentiality will create uncertainty in and undermine the solicitor-client relationship."</p>
June 2000	<b>CBA voices its objections to the Senate Banking Committee</b>	<p>On June 5, 2000, the CBA appears before the Standing Senate Committee on Banking, Trade and Commerce. Eugene Meehan, then CBA President says:</p> <p style="padding-left: 40px;">No matter how worthwhile a Bill's objectives, it must be properly tailored so that it does not create unwarranted obligations or interfere with existing rights in a manner beyond that demonstrably necessary ... The possible beneficial effects of the Bill are outweighed by its predictable deleterious effects.</p> <p>On June 12, the CBA responded to a request from the Senate Committee for additional information on comparative legislation in other countries, and alternative drafting to the section of the bill concerning the legal</p>

September- November 2000	<b>CBA meets with federal government officials on money laundering regulations</b>	<p>profession.</p> <p>Throughout fall 2000, CBA representatives meet on a number of occasions with government officials from Finance Canada, Justice Canada, Solicitor General and FINTRAC, continuing to reiterate its concerns, and to comment on proposed regulations. These result in some limits on the reporting requirements for legal counsel, namely legal fees, disbursements, expenses and bail.</p>
May 16, 2001	<b>CBA submission on Money Laundering Regulations</b>	<p>In May 2001, the CBA writes to Finance Canada's Financial Sector Division, about the proposed Money Laundering Regulations, 2000:</p> <p style="padding-left: 40px;">In our view, including lawyers as parties who must divulge information entrusted to them by their clients constitutes an unwarranted assault upon the solicitor-client relationship and the independence of the legal profession. While some of our suggestions have been incorporated into the current Regulations, we reiterate and maintain this fundamental concern on behalf of the legal profession and its clients.</p>
May 23, 2001	<b>Federation adopts First Resolution on Money-Laundering</b>	<p>By Special Meeting held by conference call, the Federation adopts a Resolution on Proceeds of Crime (Money-Laundering) Act which states that whereas:</p> <p style="padding-left: 40px;">the Barreau du Québec, the Chambre des Notaires du Québec, the Canadian Bar Association, the Ontario and Nova Scotia Criminal Lawyers Associations and other legal associations have made representations to the federal government to express their concern with respect to the legislation; and that</p> <p style="padding-left: 40px;">the Federation of Law Societies of Canada and the provincial and territorial law societies are fundamentally opposed to money laundering and in favour of the basic purpose underlying the Act;</p> <p>That the Federation requests that the federal government extend the period of consultation on the Act and proposed regulations and defer proclamation of those parts of the Act and proposed regulations that would infringe upon solicitor-client confidentiality and the professional independence of legal counsel pending a full consultation with the provincial and territorial law societies; and</p> <p>THAT in the event no decision is made to defer proclamation of those parts of the Act and proposed regulations that would infringe upon solicitor-client confidentiality and the professional independence of legal counsel and no decision is made to extend the period for consultation, or in the event that the impugned sections of the Act and regulations are brought into effect, <b>the presidents of law societies report to the Federation of Law Societies of Canada at its annual meeting in Saskatoon in August 2001 for the purpose of considering the initiation or participation in appropriate constitutional and legal</b></p>

**challenges of the Act and proposed regulations as soon as practicable.**

June 22, 2001

**CBA writes to Criminal Lawyers' Association on Money-Laundering**

On June 22, 2001, the CBA writes to Alan Gold of the Criminal Lawyers' Association, expressing its willingness to join in a coalition to fight the inclusion of lawyers in the *Proceeds of Crime Act*, saying:

We too are pleased that the law societies have now joined this important fight... a joint effort can only increase the chances of changing this law.

June 28, 2001

**Federation writes to the Feds**

On June 28, 2001, Abraham Feinstein, Q.C., then Federation's President writes to the Prime Minister of Canada, the Minister of Justice, the Minister of Finance and the Solicitor General of Canada requesting that the:

Federation and the Law Societies be invited to meet with the Government of Canada in order that representations on the implications of the Act (money-laundering) and proposed regulations can be discussed, specifically the impact of the proposed Regulations on both solicitor-client privilege and solicitor-client confidentiality. Time is of the essence, and a meeting this summer would be most appropriate as the Law Societies will meet in mid-August in Saskatoon at which time they will consider the possibility of launching a constitutional challenge to the Act and the Regulations.

From this correspondence, the Federation is invited to meet with staff from the Department of Finance who is never properly identified to the Federation.

August 11, 2001

**CBA adopts resolutions on money laundering**

At its Annual Meeting, CBA Council adopts two resolutions relating to money laundering legislation. The first strongly condemns legislated incursions into solicitor-client confidentiality. The second calls on the federal government to specifically exempt legal counsel from the operation of the *Proceeds of Crime (Money Laundering) Act*.

August 18, 2001

**Federation adopts second resolution on money-laundering**

At its Annual Meeting, the Federation adopts a resolution which calls for the President to appoint a special committee to retain and instruct legal counsel to initiate appropriate legal challenges of the *Proceeds of Crime (Money Laundering) Act* and proposed regulations as soon as practicable.

September – October 2001

**Federation appoints Special Litigation Committee**

Maurice O. Laprairie, Q.C., Federation's President, appoints Special Litigation Committee with Richard C. Gibbs, Q.C., as Chair of the Committee. Joe Wood, Blakes, Vancouver, is retained as lead counsel for the Federation.

October – December 2001

**Notice of Constitutional Questions**

In October 2001, the Federation and the Law Society of British Columbia give Notice of Constitutional Questions to the Honorable Anne McLellan, Minister of Justice and Attorney General of Canada, indicating, amongst other questions, that they are questioning whether ss. 5(i) and 5(j) of the *Proceeds of Crime (Money Laundering) 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. In November and December, all Law Societies in Canada follow suit by giving notices of constitutional questions to their provincial and territorial Attorney General.

November 8, 2001

**Regulations come into force: Federation goes to Court in British Columbia**

On November 8, 2001, certain parts of the *Proceeds of Crime (Money Laundering) Act* come into force and require lawyers to secretly report suspicious transactions of their clients to the federal government. On the same day, the Federation commences legal proceedings in the Supreme Court of British Columbia with a view of obtaining a declaration of nullity and/or unconstitutionality of those provisions of the *Proceeds of Crime (Money Laundering) Act*.

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

November 20, 2001

**Judge Allan grants exemption to BC lawyers**

Madam Justice Allan, of the Supreme Court of British Columbia, grants an exemption of the application of section 5 of the Regulations of the *Proceeds of Crime (Money Laundering) Act* pending a full hearing of the FLSC and the LSBC Petitions on their merits, saying:

The proclamation of s. 5 of the Regulations authorizes an unprecedented intrusion into the traditional solicitor-client relationship. The constitutional issues raised deserve careful consideration by the Court. The petitioners seek a temporary exemption from the legislation until the merits of their constitutional challenge can be determined. I conclude that the petitioners have satisfied the tripartite test for the exemption they seek. They are entitled to an order that legal counsel are exempt from the application of s. 5 of the Regulations pending a full hearing of the Petitions on their merits.

The CBA intervenes in support of the Federation and Law Society.

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

November 21, 2001

**Federation's President seeks national application of BC exemption**

Maurice O. Laprairie, Q.C., Federation's President, writes to the Honourable Anne McLellan, Minister of Justice for Canada, (as she then was) asking that the Interlocutory Order pronounced by Allan J., in British Columbia, be accepted as having national reach with the result that legal counsel across the country will be exempt from complying with Part 1 of the *Proceeds of Crime (Money Laundering) Act*, until such time as that Order, or any extension of it, is set aside by order of a court of competent jurisdiction. No direct response ever received from the Minister.

November 23, 2001

**Attorney General seeks leave before British Columbia Court of Appeal**

The Federation is served with an application for Leave to Appeal the Interlocutory Order of Madam Justice Allan rendered on November 20 and which suspended the application of section 5 of the Regulations of the *Proceeds of Crime (Money Laundering) Act* pending a full hearing of the FLSC and the LSBC Petitions on their merits. The Appeal is set to be

heard on January 18, 2002.

November 27, 2001	<b>Federation's President seeks national application of BC exemption</b>	Maurice O. Laprairie, Q.C., Federation's President, again writes to the Honorable Anne McLellan, Minister of Justice for Canada, (as she then was) asking that the Interlocutory Order pronounced by Allan J., in British Columbia, be accepted as having national reach. No direct response ever received from the Minister.
December 4, 2001	<b>Federation seeks exemption for Alberta lawyers</b>	<p>The Federation commences legal proceedings in the Court of Queen's Bench of Alberta with a view of obtaining a declaration of nullity and/or unconstitutionality of certain provisions of the Proceeds of Crime (Money Laundering) Act. Ken Nielsen, Vice-President, Law Society of Alberta and Don Thompson, Executive Director, Law Society of Alberta, file affidavits on behalf of the Federation.</p> <p><i>Peter Royal, Q.C., and Mona Duckett, Q.C., from the law firm of Royal, McCrum, Duckett &amp; Glancy in Edmonton, are Counsel for the Federation. Mrs. Duckett appeared before the Court on December 6, 2001 (pro bono to the Federation).</i></p>
December 6, 2001	<b>Judge Watson gives out filing instructions to Alberta lawyers</b>	<p>Mr. Justice Watson of the Court of Queen's Bench of Alberta makes the following interlocutory orders:</p> <ol style="list-style-type: none"><li>1. The obligations of lawyers in Alberta concerning suspicious transactions are not stayed.</li><li>2. However, lawyers will not provide their suspicious transaction reports to the Financial Transactions and Reports Analysis Centre (FINTRAC). Instead, they will place them in a sealed envelope marked only with their names and file numbers, to the Law Society of Alberta for storage.</li><li>3. The Law Society of Alberta will stamp the envelopes as to date of receipt.</li><li>4. The documents are not subject to search warrant unless ordered by this court.</li></ol>
December 21, 2001	<b>Federation files Notice of Appeal before Alberta Court of Appeal</b>	<p>The Federation files a Notice of Appeal before the Court of Appeal of Alberta of the decision rendered by Mr. Justice Watson on December 6, 2001.</p> <p><i>Peter Royal, Q.C., and Mona Duckett, Q.C., from the law firm of Royal, McCrum, Duckett &amp; Glancy in Edmonton, are Counsel for the Federation (pro bono to the Federation) and the Law Society of Alberta in Alberta.</i></p>
January 2, 2002	<b>Judge Cullity grants exemption to Ontario lawyers</b>	Justice Maurice Cullity of the Ontario Superior Court of Justice grants a temporary exemption for Ontario lawyers from reporting requirements of the new federal money laundering law until a constitutional challenge is heard in Ontario. The Ontario application was brought after the Federal Justice Minister indicated she would not consider the B.C. order applicable

in the rest of Canada.

Mr. Justice Cullity in the decision states:

In imposing a duty on legal practitioners to give secret reports of their clients' transactions to a government agency, the legislation clearly impinges on, and alters, the traditional relationship between solicitors, or counsel, and their clients. It does not merely override a lawyer's ethical duty of confidentiality -something that has always been possible in legal proceedings with respect to matters not subject to solicitor-client privilege -it strikes at the lawyer's duty of loyalty and the client's privilege against self-incrimination as well as the principle that lawyers should be independent of government. The duty of loyalty is affected not only by the obligation to make secret reports to government about a client's transactions and personal details but, also, because of the inevitable involvement of the lawyer's personal interests and potential liability to severe penalties when decisions whether to report are to be made.

*William Horton and Charlotte Kanya-Forstner, of the law firm of Blakes in Toronto, are counsel for the Federation (pro bono to the Federation) in Ontario.*

January 8, 2002

**Federation's  
President seeks  
Canada-wide  
Application of Ontario  
and BC Judgments**

Maurice O. Laprairie, Q.C., the Federation's President, again writes to the Honorable Anne McLellan, Minister of Justice for Canada, (as she then was) asking that the Interlocutory Order pronounced by Allan J., on November 20th, 2001, in British Columbia, and the Order pronounced by Cullity J. in Ontario on January 4th, 2002, be accepted as having national reach with the result that legal counsel across the country will be exempt from complying with Part 1 of the Proceeds of Crime (Money Laundering) Act, until such time as that Order, or any extension of it, is set aside by order of a court of competent jurisdiction.

Mr. Laprairie in his letter to the Minister states that:

In my earlier letters I expressed appreciation for your position that you must vigorously defend this legislation and I noted our obvious disagreement with respect to the constitutionality of the same. I earlier respectfully suggested that we channel that disagreement through the courts of British Columbia and, if necessary, on to the Supreme Court of Canada. I suggested that this would result in the speediest and most cost effective resolution of the matter. Our proposal that the Order of Allan J. be accepted as having national reach brings uniformity and certainty regarding the law to the people of Canada and the lawyers who serve them, while this matter is being resolved through the courts.

No response ever received from the Minister or her office.

January 9, 2002

**Case Management  
Conference takes  
place before British**

A case management conference takes place in British Columbia before Chief Justice Brenner. At that time the parties discussed the scheduling

## Columbia Court

leading to the hearing of the Petitions of the Federation and the Law Society of British Columbia. The Attorney General advises that they will need 6 months to prepare for trial. The Federation, the Law Society of British Columbia agree to the date of June 24<sup>th</sup> on the condition that counsel from the Minister (Harry Wruck, Q.C.) will get instructions from Ottawa that BC will be the venue in which the merits of the petition will be heard. All, including Brenner C.J.S.C., were in agreement that B.C. should be the jurisdiction in which the merits of the substantive issues in the Petition are determined at least to the appellate level. Wruck Q.C. advised that he felt reasonably confident he would get the required instructions. Chief Justice Brenner has not yet decided whether he will hear the matter himself, or assign one of his judges to the matter. A case management process will be put in place to ensure that the substantive issues move to hearing as expeditiously as possible.

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

January 11, 2002

### **Attorney General seeks leave before Ontario Divisional Court**

The Federation is served with a Motion for Leave to Appeal the Interlocutory Order of Mr. Justice Cullity rendered on January 08 and which suspended the application of section 5 of the Regulations of the Proceeds of Crime (Money Laundering) Act in Ontario. The motion for leave to appeal is scheduled for March 13, 2002.

*Bill Horton and Charlotte Kanya-Forstner, Blakes, Toronto, are counsel for the Federation (pro bono to the Federation) in Ontario.*

January 15, 2002

### **Federation meets with Finance and Justice Deputies**

Maurice O. Laprairie, Q.C., Joe Wood and Jack Giles, travel to Ottawa to meet with Jim Bissell, Justice, and Yvan Roy, Finance, to discuss the national application of the orders of Allan and Watson. No deal is reached at that time.

January 15, 2002

### **CBA writes to new Minister of Justice**

CBA President Eric Rice, Q.C. writes to the Honourable Maurice Cauchon on the day he is named Attorney General of Canada, urging a prompt response to the request that the B.C. interlocutory order be applied across the country. Mr. Rice says:

A fundamental aspect of the rule of law is the protection of the relationship between clients and their solicitors. For the legal system to function adequately, clients need the protection of solicitor-client confidentiality.

January 18, 2002

### **Court of Appeal in British Columbia dismisses appeal by Attorney General**

The British Columbia Court of Appeal dismisses the Appeal filed by the Attorney General of Canada of Justice Allan's decision rendered in November 2001. This decision suspended the operation of the Proceeds of Crime (Money Laundering) Act. In reasons from the Court of Appeal, the panel said they adopted the reasons of Justice Allan.

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

January 23, 2002

### **Federation seeks**

In January 2002, the Federation and the Nova Scotia Barristers Society

	<b>exemption for Nova Scotia Lawyers</b>	<p>jointly filed an application before the Supreme Court of Nova Scotia mainly asking that ss. 5(i) and 5(j) of the <i>Proceeds of Crime (Money Laundering) Act</i>, S.C. 2000, c.17 ("Act") be declared as inconsistent with the Constitution of Canada and that an interim interlocutory order preserving the status quo prior to the coming into force of the Act and suspending the operation of s. 5 of the Regulations, until the release of the Decision on the principal application or any appeal there from. The hearing was scheduled to take place before Chief Justice Kennedy on February 20 &amp; 21. On the morning of the hearing, the counsel for the Attorney General requested an adjournment based on illness from one member of his immediate family. The adjournment was agreed to and the hearing has now been rescheduled for March 13 &amp; 14.</p> <p><i>Joel Fichaud, Q.C., of the law firm of Patterson Palmer in Halifax, is Counsel for the Federation (pro bono to the Federation) and the Nova Scotia Barristers' Society in Nova Scotia.</i></p>
January 28, 2002	<b>Laprairie writes to Justice and Finance</b>	<p>Maurice O. Laprairie, Q.C., wrote to Jim Bissell and Yvan Roy as a follow-up to the January 15th meeting.</p> <p>On February 1, 2002, Mr. Laprairie received a call from Jim Bissell advising that the matter had been dealt with and that a response should be received during the week of February 4th. No satisfactory response is ever received.</p>
February 15, 2002	<b>Attorney-General files BC Order before the Supreme Court of Canada</b>	<p>On February 15, 2002, the Attorney General filed leave application to the Supreme Court of Canada, contesting the dismissal by the British Columbia Court of Appeal (January 18, 2002) of its appeal of Justice Allan's interlocutory order exempting lawyers from the Suspicious Transaction reporting requirements as contained in the <i>Proceeds of Crime (Money Laundering) Act</i>. The Attorney General also filed a motion for stay.</p>
March 4, 2002	<b>Barreau and the Chambre go to Court</b>	<p>On March 4, 2002, the Barreau du Québec and the Chambre des notaires du Québec filed an application to obtain a declaratory judgement and interim relief for suspending the application of the <i>Proceed of Crime (Money-Laundering) Act</i>.</p> <p><i>Raymond Doray and J. Vincent O'Donnell, Q.C., from the law firm of Lavery DeBilly in Montreal are counsel for the Barreau du Québec and the Chambre des notaires du Québec.</i></p>
March 6, 2002	<b>Newfoundland goes to Court</b>	<p>On March 6, 2002, the Federation and the Law Society of Newfoundland filed an Originating and Interlocutory Applications and supporting affidavits with The Supreme Court of Newfoundland and Labrador, Trial Division. Unfortunately, the Court Registry was unable to give a date to hear the Interlocutory Application until the first week of May. As a result, the matter has been set down for Tuesday, March 19, 2002 at 10:00 a.m. for purposes of setting a date to hear the application for interim relief. It is our hope that at that time the Court will be able to accommodate the Federation and the Law Society of Newfoundland with an earlier date.</p>

*Gregory M. Anthony, and The Honorable John C. Crosbie, P.C., O.C., Q.C., from the law firm of Patterson Palmer, are counsel for the Federation (pro bono to the Federation) and the Law Society of Newfoundland in Newfoundland.*

March 6, 2002

**New Brunswick goes to Court**

On March 6, the Federation and the Law Society of New Brunswick filed their Notice of Motion for interlocutory injunction and Notice of Application in order to request a court declaration that some of the provisions contained in the Proceeds of Crime (Money Laundering) Act, S.C. 2000, c. 17 (the "Act") and related Regulations are *ultra vires* and contrary to the Charter.

*Charles (Chip) Whelley, Q.C., Christian E. Michaud, from the law firm of Patterson Palmer are counsel for the Federation (pro bono to the Federation) and the Law Society of New Brunswick in New Brunswick.*

March 8, 2002

**Saskatchewan goes to Court**

On March 8, the Federation and the Law Society of Saskatchewan filed their Notice of Motion for interlocutory injunction and Notice of Application in order to request a court declaration that some of the provisions contained in the Proceeds of Crime (Money Laundering) Act, S.C. 2000, c. 17 (the "Act") and related Regulations are *ultra vires* and contrary to the Charter.

*David Eldon (Tom) Gauley, from the law firm of McDougall Gauley is counsel for the Federation and the Law Society of Saskatchewan (pro bono to the Federation).*

March 12, 2001

**Hearing on Interim Relief in Nova Scotia**

The Federation and the Nova Scotia Barristers Society appeared before Mr. Justice Kennedy of the Supreme Court of Nova Scotia to ask that ss. 5(i) and 5(j) of the *Proceeds of Crime (Money Laundering) Act*, S.C. 2000, c.17 ("Act") be declared as inconsistent with the Constitution of Canada and that an interim interlocutory order preserving the status quo prior to the coming into force of the Act and suspending the operation of s. 5 of the Regulations, until the release of the Decision on the principal application or any appeal there from.

*Joel Fichaud, Q.C., of the law firm of Patterson Palmer in Halifax, is Counsel for the Federation (pro bono to the Federation) and the Nova Scotia Barristers' Society in Nova Scotia.*

March 13, 2002

**Hearing on Motion for leave to appeal in Ontario**

The Ontario Divisional Court entertained a motion for leave to appeal the decision of Cullity rendered on January 9, 2002, and which exempted Ontario lawyers from the reporting requirements of the Proceeds of Crime Act pending a decision on the merits.

*Bill Horton and Charlotte Kanya-Forstner, Blakes, Toronto, are counsel to the Federation (pro bono to the Federation) in Ontario.*

March 13, 2002

**Laprairie announces President's Task Force on Money-Laundering Legislation**

As directed by the delegates at the FLSC Mid-Winter Meeting, on March 2, 2002, Maurice O. Laprairie, Q.C. established a President's Task Force on Money-Laundering Legislation. The following have agreed to be members of the Task Force (in alphabetical order):

**Sherron Dickson, Q.C.**, Vice-President of the Federation of Law Societies  
**Allan Fineblit, Q.C.**, Chief Executive Officer of the Law Society of

Manitoba

**Francis Gervais**, Bâtonnier of the Barreau du Québec and  
**Julian Porter, Q.C.**, Bencher of the Law Society of Upper Canada.

The Presidential Task Force will have overall responsibility to co-ordinate the Federation's response to the Money Laundering legislation including diplomatic, public relations and litigation response.

The Special Litigation Committee will continue, with a significant change. Richard Gibbs, Q.C., resigned as Chair of the Special Litigation Committee. Peter Royal, Q.C. has agreed to Chair the Special Litigation Committee.

Members of the Special Litigation Committee will remain  
**Neil Finkelstein**, Bencher at the Law Society of Upper Canada,  
**Claude Leduc**, Vice-President at the Barreau du Québec, and  
**John Mitchell, Q.C.**, President at the Law Society of Prince Edward Island.

March 15, 2002

**Federation files its  
Response with  
Supreme Court of  
Canada**

On March 15, 2002, the Federation filed its Response to the Attorney General's leave application to the Supreme Court of Canada, filed on February 15, 2002, contesting the dismissal by the British Columbia Court of Appeal (January 18, 2002) of its appeal of Justice Allan's interlocutory order exempting lawyers from the Suspicious Transaction reporting requirements as contained in the Proceeds of Crime (Money Laundering) Act.

The Federation opposes the granting of leave, on the basis that the lower courts understood and properly applied the tests for standing and the granting of interlocutory relief. At the same time, in agreement with Allan J. who determined that the balance of inconvenience favours the exemption she granted, the Federation also opposes the Attorney General's application for a stay of Justice Allan's order pending the decision on the leave application and if leave is granted, the appeal.

If leave to appeal is granted, the Federation does not oppose an order expediting the hearing of the matter. The Law Society of British Columbia took the same position in its Response to the Attorney General's application for leave to appeal. If the Supreme Court denies leave, the application for a stay will also be rejected.

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

March 21, 2002

**Nova Scotia lawyers  
exempt from  
legislation**

On March 21, 2002, Mr. Justice Kennedy of the Nova Scotia Supreme Court rendered an oral decision in the matter between the Federation, the Nova Scotia Barristers' Society and the Attorney-General of Canada.

Justice Kenney exempted lawyers in Nova Scotia from the legislation (as

interim relief) and made an order similar to the one rendered by Madam Justice Allan on November 20, 2001, in British Columbia, and the order rendered by Mr. Justice Cullity on January 8, 2002, in Ontario. The result is that lawyers in Nova Scotia are exempt from reporting suspicious transactions to FINTRAC until the matter is heard on the merits.

Justice Kennedy said that there was irreparable harm in the matter and agreed with Clayton's Ruby Affidavit which had been filed in Nova Scotia as in Ontario. On the balance of convenience, Justice Kennedy said that the public interest outweighs public interest that the AG was citing in his arguments before the court.

*Joel Fichaud, Q.C., of the law firm of Patterson Palmer in Halifax, is Counsel for the Federation (pro bono to the Federation) and the Nova Scotia Barristers' Society in Nova Scotia.*

April 9, 2002/

### **Hearing in Quebec**

On April 9, 2002, the Barreau du Québec and the Chambre des notaires du Québec appeared before the Superior Court of Quebec for a Hearing Pro Forma. According to information received from Julie Brunelle, Assistant to the Bâtonnier of the Barreau du Québec, a pro forma hearing is one where the judge and the lawyers sit down to look at dates, procedures and proceedings.

*Raymond Doray and J. Vincent O'Donnell, Q.C., from the law firm of Lavery DeBilly in Montreal are counsel for the Barreau du Québec and the Chambre des notaires du Québec.*

April 11, 2002

### **Hearing in Saskatchewan**

On April 11, 2002, the Federation and the Law Society of Saskatchewan appeared before the Court of Queen's Bench, Judicial Centre of Saskatoon, to seek interim relief for lawyers in Saskatchewan.

*D.E. Gauley, Q.C., of the law firm of McDougall Gauley in Saskatoon, and Allan Snell, Q.C. are counsel for the Federation (pro bono to the Federation) and the Law Society of Saskatchewan in Saskatchewan.*

April 15, 2002

### **Saskatchewan lawyers exempted from reporting obligation**

The Saskatchewan Court of Queen's Bench grants an exemption suspending parts of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* that require lawyers to disclose their clients' confidential financial affairs.

The April 15th decision means superior courts in five provinces - B.C., Alberta, Ontario, Nova Scotia and Saskatchewan - have now ruled against the federal government in this constitutional challenge.

April 17, 2002

### **Justice Kennedy renders written decision exempting Nova Scotia lawyers**

Chief Justice Kennedy of the Supreme Court of Nova Scotia released his written decision today, exempting lawyers of this province from certain provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This decision follows the oral one rendered earlier on March 21, 2002, by which he exempted Nova Scotia lawyers from reporting suspicious transactions to FINTRAC until a decision on the merits is rendered.

May 01, 2002	<b>Hearing in New Brunswick - ADJOURNED</b>	<p>The hearing date in New Brunswick for presentation of the Motion for interlocutory injunction seeking a declaration that some of the provisions contained in the Proceeds of Crime (Money Laundering) Act and related Regulations are ultra vires and contrary to the Charter has now been set for May 1st, 2002, in Moncton.</p> <p><i>Charles D. Whelly, Q.C., and Christian F. Michaud, of Patterson Palmer in Saint-John and Moncton respectively, are counsel to the Federation (pro bono to the Federation) and the Law Society of New Brunswick in New Brunswick.</i></p>
May 02, 2002	<b>Hearing in Newfoundland - ADJOURNED</b>	<p>Gregory M. Anthony, partner at Patterson Palmer, informed the Federation that Chief Justice Green of the Supreme Court of Newfoundland, Trial Division, set the hearing of the Interlocutory Application challenging the Money Laundering Legislation on Thursday, May 2, 2002 at 10:00 a.m. Gregory is acting for the Federation and the Law Society of Newfoundland in this matter.</p> <p><i>Gregory M. Anthony, and The Honorable John C. Crosbie, P.C., O.C., Q.C., from the law firm of Patterson Palmer, are counsel for the Federation (pro bono to the Federation) and the Law Society of Newfoundland in Newfoundland.</i></p>
May 14, 2002	<b>Agreement for national recognition of Allan's decision</b>	<p>The Federation of Law Societies of Canada and the Attorney General of Canada signed an agreement for a test case in the B.C. Supreme Court to resolve the constitutionality of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. The new agreement gives national recognition to Madam Justice Allan's decision that will remain in effect across Canada until the Supreme Court of Canada if necessary resolves the constitutional challenge. The Federation/Law Society of B.C. constitutional challenge was scheduled to be heard in the B.C. Supreme Court on June 24, 2002 but will be adjourned to allow the parties to prepare to argue the case as a national test case. A date for hearing has not been set.</p>
May 22, 2002	<b>Consent Order in the Yukon Territory</b>	<p>The Supreme Court of Yukon issued a Consent Order which orders that Legal counsel in the Yukon Territory are exempt from the application of section 5 of the Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations, SOR/2001-317, pending the hearing of the Petition filed herein or as otherwise ordered.</p> <p><i>Timothy Preston, Q.C., and John Phelps, from the law firm of Preston, Lackowicz &amp; Shier, are counsel for the Federation (pro bono to the Federation) and the Law Society of Yukon in the Yukon Territory.</i></p>
May 30th, 2002	<b>Manitoba lawyers get exemption</b>	<p>Madam Justice McKelvey of the Court of Queen's Bench of Manitoba issued an Order which orders that Legal Counsel in Manitoba are exempt from the application of section 5 of the Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations, SOR/2001-317, pending the hearing of the Petition filed herein or as otherwise ordered.</p> <p><i>J. William Olsen, Q.C., from the law firm of Thompson Dorfman Sweatman, and Kris Dangerfield, are counsel for the Federation (pro bono to the Federation) and the Law Society of Manitoba in Manitoba.</i></p>

May 30th, 2002	<b>Quebec lawyers get exemption</b>	<p>By a Court Order dated May 30, 2002, Madam Justice Jeannine M. Rousseau of the Quebec Superior Court exempted lawyers and notaries of Quebec from the obligation to report suspicious transactions required by Article 5 of the Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations, until final judgement is rendered in the test case of British Columbia.</p> <p><i>Raymond Doray and J. Vincent O'Donnell, Q.C., from the law firm of Lavery DeBilly in Montreal are counsel for the Barreau du Québec and the Chambre des notaires du Québec.</i></p>
June 6th, 2002	<b>Newfoundland lawyers get exemption</b>	<p>Mr. Justice Thompson of the Supreme Court of Newfoundland and Labrador issued a Consent Order which orders that Legal counsel in the Newfoundland and Labrador are exempt from the application of section 5 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>, SOR/2001-317, pending the hearing of the Petition filed herein or as otherwise ordered.</p> <p><i>Gregory M. Anthony, and The Honorable John C. Crosbie, P.C., O.C., Q.C., from the law firm of Patterson Palmer, are counsel for the Federation (pro bono to the Federation) and the Law Society of Newfoundland in Newfoundland.</i></p>
June 7 <sup>th</sup> , 2002	<b>Northwest Territories lawyers get exemption</b>	<p>Mr. Justice Vertes of the Supreme Court of the Northwest Territories issued a Consent Order which orders that Legal counsel in the Newfoundland and Labrador are exempt from the application of section 5 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>, SOR/2001-317, pending the hearing of the Petition filed herein or as otherwise ordered.</p> <p><i>Sarah Kay, of the law firm of Gullberg, Wiest MacPherson &amp; Kay, is counsel to the Federation (pro bono to the Federation) and the Law Society of the Northwest Territories in the Northwest Territories.</i></p>
June 11 <sup>th</sup> , 2002	<b>Quebec legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>Mr. Justice Mass of the Superior Court of Quebec issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>Raymond Doray and J. Vincent O'Donnell, Q.C., from the law firm of Lavery DeBilly in Montreal are counsel for the Barreau du Québec and the Chambre des notaires du Québec.</i></p>
June 12 <sup>th</sup> , 2002	<b>British Columbia legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>The Honourable Chief Justice Donald I. Brenner of the Supreme Court of British Columbia vacated the order rendered by Madam Justice Allan in November 2001, and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.</i></p>
June 12 <sup>th</sup> , 2002	<b>Alberta gets new order that exempts legal counsel and</b>	<p>Mr. Justice Watson of the Court of Queen's Bench in Alberta vacated the Order rendered in December 2001 and issued a Variation Order that</p>

	<b>legal firms get from section 5 &amp; 31</b>	exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i> . It also ordered the Law Society of Alberta to dispose of any suspicious transaction report received as a result of the December order.  <i>Peter Royal, Q.C., and Mona Duckett, Q.C., from the law firm of Royal, McCrum, Duckett &amp; Glancy in Edmonton, are Counsel for the Federation (pro bono to the Federation) and the Law Society of Alberta in Alberta.</i>
June 12 <sup>th</sup> , 2002	<b>Ontario legal counsel and legal firms get exempted from section 5 &amp; 31</b>	Mr. Justice Cullity of the Ontario Superior Court of Justice vacated the Order pronounced on January 4, 2002, and entered on March 7, 2002, and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i> .  <i>William Horton and Charlotte Kanya-Forstner, of the law firm of Blakes in Toronto, are counsel for the Federation (pro bono to the Federation) in Ontario.</i>
June 14 <sup>th</sup> , 2002	<b>Saskatchewan legal counsel and legal firms get exempted from section 5 &amp; 31</b>	Madam Justice A.R. Rothery of the Court of Queen's Bench for Saskatchewan vacated the Order pronounced by Chief Justice Gerein on April 15, 2002, and entered on April 17, 2002, and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i> .  <i>D.E. Gauley, Q.C., of the law firm of McDougall Gauley in Saskatoon, and Allan Snell, Q.C. are counsel for the Federation (pro bono to the Federation) and the Law Society of Saskatchewan in Saskatchewan.</i>
June 19 <sup>th</sup> , 2002	<b>Yukon legal counsel and legal firms get exempted from section 5 &amp; 31</b>	Mr. Justice R.E. Hudson of the Supreme Court of the Yukon Territory vacated the Order rendered in May 2002 and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i> .  <i>Timothy Preston, Q.C., and John Phelps, from the law firm of Preston, Lackowicz &amp; Shier, are counsel for the Federation (pro bono to the Federation) and the Law Society of Yukon in the Yukon Territory.</i>
June 21 <sup>st</sup> , 2002	<b>Newfoundland legal counsel and legal firms get exempted from section 5 &amp; 31</b>	The Supreme Court of the Newfoundland and Labrador vacated the Order rendered in June 2002 by Mr. Justice Thompson and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i> .  <i>Gregory M. Anthony, and The Honorable John C. Crosbie, P.C., O.C., Q.C, from the law firm of Patterson Palmer, are counsel for the Federation (pro bono to the Federation) and the Law Society of Newfoundland in Newfoundland.</i>
June 24, 2002 ADJOURNED SINE DIE	<b>Hearing on the Merits in British Columbia - ADJOURNED</b>	The Federation is scheduled to appear in court in British Columbia to argue the merits of the petition filed on November 8, 2001. The trial is scheduled to start on June 24 and continue until July 7, 2002 (9 hearing days).

*Joe Wood and Roy Millen, Blakes, Vancouver, are Counsel for the Federation in British Columbia. Jack Giles, Q.C., is counsel for the Law Society of British Columbia.*

June 26 <sup>th</sup> , 2002	<b>Prince Edward Island legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>Mr. Justice Kenneth MacDonald of the Supreme Court of Prince Edward Island issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>David W. Hooley, Q.C., of the law firm of Patter Palmer in Charlottetown, is counsel to the Federation (pro bono to the Federation) and the Law Society of Prince Edward Island in Prince Edward Island.</i></p>
June 27 <sup>th</sup> , 2002	<b>Manitoba legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>The Honourable Mr. Justice Wilfred R. DeGraves of the Manitoba Court of Queen's Bench vacated the Order rendered by Madam Justice McKelvey on May 30, 2002, and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>J. William Olsen, Q.C., from the law firm of Thompson Dorfman Sweatman, and Kris Dangerfield, are counsel for the Federation (pro bono to the Federation) and the Law Society of Manitoba in Manitoba.</i></p>
July 3 <sup>rd</sup> , 2002	<b>Northwest Territories legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>Mr. Justice Vertes of the Supreme Court of the Northwest Territories vacated the Order rendered on June 7, 2002, by Mr. Justice Vertes and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>Sarah Kay, of the law firm of Gullberg, Wiest MacPherson &amp; Kay, is counsel to the Federation (pro bono to the Federation) and the Law Society of the Northwest Territories in the Northwest Territories.</i></p>
July 10 <sup>th</sup> , 2002	<b>New Brunswick legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>Mr. Justice Landry of the Court of Queen's Bench of New Brunswick vacated the Order rendered on June 14, 2002, by himself, and issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>Charles D. Whelly, Q.C., and Christian F. Michaud, of Patterson Palmer in Saint John and Moncton respectively, are counsel to the Federation (pro bono to the Federation) and the Law Society of New Brunswick in New Brunswick.</i></p>
July 25 <sup>th</sup> , 2002	<b>Nova Scotia legal counsel and legal firms get exempted from section 5 &amp; 31</b>	<p>Mr. Justice Kennedy of the Supreme Court of Nova Scotia issued an Order that exempts legal counsel and legal firms from the application of section 5 and section 31 of the <i>Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations</i>.</p> <p><i>Joel Fichaud, Q.C., of the law firm of Patterson Palmer in Halifax, is Counsel for the Federation (pro bono to the Federation) and the Nova Scotia Barristers' Society in Nova Scotia.</i></p>

August 16 <sup>th</sup> , 2002	<b>Law Societies adopt notice for the profession on reporting importation or exportation of amounts of over \$10,000</b>	At their meeting in Niagara-on-the-Lake, Law Societies adopted a Notice for the profession which confirms that lawyers across Canada and notaries in Quebec are currently exempted from the reporting obligations of the Proceeds of Crime (Money -Laundering Act). It also points out that lawyers and law firms and notaries in Quebec might be called to report the importation or exportation of amounts over \$10,000 of currency or monetary instruments in bearer form if regulations come into force as planned for the fall.
November 27 <sup>th</sup> , 2002	<b>Money-Laundering Update: Reporting of Cross-Border Transactions Commences January 6, 2003</b>	The final set of regulations for the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("PCMLTFA") were published in the Canada Gazette on November 26, 2002. These regulations will take effect January 6, 2003. Lawyers must comply with these regulations as of this date as they are not exempt from the obligation to report cross-border transactions imposed by Part 2 of the PCMLTFA.
January 7 <sup>th</sup> , 2003	<b>Important update on reporting cross-border transactions of over \$10,000</b>	The Federation was informed by the office of the Government of Canada that lawyers will NOT be required to report cross border transactions when such transactions are done on behalf of a client as per the regulations that came into force on January 6, 2003. Obviously, a lawyer will have to report if the transaction is done on his or her own behalf.
January 21, 2003	<b>In Most Circumstances Clients, Not Lawyers, Must Report Cross-Border Transactions Reportable Under The Proceeds Of Crime Legislation</b>	The Government of Canada has informed the Federation that, if a lawyer is involved in a reportable cross-border transaction on behalf of a client, under ss. 12(3) (b)-(e), it is the client that is obligated to report the transaction, not the lawyer. This is the case as under these parts of s.12 (3) it is the client, not the lawyer, that is considered the exporter or importer, and it is the exporter or importer that is specified as the person who is obligated to report. While it is the client who has the obligation to file the report in these circumstances, the lawyer may do so as a service to the client if so instructed.
March 28, 2003	<b>Court challenges by Federation and law societies lead to important victory for rights of Canadians: repeal of portions of money laundering regulations</b>	In the face of challenges by the Federation of Law Societies of Canada and law societies across the country, the federal government has decided to repeal controversial parts of regulations implementing the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, parts that would have seriously eroded the right of Canadians to independent counsel and to confidentiality when dealing with their lawyers.
April 15, 2003	<b>Parties agree to adjourn trial on money-laundering legislation to November 2004</b>	The Federation of Law Societies and the Law Society of British Columbia have adjourned their constitutional challenge of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PC(ML)TFA ) to November 2004. The adjournment, filed by consent in BC Supreme Court on April 15, 2003, states that the Attorney General has agreed to reimburse the parties for all "costs thrown away" in relation to all proceedings for interlocutory relief across the country, including all appeal processes. The Federation is currently working on recovering these costs.

