IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Federation of Law Societies of Canada v. Canada (Attorney General),* 2023 BCSC 2068

Date: 20231124
Docket: S236280
Registry: Vancouver

Between:

Federation of Law Societies of Canada

Petitioner

And

Attorney General of Canada

Respondent

Before: The Honourable Madam Justice Warren

Reasons for Judgment

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Place and Date of Hearing:	Vancouver, B.C. October 20, 2023
Place and Date of Judgment:	Vancouver, B.C. November 24, 2023

I. INTRODUCTION

[1] The Federation of Law Societies of Canada (the "Federation") has applied for interlocutory injunctive relief as part of a constitutional challenge to certain amendments to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [*ITA*].

[2] The amendments require legal professionals, among other persons, to report to the Canada Revenue Agency (the "CRA") on two broad categories of transactions undertaken by their clients: "reportable transactions" (which meet certain statutory hallmarks) and "notifiable transactions" (which are any type of transaction the Minster of National Revenue (the "Minister") designates as notifiable). Both are lawful transactions that the CRA wishes to investigate further to determine if they are "abusive" from a taxation perspective, in which case the associated tax benefits may be denied. Failure to report may result in fines of up to $100,000 and imprisonment.

[3] The Attorney General of Canada (the "Government") acknowledges that the purpose of requiring legal professionals to report on reportable transactions and notifiable transactions is to allow the Government to verify the information, if any, reported by the clients of the legal professionals. The Federation says this is "an unconstitutional attempt to turn legal professionals into agents of the state".

[4] In the constitutional challenge, the Federation ultimately seeks a declaration that ss. 237.3 and 237.4 of the *ITA* are of no force or effect to the extent they apply to legal professionals, in their role as such. The Federation claims that the reporting requirements in these sections contravene ss. 7 and 8 of the *Canadian Charter of Rights and Freedoms*.

[5] On this application, the Federation seeks to exempt legal professionals from the operation of ss. 237.3 and 237.4 of the *ITA* until the constitutional challenge is determined on the merits. The Government opposes the application.

[6] By consent of the parties, an interim injunction was granted on September 14, 2023. It provides that legal professionals are exempt from the application of ss. 237.3 and 237.4 of the *ITA* until the earlier of the release of this Court's decision on

the injunction application, or November 20, 2023. On October 20, 2023, the day this application was heard, the interim injunction was extended to December 1, 2023. The Government emphasizes that its consent to the temporary injunction was not an agreement or acknowledgment of the need for a further injunction.

II. BACKGROUND

A. The Impugned Legislation

[7] On June 22, 2023, Bill C-47: *An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess., 44th Parl., 2023, received Royal Assent. Through changes to s. 237.3 of the *ITA*, Bill C-47 modified the definition of reportable transactions and altered mandatory disclosure rules as they relate to reportable transactions. Bill C-47 also introduced a mandatory disclosure requirement for notifiable transactions through s. 237.4 of the *ITA*.

[8] For both reportable and notifiable transactions, all promoters and advisors, including legal professionals, are now required to file an information return in prescribed form with the Minister. Previously, advisors were not required to file an information return if the taxpayer or another advisor had done so. Pursuant to ss. 237.3(5) and 273.4(9), information returns must be filed within 90 days of the taxpayer entering the transaction, or (if earlier) 90 days of the taxpayer becoming contractually obligated to enter the transaction.

1. Reportable Transactions

[9] Reportable transactions are defined in s. 237.3(1) of the *ITA*. A transaction is reportable if “it may reasonably be considered that one of the main purposes of the transaction, or of a series of transactions of which the transaction is a part, is to obtain a tax benefit” and the transaction exhibits any one of three possible hallmarks: a contingent fee arrangement, confidential protection, or contractual protection. If both the tax benefit purpose and the hallmark criteria are met, the transaction is reportable.

[10] There are some boundaries delineated in the legislation on both the scope of the required disclosure and the potential liability of the individuals who must report. Section 237.3(17) provides that disclosure is not required "if it is reasonable to believe that the information is subject to solicitor-client privilege". Section 237.3(11) provides that a person required to file a return in respect of a reportable transaction is not liable for a penalty "if the person has exercised the degree of care, diligence and skill to prevent the failure to file that a reasonably prudent person would have exercised in comparable circumstances".

[11] The mandatory disclosure rules relating to reportable transactions were not introduced in 2023 by Bill C-47. These rules have existed since 2013, but Bill C-47 changed both the definition of and disclosure rules for reportable transactions such that the threshold for reporting has been lowered and the exposure of legal professionals has been heightened. The significant changes are as follows:

a) one of the three hallmarks is now sufficient, whereas previously two of the hallmarks were required in order for a transaction to fall within the definition of a reportable transaction;

b) one of the main purposes of the transaction must be the obtaining of a tax benefit, whereas previously the transaction needed to be made primarily to obtain a tax benefit in order for a transaction to fall within the definition of a reportable transaction;

c) a party (such as a legal professional) is no longer relieved from their disclosure obligation when another party (such as the legal professional's client) fulfills the disclosure obligation;

d) the filing deadline was shortened to 90 days, whereas previously the filing deadline was June 30 of the calendar year following the calendar year in which the transaction became reportable; and

e) where previously an advisor who failed to report could only be subject to a penalty in the amount of the professional fee they had charged, the

> amendments provide that in addition to a penalty in the amount of their fee, an advisor may be fined $10,000 plus $1,000 per day while not in compliance, up to $100,000.

[12] The general offence provision in s. 238 of the *ITA* applies as it did previously, making any person who fails to file a return as required guilty of an offence and liable to a fine of up to $25,000 and imprisonment for a term of up to 12 months.

2. Notifiable Transactions

[13] Notifiable transactions are a new category of transaction introduced by Bill C-47. Notifiable transactions are single transactions (or any transaction in a series of transactions) that are the same as, or substantially similar to, transactions designated by the Minister, with the concurrence of the Minister of Finance. The Minister has not yet designated any transactions as notifiable. Section 237.4 defines "substantially similar" broadly and provides that the term "is to be interpreted broadly in favour of disclosure".

[14] The provision on notifiable transactions also sets boundaries on the scope of the required disclosure and the potential liability of individuals with reporting obligations. As with reportable transactions, disclosure for notifiable transactions is not required "if it is reasonable to believe that the information is subject to solicitor-client privilege" (s. 237.4(18)). In addition, only advisors who know or are reasonably expected to know that a transaction is a notifiable transaction are required to file an information return (s. 237.4(7)).

3. Information to be Disclosed

[15] The content for disclosure in the form is the same for every person required to report, whether that be the taxpayer, a promoter or an advisor such as a lawyer. The form is Form RC312. The prescribed form which was previously required for reportable transactions was substantially similar. The specific information that must be reported is set out in more detail in the irreparable harm section of these reasons.

B. Previous similar litigation

[16] Two previous cases figure prominently in the Federation's argument. I will refer to them as the PCA litigation and the Quebec Notaries litigation.

[17] The PCA litigation arose out of provisions in what is now the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, formerly the *Proceeds of Crime (Money Laundering) Act* or "PCA", that required lawyers to report client financial transactions that were reasonably suspected of being related to money laundering to the federal government. In 2001, the Federation and the Law Society of British Columbia (the "LSBC") filed a petition in this court challenging the constitutionality of the provisions, and then sought interlocutory injunctive relief exempting lawyers from the reporting requirements pending a determination of their constitutionality. Justice Allan granted the interlocutory injunctive relief: *Law Society of British Columbia v. Canada (Attorney General)*, 2001 BCSC 1593 [the PCA Injunction Decision]. The PCA Injunction Decision was upheld by the *Court of Appeal: Law Society of British Columbia v. Canada (Attorney General)*, 2002 BCCA 49.

[18] The PCA was subsequently amended and the provisions requiring lawyers to report on their clients repealed. However, in 2008, new reporting requirements applicable to lawyers were enacted. The new legislation also gave search and seizure powers to a government agency. The Federation and the LSBC again challenged the constitutionality of the legislation. The Attorney General agreed to exempt legal professionals pending a decision on the merits of the constitutional challenge.

[19] In 2011, this Court held that the challenged PCA amendments infringed the *Charter*: 2011 BCSC 1270 [*the PCA BCSC Decision*]. The PCA BCSC Decision was upheld by the Court of Appeal: 2013 BCCA 147 [*the PCA BCCA Decision*]. The PCA BCCA Decision was upheld by the Supreme Court of Canada: 2015 SCC 7 [*the PCA SCC Decision*].

[20] In the *PCA SCC Decision*, Cromwell J., writing for the majority, concluded that the challenged amendments violated both s. 7 and s. 8 of the *Charter*. He found that a lawyer's duty of commitment to their client's cause is a constitutionally protected principle of fundamental justice and legislation that compromises this duty in favour of the state is unconstitutional.

[21] The Quebec Notaries litigation arose out of provisions of the *ITA* that allowed tax authorities to require any person to provide information or documents for any purpose related to the administration of the *ITA*. Certain notaries received notices requiring them to provide information about their clients. The Chambre des notaires du Quebec commenced an action seeking a declaration that the provisions were unconstitutional and of no force or effect with respect to notaries. The Barreau du Quebec joined the proceedings for the purpose of having any declaration also apply to lawyers. The Quebec Superior Court and Court of Appeal held in favour of the Chambre and the Barreau: 2010 QCCS 4215 and 2014 QCCA 552. The Attorney General's appeal to the Supreme Court of Canada was dismissed: *Canada (Attorney General) v. Chambre des notaires du Quebec*, 2016 SCC 20 [*Chambre des notaires*]. The Supreme Court of Canada held that the provisions of the *ITA* that required notaries and lawyers to report confidential information about their clients to the CRA violated s. 8 of the *Charter*.

C. The legal test for injunctive relief on a constitutional challenge

[22] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117, sets out the three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction: is there a serious issue to be tried; would irreparable harm result if the injunction were not granted; and is the balance of convenience in favour of granting the interlocutory injunction or denying it. These three considerations are not a checklist but a guide for considering the fundamental question of whether granting an injunction is just and equitable in all the circumstances of the case: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 25; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.

[23] The factors relevant to assessing the balance of convenience are specific to the case and potentially numerous. In constitutional cases, the public interest is a special factor to be considered in assessing the balance of convenience, and "either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought": *RJR-MacDonald* at 343–344; *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at 149, 1987 CanLII 79.

III. ISSUES

[24] The issues are:

1. Is there a serious issue to be tried?

2. Will irreparable harm result if the interlocutory injunction is not granted pending the determination of constitutional validity?

3. Does the balance of convenience, taking into account the public interest, favour granting injunctive relief?

IV. DISCUSSION AND ANALYSIS

1. Is there a serious issue to be tried?

[25] It is apparent from the PCA litigation and the Quebec Notaries litigation that there is a serious issue to be tried concerning the constitutionality of the reporting requirements introduced by Bill C-47; specifically, whether they contravene s. 7 or s. 8 of the *Charter*. Indeed, this has been conceded by the Government.

2. Will irreparable harm result if the interlocutory injunction is not granted?

[26] This stage requires the applicant to convince the court that irreparable harm will result if the relief is not granted. It is the nature of the harm, rather than the magnitude, that is considered. Harm will be irreparable if it cannot be quantified in monetary terms, or if the harm cannot be cured, usually because one party cannot collect damages from the other: *RJR-MacDonald* at 341.

[27] The Federation says that without a temporary exemption, the new legislation will damage public confidence in the legal profession's duty of loyalty to its clients. It says the new reporting requirements will result in the disclosure of confidential client information, the potential disclosure of privileged information, and irreconcilable conflicts of interest between lawyers' interest and those of their clients.

[28] The Federation points to the PCA Injunction Decision as a directly comparable case. There, Allan J. found that enforcing the PCA reporting provisions prior to a hearing on the merits would potentially result in the unconstitutional reporting of confidential information, which would irrevocably damage the solicitor-client relationship and harm the public interest by undermining the public's confidence in an independent bar.

[29] The Government submits that the Federation has not met the irreparable harm component of the test. Its position is founded on four arguments:

- this case is distinguishable from the PCA Injunction Decision because the legislation in question in that case had a criminal law purpose;

- at this stage, only harm to the applicant is considered and, in any event, the harm the Federation has identified is speculative, with the Government emphasizing that legal professionals have been complying with mandatory reporting rules since 2013 and implying that the amendments represent no new intrusion on privacy or impact on the solicitor-client relationship;

- legal professionals are protected because information reasonably considered to be subject to solicitor-client privilege is exempt from disclosure, the client has the same obligation to report so it cannot be said that the information reported was intended to be kept confidential, and legal professionals will not be penalized for failure to report if they exercised the degree of skill to prevent such failure that a reasonably prudent person would have exercised in comparable circumstances; and

- legal professionals have had sufficient notice to adapt their legal practice to mitigate the risk of harm.

[30] It hardly needs to be said that a lawyer has a duty to keep client information confidential and not to use a client's confidential information to the disadvantage of the client or for the benefit of the lawyer or a third person without the consent of the client (see for example, the *Code of Professional Conduct for British Columbia* [*BC Code*], Rules 3.3-1, 3.3-2). The ambit of this duty goes beyond solicitor-client privileged information. The commentary for Rule 3.3-1 of the *BC Code* provides that it applies "without regard to the nature or source of the information or the fact that others may share the knowledge". The rationale for this duty is the need for the open exchange of information between clients and lawyers. The commentary for Rule 3.3-1 of the *BC Code* explains that a lawyer "cannot render effective professional service to a client unless there is full and unreserved communication between them".

[31] There is no question that the reporting provisions in issue will require lawyers to disclose information to the CRA that is subject to this broad duty of confidentiality. Form RC312 requires the filing party to disclose, among other things:

- the identity of the person required to file the Form;
- the relationship of the filing party to the taxpayer;
- if the filing party is an advisor, the fees received or receivable in respect of the transaction;
- the identity of the taxpayer;
- with respect to a notifiable transaction:
    - the filing party's view as to whether the notifiable transaction is the same as or substantially similar to a transaction designated by the Minister;
    - the year the tax benefit is expected to be used; and

- the filing party's description of the reason they are disclosing the transaction;

- with respect to a reportable transaction:
  - the filing party's description of the transaction;
  - the date the transaction is required to be disclosed;
  - what hallmark(s) of a reportable transaction apply;
  - a list of all advisors connected with the transaction who have access to information requested in the Form;
  - the nature and amount of the tax benefit being sought, and the year in which it is expected to be used; and
  - the details of the transaction, which requires the filing party to describe the transaction in sufficient detail for the Minister to understand the tax structure; describe the expected, claimed or purported tax treatment of all potential benefits; and possibly include reference to any material used to determine the tax treatment.

[32] In addition to requiring the disclosure of confidential client information, it is apparent that it will be necessary for a legal professional to apply legal judgment in completing the Form. For example:

- determining whether a transaction is substantially similar to a transaction designated by the Minister as a notifiable transaction will require a qualitative legal assessment; and

- in respect of reportable transactions, determining whether it "may reasonably be considered" that "one of the main purposes" of the transaction is to obtain a "tax benefit" will require a legal assessment of what might be considered

> "reasonable" views; the purposes of the transaction, and which are the "main" purposes; and whether a transaction provides a tax benefit.

These are matters about which legal professionals might disagree, and with respect to which a legal professional will have advised their client. Once this confidential information is disclosed, the CRA may use the legal professional's knowledge and analysis of the transaction against the legal professional's client.

[33] It is possible, or likely, that a legal professional's opinion about these matters would be privileged. As noted, the legislation provides that disclosure is not required "if it is reasonable to believe that the information is subject to solicitor-client privilege", but reasonable people could disagree about whether that threshold is met in relation to particular information and mistakes can be made in determining which side of the line the particular information falls. As a result, there is the potential for the disclosure of privileged information, notwithstanding the exemption. Once disclosed, solicitor-client privileged information could be used against the legal professional's client.

[34] Additionally, the legislation creates conflicts of interest between lawyers' interest and those of their clients. The following is a non-exhaustive list of examples:

- some of the information that must be reported is the product of legal judgment and, given the prospect of a penalty being imposed, it will be in the lawyer's interest to err on the side of disclosure;

- similarly, because of the prospect of penalty, it will be in the lawyer's interest to conclude that certain information is not privileged in circumstances where it is a close call;

- while structuring a transaction in a way that might be considered notifiable or reportable may be in the client's best interest, it could be in the lawyer's best interest to recommend an alternative structure that would not be reportable or notifiable to avoid the possibility of the lawyer having to report or face sanction; and

- if the CRA disagrees with a lawyer's determination that certain information need not be reported because it is privileged and a penalty is imposed on the lawyer, the best evidence that the lawyer may have to challenge the penalty may be the allegedly privileged information in question.

[35] In the circumstances, I am satisfied that the Federation has established at least two types of irreparable harm that would result if the injunction sought is not granted:

- if confidential or privileged information is disclosed as a result of legislation that is ultimately found to be unconstitutional, individual clients will be irreparably harmed by the loss of professional secrecy, which cannot be undone, and the prospect of that occurring will have a chilling effect on the ability of individual clients to consult with their lawyers fully and freely pending a final determination of the constitutional challenge; and

- the potential for the unconstitutional reporting of confidential and privileged information, and the conflicts of interest between lawyers and their clients that will arise as a result of potentially unconstitutional legislation, would irrevocably damage the solicitor-client relationship and harm the public interest by undermining the public's confidence in an independent bar.

[36] While the above reasoning refutes some of the Government's arguments, I will briefly address each of them directly.

[37] The Government submits that the PCA Injunction Decision is distinguishable on the issue of irreparable harm because the legislation in issue in that case was criminal in character while the legislation in issue here serves a regulatory administration purpose, reasoning that the criminal law nature of the proceeds of crime legislation resulted in a high expectation of privacy, while the regulatory nature of the *ITA* results in a lower expectation of privacy. I do not view this as a meaningful distinction. The significant protection accorded to information provided by a client to

their lawyer is unaffected by the context in which the information is disclosed: *Chambre des notaires* at para 39.

[38] Citing *RJR-MacDonald* at 340–341, the Government submits that, at this stage, only harm alleged to be suffered by the applicant (legal professionals themselves) is to be considered, and any harm to the Government or to the public interest is considered at the balance of convenience stage. In *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2018 BCSC 2084 at paras 166–170, leave to appeal to BCCA ref'd, 2019 BCCA 29, this Court recently questioned the importance of irreparable harm to the applicant on an application for injunctive relief in a public interest case and concluded that some prospective patients (that is, not the applicants themselves) would suffer irreparable harm if the injunction sought was not granted. In any event, for the reasons expressed above, legal professionals will suffer irreparable harm if the injunction sought in this case is not granted because their relationships with their clients will be irrevocably damaged.

[39] The Government emphasizes that legal professionals have been complying with mandatory reporting rules since 2013, implying that there is no new intrusion on privacy or on the solicitor-client relationship. This is not persuasive. Prior to the new amendments, a client could prevent their lawyer from disclosing anything by ensuring someone else reported. Put another way, the ability to prevent the harm that has been identified was within the client's control. This is no longer the case.

[40] The Government says that legal professionals are protected because information reasonably considered to be subject to solicitor-client privilege is exempt from disclosure, the client has the same obligation to report so it cannot be said that the information reported was intended to be kept confidential, and legal professionals will not be penalized for failure to report if they exercised the degree of skill to prevent such failure that a reasonably prudent person would have exercised in comparable circumstances. This too is not persuasive. Whether the exemption for privileged information or the penalty exception applies in a given case is a matter about which reasonable people might disagree. The uncertainty inherent in the

exemption as a result of the words “reasonably considered” and in the exception as a result of the words “reasonably prudent person” creates a conflict of interest between lawyers’ interest and those of their clients. The fact that clients also have to report does not eliminate the harm because it is not likely that a client and their lawyer will share an identical body of information about a particular transaction, particularly the aspects that require the application of legal judgment. This reality appears to be implicit in Government’s purpose for requiring legal professionals to report; that is, as a check on the information reported by the clients.

[41] Finally, the Government argues that legal professionals have had sufficient notice to adapt their legal practice to mitigate the risk of harm by advising clients upfront about the reporting obligations and addressing in retainer agreements the consequences of any disagreement between the lawyer and client over what is reportable. However, these steps would merely identify the harm in advance; they would not eliminate the harm, particularly the chilling effect on the ability of individual clients to consult with their lawyers fully and freely pending a final determination of the constitutional challenge.

[42] The irreparable harm component of the test has been established by the Federation.

3. Does the balance of convenience, taking into account the public interest, favour granting injunctive relief?

[43] As mentioned, in constitutional cases the public interest is a special factor which must be considered in assessing where the balance of convenience lies.

[44] In considering the granting of an injunction suspending the operation of a validly enacted law, it must be assumed that the law is directed to the public good, and this assumption weighs heavily in the balance. As such, it is only in clear cases that interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed because the granting such relief will temporarily frustrate the pursuit of the common good: *Harper v. Canada (Attorney General)*, 2000 SCC 57 at para. 9 and *Metropolitan Stores* at 135.

[45] The Government does not, however, have a monopoly on the public interest: *RJR-MacDonald* at 343. Where the applicant demonstrates a more compelling public interest in favour of granting injunctive relief, that may tip the scales of convenience in its favour.

[46] The Federation says that temporary injunctive relief will cause no harm to the Government or the public interest, given that other advisors, promoters and taxpayers will still be required to report the information to the CRA; there is no urgency associated with extending the mandatory reporting of reportable and notifiable transactions to legal professionals; and it is prepared to move expeditiously to a hearing on the merits of the constitutional challenge.

[47] In particular, the Federation says that the balance of convenience is in its favour because the injunction is narrow in scope, the injunction is in the public interest, its case on the merits is strong, granting the exemption will preserve the status quo, and the Government will not suffer any harm.

[48] The Government submits that the amendments serve an important purpose and are in the public interest, and that the harm alleged by the Federation does not outweigh that public interest. It emphasizes the public interest in the proper administration and enforcement of the *ITA*, and the importance of ensuring that taxpayers do not undermine the integrity of Canada's tax system by engaging in abusive tax avoidance. If the injunction is granted, the Government says the CRA and the public will be deprived of an unknown amount of reporting by legal professionals with respect to avoidance and abusive transactions.

[49] I start by observing that the strength of the applicant's case may be a factor to be weighed in assessing the balance of convenience, but a judge should not engage in an extensive review of the merits unless the interlocutory motion will effectively amount to a final determination of the action or the constitutionality question is a simple question of law alone: *RJR-MacDonald* at 337–338; *Cambie Surgeries* at paras. 113–115. Neither of those exceptions applies here.

[50] As noted, legislation enacted by a democratically elected government is assumed to be directed at the common good and to serve a valid public purpose. At the same time, I have found that harm to the public interest will result if the injunctive relief sought is not granted. The question is which is the more compelling public interest.

[51] I accept that the proper administration and enforcement of the *ITA* is in the public interest, but for the reasons that follow this is one of those rare cases where there is a far more compelling public interest in favour of granting the injunction relief sought.

[52] The injunction will deprive the public of the benefit of duly enacted legislation, but, for two reasons, the impact of such deprivation will be minimal.

[53] First, the injunction sought grants an exemption for legal professionals as opposed to a wholescale suspension of the legislation. In *RJR-MacDonald* at 346, Justice Sopinka and Justice Cory explained that the public interest in protecting duly enacted legislation weighs more heavily in a suspension case than in an exemption case because the public interest is likely to be much less detrimentally affected when a discrete and limited number of people are exempted than when the application of the law is suspended entirely. Here, other advisors, promotors, and the taxpayers themselves will still be required to report and, as a result, the injunction will not gravely impair the Government's ability to enforce the *ITA*.

[54] Second, the Federation has committed to move expeditiously to have the constitutional challenge heard on the merits, the status quo will be preserved in the meantime, and the Government has not demonstrated any particular urgency associated with expanding the scope of the reporting requirements to make disclosure by legal professionals mandatory.

[55] In contrast, the harm to the public interest if the injunction is not granted is significant and serious. I have found that the potential for the unconstitutional reporting by lawyers of confidential and privileged client information, and the

conflicts of interest between lawyers and their clients that will arise as a result of potentially unconstitutional legislation, would irrevocably damage the public interest by undermining the public's confidence in an independent bar. This is a public interest that has repeatedly been recognized as extremely important. In *Chambre des notaires,* at para. 37, the Supreme Court of Canada called the professional secrecy of legal advisers an interest "which is a principle of fundamental justice and a legal principle of supreme importance". In the *PCA SCC Decision*, at para. 96, the Supreme Court of Canada emphasized that both clients and the broader public must feel confident that lawyers are committed to serving their clients' legitimate interests free of other obligations. This confidence was said to be "essential to the integrity of the administration of justice" and "of high public importance".

[56] For these reasons, the balance of convenience favours the granting of the interlocutory relief sought.

V. CONCLUSION

[57] Given that there is a serious question to be tried, the Federation has established that irreparable harm will result if injunctive relief, in the form of an exemption for legal professionals, is not granted, and the balance of convenience favours the granting of such relief, I conclude that it is just and equitable to grant an injunction pending the determination of the Federation's Petition on the merits.

[58] During the hearing, the Government submitted that if an injunction was to be granted, it should be slightly narrower in scope than as expressed in the Federation's Notice of Application. The Federation confirmed that it seeks the exemption to apply to legal professionals but only in their capacity as advisors. Counsel advised me that they are confident they will agree on the specific wording of the order that flows from these reasons. If that is not the case, they may seek a determination on the specific wording of the order by setting out their respective positions in writing and directing them to my attention, through Supreme Court Scheduling.

"Warren J."