



BY EMAIL

June 2, 2015

James Rajotte, M.P.
Chair, Standing Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Re: Bill C-59, Economic Action Plan 2015 Act, No. 1

Dear Sir,

I am writing on behalf of the Federation of Law Societies of Canada (the "Federation") with regards to the study by the Standing Committee on Finance of Bill C-59, the *Economic Action Plan 2015, No.1* ("Bill C-59").

The Federation is the national coordinating body of the 14 provincial and territorial regulators of the legal profession in Canada that together regulate more than 100,000 lawyers, some 4,000 Quebec notaries, and 7,000 Ontario licensed paralegals in the public interest. The Federation wishes to raise concerns about proposed amendments to the *Patent Act* and the *Trade-marks Act* contained in Bill C-59 that would grant statutory privilege to confidential communications between patent and trade-mark agents and their clients.

We raised a number of our concerns with Industry Canada as far back as 2004. Submissions provided as part of a consultation at that time, and sent to the department again in 2013, questioned whether providing protection from disclosure for communications between intellectual property agents and their clients was either necessary or appropriate. In those submissions, the Federation noted that there was no empirical evidence to suggest that the lack of such protection caused a harm that required a remedy. We note that a November 2013 discussion paper prepared by Industry Canada echoed this observation, suggesting that there is not yet "evidence of the harm that is to be countered by granting this privilege."

As we stated in correspondence to Industry Canada in October 2014, the proposal to protect from disclosure the communications between patent and trade-mark agents and their clients raises complex issues and would have significant implications not only for the patent and trade-marks system, but also for the legal profession, other professions,

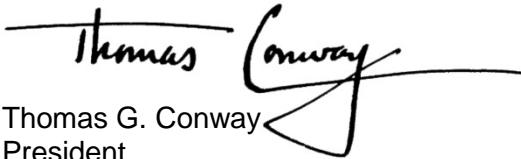
and for the administration of justice.

In discussing solicitor-client privilege, the Supreme Court of Canada has held that the privilege is essential to the proper functioning of our legal system. The Court has also recognized, however, that the privilege is an exception to the principle of full disclosure in the pursuit of the truth and is justified only by the greater public interest it protects. In the absence of evidence of a similarly compelling public interest in protecting communications between intellectual property agents and their clients, extending solicitor-client privilege in the manner contemplated by the proposed amendments is unwarranted. At the very least, given the complexity of the issue and the possible ramifications that extending privilege might have for the administration of justice and for other professions equally interested in acquiring such protection,¹ careful study of the issue should be undertaken.

To our knowledge, Industry Canada did not complete the consultation on the proposal to protect communications between patent and trade-mark agents and their clients that it began last year and no final report has been published. Until a full consultation has been undertaken and the implications of extending solicitor-client privilege have been carefully studied, it would, in our view, be inappropriate to proceed with the proposed legislative amendments.

In all of the circumstances, we urge the members of the Committee to remove the proposed amendments to the *Patent Act* and *Trade-marks Act* contained in Division 3 of Part 3 of Bill C-59 and refer them for comprehensive study and a full consultation with interested stakeholders.

Sincerely,



Thomas G. Conway
President

¹ In recent years, for example, the accounting profession has indicated an interest in acquiring privilege for communications with clients.