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LawSocietyofAlberta

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Please reply to the Calgary office

June 4, 2015

Standing Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Dear Committee Members,

RE: Bill C-59 – Privilege for Patent and Trademark Agents

The Law Society of Alberta regulates the legal profession in Alberta. We are concerned 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.

You will know from correspondence from the Federation of Law Societies that concerns were raised with Industry Canada as far back as 2004. Submissions provided as part of consultations questioned whether providing protection from disclosure for communications between intellectual property agents and their clients was either necessary or appropriate. There was no empirical evidence that the lack of such protection caused a harm that required a remedy.

The proposal to protect from disclosure the communications between patent and trade-mark agents and their clients raises complex issues and may 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.

The Supreme Court of Canada has held that solicitor-client 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. We are not aware of a similarly compelling public interest in protecting communications between intellectual property agents and their clients. 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, careful study of the issue should be undertaken.

To our knowledge, Industry Canada did not complete the 2014 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.

Yours truly,

The Law Society of Alberta

“James Eamon”

James Eamon, QC
President