



June 4, 2015

Sent via email and post

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

Ken Walker, QC
President

Dear Sir:

Re: Review of Bill C-59, the *Economic Action Plan 2015 Act, No. 1*

I am writing on behalf of the Law Society of British Columbia, concerning the study by the Standing Committee on Finance of Bill C-59, the *Economic Action Plan 2015 Act, No. 1* (“Bill C-59”).

The Law Society of British Columbia is an independent organization whose origins date back to 1869. Its membership comprises all of the approximately 13,000 lawyers who have been called to the Bar in British Columbia who remain in good standing pursuant to the *Legal Profession Act* S.B.C. 1998, Chapter 9, and the Law Society Rules. It is governed by the Benchers, being 25 lawyers who have been elected by the membership, together with up to 6 persons who are not members of the Law Society appointed by the Lieutenant Governor in British Columbia, as well as the Attorney General of British Columbia.

Pursuant to s. 3 of the *Legal Profession Act*, the Law Society of British Columbia’s object and duty is to “uphold and protect the public interest in the administration of justice by (inter alia) preserving and protecting the rights and freedoms of all persons.”

The Law Society of British Columbia is also a member of the Federation of Law Societies in Canada.

The Law Society of British Columbia wishes to raise certain concerns about the 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 trademark agents and their clients.

We supported submissions made the Federation of Law Societies to Industry Canada in the early 2000s. Submissions made by the Federation at that time questioned whether providing protection from disclosure for communications between intellectual property agents and their clients was either necessary or appropriate, noting that there was no empirical evidence to suggest that the lack of such protection caused a harm that required a remedy. We further note that in a November 2013 discussion paper prepared by Industry Canada, that observation was echoed. We suggest, as does the Federation, that this indicates that there is still not yet “evidence of the harm that is to be countered by granting this privilege.”

We also supported correspondence from the Federation to Industry Canada in October 2014, which commented that 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 that the privilege is an exception to the principle of full disclosure in the pursuit of 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 a manner contemplated by the proposed amendments may be unwarranted. At the very least, given the complexity of the issue and the possible ramification that extending privilege might have for the administration of justice and for other professions equally interested in acquiring such protection (such as the accounting profession), careful study of the issue should be undertaken.

It is our understanding that Industry Canada did not complete its consultation of the proposal to protect communications between patent and trademark agents and their clients that it began last year, and we understand that no final report has been published. It would, in our view, be inappropriate to proceed with the proposed legislative amendments until a

full consultation has been undertaken and the implications of extending solicitor-client have been very carefully studied.

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

Yours truly,

A handwritten signature in black ink, appearing to read 'Ken Walker', written in a cursive style.

Ken Walker, QC
President

KW/al

c. Christine Lafrance, Clerk of the Committee
via email: fina@parl.gc.ca