Bill C-47: Federation of Law Societies of Canada challenges amendments to the Income Tax Act

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In April 2023, the federal government introduced Bill C-47, *An Act to implement certain provisions of the budget*. Bill C-47 proposed amendments to the *Income Tax Act* (the Act) mandatory disclosure rules in section 237.3 and added additional mandatory disclosure rules in 237.4 (the New Legislation).

The effect of the New Legislation is to:

1. lower the threshold for what constitutes a "reportable transaction" for reporting purposes;
2. introduce reporting requirements for a new (but not yet fully defined) category of "notifiable transactions"; and
3. require all advisors, including notaries in Québec and barristers and solicitors, to file an information return in respect of a reportable or notifiable transaction, regardless of whether another person does so.

For additional information in respect of Bill C-47 BLG's article here.

On 11 September 2023, the Federation of Law Societies of Canada (the Federation) filed a petition in the British Columbia Supreme Court (the Petition) challenging the constitutionality of the New Legislation as it applies to members of the legal profession.

In the Petition, the Federation asserts that the New Legislation infringes on rights under the *Canadian Charter of Rights and Freedoms* (the Charter) and principles of fundamental justice that exist for the benefit of the people of Canada.

The Petition raises many of the same issues involved in the Federation's successful challenge to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7). As in that case, the Federation advances the position that requiring legal counsel to report to a government agency on their clients' activities causes an irreconcilable conflict with the legal and ethical duties lawyers and other legal professionals owe to their clients.

Backed by penalties that include significant fines and potential imprisonment for noncompliance, the New Legislation forces legal counsel to choose between their professional obligations to their clients and obligations imposed by the government for the purposes of helping it enforce compliance with the Act. This conflict of interest undermines the duty of commitment to the client's cause, a duty recognized by the Supreme Court of Canada as a principle of fundamental justice. As a result, the Federation argues, the New Legislation violates the Charter.

As part of the Petition, the Federation is seeking:

a. a declaration that the New Legislation is of no force or effect, to the extent that it applies to legal professionals;
b. A declaration that the term "advisor" as it is used in the New Legislation be read down to exclude legal professionals; and
c. an interim order exempting legal counsel from the obligations under the New Legislation pending the outcome of its legal challenge. The Government of Canada has consented to a 30-day injunction suspending application of the provisions to members of the legal profession, pending a hearing on the Federation's Petition.

The Petition follows similar submissions from the Canadian Bar Association and from the Federation to the Ministers of Finance and Justice, as well as the House of Commons Standing Committee on Finance and the Standing Senate Committee on National Finance. Canadian courts have consistently recognized and protected solicitor-client privilege.

Even if legal professionals are ultimately exempted from its disclosure obligations, taxpayers, promoters and other advisors will still need to provide disclosure on reportable transactions in accordance with the New Legislation. Great care needs to be taken in considering these reporting obligations and advice regarding the potential application of the New Legislation and the Act generally should be sought from legal professionals.

For more information on Bill C-47 and its amendments to the *Income Tax Act*, please reach out to one of the key contacts listed below.

By

Ben Hardwicke-Brown

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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