



March 28, 2017

The Honourable Jane Philpott
Minister of Health
House of Commons
Ottawa, ON K1A 0A6

Sent via email at Jane.Philpott@parl.gc.ca

The Honourable Bob Runciman
Chair, Senate Standing Committee on Legal and Constitutional Affairs
351 East Block
Ottawa, ON K1A 0A4

Sent via email at Bob.Runciman@sen.parl.gc.ca

Dear Minister Philpott and Senator Runciman:

**Re: Bill C-37 – An Act to Amend the *Controlled Drugs and Substances Act*
and to Make Related Amendments to Other Acts**

The Law Society of British Columbia regulates the legal profession in the province of British Columbia. It is an institution whose origin dates back to 1869, and which has been continued under the *Legal Profession Act*, SBC 1998, c. 9. The object and duty of the Society 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.

In discharging our mandate, we have identified concerns about Bill C-37. We are particularly concerned about section 52, which repeals subsections 99(2) and (3) of the *Customs Act*, and section 53, which repeals subsections 17(2) and (3) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. The current provisions prohibit officers from opening mail that weighs thirty grams or less, except if authorized by the sender or addressee.

The proposed revisions would permit the opening of routine correspondence delivered to a law office. Much of this correspondence could be presumed to be authored by a lawyer's client. It should therefore be logically expected to contain information that is

subject to solicitor-client privilege. If the current sections are repealed as proposed by Bill C-37 we are very concerned that solicitor-client privilege will thereby be compromised.

The Supreme Court of Canada has repeatedly held that solicitor-client privilege is a principle of fundamental justice and a civil right of supreme importance in Canadian law. Given that solicitor-client privilege must remain as close to absolute as possible to retain its relevance, stringent norms must be adopted to ensure its protection. The proposed revisions in Bill C-37 create a risk that privileged correspondence will be viewed, without creating any processes that will work to ensure its protection. We view that as a fatal flaw that opens up the possibility of constitutional challenges.

We have reviewed the policies in Canada Border Services Agency Memorandum D5-1-1. Pursuant to section 31 of that Memorandum, officers must not read “personal or private communications intended for the addressee”, including “correspondence, information, letters, messages, notes, and similar communications.” We do not consider this policy to address our concerns. First, it is not part of any legislative or regulatory requirement. Second, compliance with the policy requires an officer to examine a communication to determine if it qualifies as personal or private. Third, section 31 of the Memo states that “correspondence” excludes items such as invoices, cheques, and recorded mass storage devices. The Supreme Court of Canada has held that invoices rendered by a lawyer are prima facie privileged. Cheques may or may not be privileged, depending on the circumstances. Recorded mass storage devices could contain any number of privileged materials.

We understand that Bill C-37 recently completed third reading in the House of Commons, and is currently before Committee in the Senate. By repealing the above-noted provisions in the *Customs Act* and *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the fundamental legal principle of solicitor-client privilege will be jeopardized, resulting in an increased risk of harm a principle of the Canadian legal system that is a fundamental right of Canadians. Consequently, we strongly urge you either to reconsider the repeal of these sections, or to build in provisions in the legislation that will create a constitutionally accepted method to preserve solicitor-client privilege and ensure that it is not even accidentally violated.

We would be pleased to discuss these concerns with you at greater length.

Yours truly,



Craig A. B. Ferris, QC
Chair, Rule of Law and Lawyer Independence Advisory Committee

cc: The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness
The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General