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Date:

April 17, 2003

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ACTL-GOE

To	Company	Location	Fax Number
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Message:

Please see attached.

Status of Original: Kept in Our File

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Reply Attention of: Jack Giles, Q.C.
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Our File No.: 01590-073

April 17, 2003

BY FACSIMILE

Steploe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Attention: Mr. Edward J. Krauland

Dear Mr. Krauland,

**Re: *Law Society of British Columbia v. Attorney General of Canada,*
B.C.S.C. Action No. L013116**

I am writing to keep you up to date on developments with respect to the application to the Bar in this country of reporting provisions in federal money laundering and terrorist financing legislation.

I am very pleased to report that on March 25 last the Government of Canada announced the repeal of the Regulations under this legislation making it applicable to legal counsel and legal firms. At the same time it announced that it would be re-examining the whole question of the position of the Bar in Canada in relation to this type of legislation and that it wished to do so in consultation with the representatives of the Bar.

While the Government has repealed these Regulations, it has not, as yet, relinquished the authority to make such Regulations by amending the statute. In the result, the Law Society's lawsuit is not yet moot as it calls into question the constitutional validity of the legislation to the extent it gives the authority to make such Regulations. In the result, the action must remain in place in order that the issue can be tried should the Government wish to re-enact a Regulation that is not acceptable to the Bar.

April 17, 2003

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I enclose a copy of a Consent Order made by the Chief Justice of the Supreme Court of British Columbia adjourning the trial from June 2, 2003 to November 1, 2004, subject to certain important conditions. These conditions are ones which maintain the status quo by preventing the Government from enacting any Regulation which does not have the consent of the organized Bar in Canada until the actions have been tried at the new date now fixed for the trial of the constitutionality of the statute. In addition, the Government has agreed to pay all costs thrown away in relation to all proceedings for interlocutory relief, including all appeal process therefrom in all jurisdictions in Canada.

This is a highly significant change in policy on the part of the Canadian Government which already has had an impact on the position of the Financial Action Task Force (FATF). This appears from reports of its meeting in Brussels on April 5, 2003 with representatives of Bars from around the world, including Bruce Zagaris of the American Bar Association and Robert Lawrence, III of the American College of Trust and Estate Counsel.

Yours truly,

JACK GILES

JG:left
E:rl

A handwritten signature in black ink, appearing to read "Jack Giles", is written over a vertical line that separates it from the typed name "JACK GILES" to its left.

No. L013116
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

THE LAW SOCIETY OF BRITISH COLUMBIA

PETITIONER

ATTORNEY GENERAL OF CANADA

RESPONDENT

CANADIAN BAR ASSOCIATION,
CHAMBRE DES NOTAIRES DU QUÉBEC and
BARREAU DU QUÉBEC

INTERVENORS

ORDER

BEFORE) THE HONOURABLE, THE) TUESDAY, THE 15th DAY
) CHIEF JUSTICE OF THE) OF APRIL, 2003
) SUPREME COURT)

THE APPLICATION of the Petitioner, The Law Society of British Columbia, coming on for hearing at Vancouver on the 15th day of April, 2003 and on hearing Jack Giles, Q.C. and Dylana Bloor, counsel for the Petitioner, Ivan Whitehall, Q.C., Judith Bowers, Q.C. and Richard Casanova, counsel for the Respondent Attorney General of Canada, Ronald A. Skolrood, counsel for the Intervenor Canadian Bar Association, J. Vincent O'Donnell, Q.C., counsel for the Intervenor Barreau du Québec and Raymond Doray, counsel for the Intervenor Chambre des Notaires du Québec, and by CONSENT of the parties herein:

THIS COURT ORDERS THAT:

1. My Order pronounced Wednesday, the 12th day of June, 2002, be and is hereby vacated.
2. The hearing of the Petition herein set for June 2, 2003 be adjourned to November 1, 2004 (with a revised pre-trial case management schedule to be fixed by further order failing agreement between the parties) on the following conditions:
 - (i) if a new set of Regulations affecting legal counsel or legal firms is enacted pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, as amended, without the consent of the Petitioner and Intervenor, the coming into force of such Regulations would be deferred in

accordance with the Agreement of May 14, 2002 (the "Agreement"), a copy of which is attached hereto as Schedule "A", which shall continue to apply *mutatis mutandis* to the circumstances then existing until the constitutional validity of the Act and its Regulations has been determined by this Court, subject only to an entitlement on the part of the Respondent to apply to this Court for an order varying the terms of the consent interlocutory injunction mandated by the Agreement in the light of any materially different circumstances existing at that time;

- (ii) payment forthwith by the Respondent of all costs thrown away in relation to all proceedings for interlocutory relief, including all appeal process therefrom in all jurisdictions to date, subject only to the entitlement of the Respondent to contest the basis upon which such costs are determinable as well as the amount of costs claimed as distinct from the liability to pay such costs; and
- (iii) should it become necessary in order to maintain the *status quo* at any stage of the proceedings, the Respondent will consent to interlocutory injunctions exempting legal counsel and legal firms from the application of the Act and its Regulations in all jurisdictions in Canada as already provided in paragraph 3 of the Agreement.

BY THE COURT.

DEPUTY DISTRICT REGISTRAR

ENTERED

APR 15 2003

VANCOUVER REGISTRY

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REGISTRAR

APPROVED AND CONSENTED TO:

JACK GILES Q.C.

Counsel for the Petitioner
Jack Giles, Q.C.

Counsel for the Respondent
Ivan Whitehall, Q.C.

RONALD A. SKOLROOD

Counsel for the Intervenor Canadian Bar
Association
Ronald A. Skolrood

RAYMOND DORAY

Counsel for the Intervenor Chambre des
Notaires du Québec
R. Doray

J VINCENT O'DONNELL Q.C.
Counsel for the Intervenor Barreau du Québec
J. Vincent O'Donnell, Q.C.

Schedule "A"

AGREEMENT

BETWEEN:

FEDERATION OF LAW SOCIETIES OF CANADA

AND:

ATTORNEY GENERAL OF CANADA

WHEREAS:

A. The Federation of Law Societies of Canada (hereinafter the "Federation") is a corporation incorporated under the laws of Canada, whose members and representatives are the governing bodies of the legal profession of all Canadian Provinces and Territories and in particular, the following:

- The Law Society of British Columbia
- The Law Society of Alberta
- Law Society of Saskatchewan
- The Law Society of Manitoba
- The Law Society of Upper Canada
- Barreau du Québec
- Chambre des notaires du Québec
- The Law Society of New Brunswick
- Nova Scotia Barristers' Society
- The Law Society of Prince Edward Island
- The Law Society of Newfoundland
- The Law Society of Yukon
- Law Society of Northwest Territories
- Law Society of Nunavut

(hereinafter the "Law Societies")

B. The Federation and some of the Law Societies, on their own or in conjunction with each other, have commenced proceedings against the Attorney General of Canada (hereinafter the "Attorney General") seeking injunctive relief from the application of the *Proceeds of Crime (Money Laundering) Act*, S.C. 2000, c.17, as amended (the "Act"), and *Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations*, SOR/2001-317 (the "Regulations"), as they relate to legal counsel (as that term is defined in the Act) in the various jurisdictions of Canada and in particular, the following proceedings:

The Law Society of British Columbia v. Attorney General of Canada, British Columbia Supreme Court, Vancouver Registry Action No. L013116

Federation of Law Societies of Canada v. Attorney General of Canada, British Columbia Supreme Court, Vancouver Registry Action No. L013117

Federation of Law Societies of Canada v. Attorney General of Canada, Court of Queen's Bench of Alberta, Judicial District of Edmonton No. 0103 24618

Federation of Law Societies of Canada and The Law Society of Saskatchewan v. Attorney General of Canada, Court of Queen's Bench of Saskatchewan, Judicial Centre of Saskatoon Q.B. No. 475 of 2002

Federation of Law Societies of Canada v. Attorney General of Canada, Ontario Superior Court of Justice, Court File No. 01-CV-222041

Barreau du Québec et Chambre des notaires du Québec v. Procureur Général du Canada, Cour Supérieure du Québec, District de Montréal, No. 500-05-070929-029

Federation of Law Societies of Canada and the Nova Scotia Barristers' Society v. Attorney General of Canada, Supreme Court of Nova Scotia, Docket: S.H. 176587

Federation of Law Societies of Canada and The Law Society of Newfoundland v. The Attorney General of Canada, Supreme Court of Newfoundland and Labrador Trial Division, No. 2002 01T 0613

Federation of Law Societies of Canada and The Law Society of New Brunswick v. Attorney General of Canada, Court of Queen's Bench of New Brunswick Trial Division, Judicial District of Moncton, Court Cause Number: M/M/0019/02

C. The parties agree that the petitions filed by the Federation and the Law Society of British Columbia in the British Columbia Supreme Court under action numbers L013116 and L013117 (the "Petitions") will serve as the test case for the purpose of the proceedings set out in paragraph B in respect of the issues raised in those Petitions, and the parties agree to take all reasonable measures to ensure that a full and complete record is before the court.

D. For the purposes of this agreement, and the transactions necessary to give effect to this agreement, the Federation represents the Law Societies, whether individually or

collectively, and the Law Societies, and each of them, have authorized the Federation to bind the Law Societies, and each of them, and further, the Law Societies, and each of them, have authorized the Federation to do everything necessary to give effect to this agreement.

E. This agreement is conditional upon the adjournment of the hearing of the Petitions (or amended petitions or fresh petitions as described in paragraph 3 below, if applicable), presently set for June 24, 2002, to a date convenient to all parties.

F. In the event of amendments to the *Act* or the *Regulations* other than those identified in paragraph 3, the parties will co-operate with each other to ensure that the issues raised in the Petitions, or amended petitions, are dealt with expediently by the courts. Nothing set out in this paragraph affects the right of the Federation or the Law Society of British Columbia to apply to the British Columbia Supreme Court under the *Rules of Court* of the Supreme Court of British Columbia for leave to amend pleadings, as necessary.

IN CONSIDERATION of the covenants herein contained, the Federation, the Law Societies and the Attorney General agree as follows:

1. The Attorney General agrees to consent to interlocutory injunctions, in the same terms as the interlocutory injunction granted by Allan J. of the British Columbia Supreme Court on November 20, 2001, being granted in respect of the *Regulations* under the *Act* with respect to legal counsel (including notaries in the province of Quebec) in all of the remaining jurisdictions of Canada where injunctions have not yet been obtained.
2. The Attorney General agrees to consent to a variation of the order of Watson J. of the Court of Queen's Bench of Alberta, dated December 6, 2001, such that the interlocutory injunction granted is in the same terms as the interlocutory injunction granted by Allan J. of the British Columbia Supreme Court on November 20, 2001, and an order authorizing the Law Society of Alberta to dispose of, in any manner that it sees fit, any reports which it may have received pursuant to the original order of Watson J. The parties further agree to discontinue each of their appeals from the original order of Watson J.
3. The Attorney General agrees to consent to amendments to the Petitions or to the filing of fresh proceedings and to the continuation or the renewal of the interlocutory injunctions in each jurisdiction that may result from the introduction of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, the amendment of the *Suspicious Transaction Reporting Regulations*, and any orders in Council bringing into force certain sections of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* passed by the Special Committee of Council in May 2002.
4. The parties agree that the interlocutory injunctions will remain in place until the British Columbia Supreme Court has finally disposed of the substantive issues raised by the Petitions filed in that court by the Federation and the Law Society of British Columbia. Should the Federation and the Law Society of British Columbia be successful on the merits of their respective Petitions in the British Columbia Supreme Court, the Attorney General will consent to continue all of the injunctions until the British Columbia Court of Appeal has disposed of the appeal on its merits, and, should the British Columbia Court of Appeal dismiss the appeal by the Attorney General, the

Attorney General will consent to continue all of the injunctions pending an application by the Attorney General to the Supreme Court of Canada for leave to appeal, and if leave is granted, pending the final disposition of the proceedings by the Supreme Court of Canada.

5. The Attorney General agrees to consent to an application by the Barreau du Québec and the Chambre des notaires du Québec for leave to intervene at the hearing of the Petitions in the British Columbia Supreme Court and the British Columbia Court of Appeal.
6. The parties agree to consent to any leave applications to either the British Columbia Court of Appeal or the Supreme Court of Canada of any decision with respect to the Petitions. Should the Supreme Court of Canada eventually grant leave to appeal on the merits of the British Columbia proceedings, the Attorney General agrees to consent to applications by the Law Societies, or any of them, for leave to intervene at that level if they so wish.
7. The parties agree:
 - (a) to consent to the adjournment of the hearing of the Petitions or amended petitions, presently set for June 24, 2002, to a date convenient to all parties;
 - (b) to accept as nationally binding the final disposition (including all appeals) of the Petitions, as the Act and the Regulations apply to legal counsel; and
 - (c) as a result, the Federation and the Law Societies, other than the Law Society of British Columbia, will refrain from proceeding with their petitions already filed, or to be filed in jurisdictions other than British Columbia, until the final disposition (including all appeals) of the Petitions, at which point the Federation and the Law Societies shall discontinue the petitions in every jurisdiction.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto this 14th day of May, 2002.

ATTORNEY GENERAL OF CANADA



By His Authorized Signatory

FEDERATION OF LAW SOCIETIES OF
CANADA, on its own behalf and on behalf
of the Law Societies, and each of them



By Their Authorized Signatory

66802.1

File No L013116
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

PETITIONER

AND:

ATTORNEY GENERAL OF CANADA

RESPONDENT

AND:

CANADIAN BAR ASSOCIATION
CHAMBRE DES NOTAIRES DU QUEBEC and
BARRIEAU DU QUEBEC

INTERVENOR

ORDER

JMG/efh

File No. 01590-073

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