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The Advocates' Society

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BY EMAIL

June 2, 2015

The Honourable Joe Oliver, PC, MP
Minister of Finance
Department of Finance Canada
90 Elgin Street
Ottawa, ON K1A 0G5

Dear Minister:

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

The Advocates' Society is a professional association of over 5,000 advocates, both criminal and civil litigators, who practise before courts and tribunals across Canada. The Society's mandate includes the protection of the rights of litigants, the protection of the public's right to representation by an independent bar, and the promotion of access to, and the improvement of, the administration of justice. Therefore, the issue of solicitor-client privilege lies at the heart of our mandate.

It is in this regard that we are writing to you.

Bill C-59, the *Economic Action Plan 2015 Act, No. 1* (the "Bill"), through the proposed amendments to the *Patent Act* and the *Trade-marks Act* (Sections 54 and 66 of the Bill), proposes to grant a type of statutory solicitor-client privilege to certain types of communications between individuals and patent and trade-mark agents.

The proposed amendments will have implications for the administration of justice, the patent and trade-mark system, the legal profession and other professions. Any discussion of extending the privilege beyond the lawyer and client relationship must take into consideration the policy basis for the privilege doctrine and the important function it serves in the administration of justice.

Given the importance of the issue of extending solicitor-client privilege, The Advocates' Society does not believe there has been sufficient consultation by the government with the legal profession. It is our understanding that Industry Canada initiated, but did not complete, its own consultation on patent and trade-mark privilege and that it did not publish a final report with respect to its consultations.

In our submission, further study is required given that some of Canada's professional associations and regulatory bodies, including the Law Societies in all of the provinces and territories, did not have an opportunity to provide their position or opinions on this issue. The Advocates' Society wishes to have the opportunity to study the issue and provide its opinion to the government.

The Advocates' Society requests that the proposed amendments to the *Patent Act* and *Trade-marks Act* in Division 3 of Part 3 of the Bill related to the granting of a statutory form of solicitor-client privilege to patent and trade-mark agents be removed from the Bill and referred for further study and that a consultation process be undertaken to ensure the inclusion of all stakeholders directly impacted by these proposals.

We would be pleased to discuss the issues raised in this letter with you further.

Yours truly,

A handwritten signature in black ink, appearing to read "Peter Lukasiewicz". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter Lukasiewicz
President

CC: The Hon. Peter MacKay, PC, QC, MP, Minister of Justice
The Hon. James Moore, PC, MP, Minister of Industry
James Rajotte, MP, Chair, Standing Committee on Finance
Ms. Christine LaFrance, Clerk of the Standing Committee on Finance