

September 9, 2016

VIA EMAIL

Denis Martel
Director of Patent Policy
Strategic Policy Sector
Innovation, Science and Economic Development Canada
235 Queen Street
Ottawa, ON K1A 0H5

Dear Mr. Martel:

RE: Proposal of the Federation of Law Societies of Canada Regarding a Governance Framework For Patent and Trademark Agents

The Advocates' Society, established in 1963, is a not-for-profit association of over 5,500 lawyers throughout Ontario and the rest of Canada. The mandate of The Advocates' Society includes, amongst other things, making submissions to governments and other entities on matters that affect access to justice, the administration of justice and the practice of law by advocates. As legal advocates, The Advocates' Society's members have a keen interest in protecting the relationship between a lawyer and his or her client and maintaining the robust protection of solicitor-client privilege.

On June 13, 2016, The Advocates' Society wrote to you and stressed the importance of safeguarding the statutory privilege that would attach to communications between a client and a patent or trademark agent. In this regard, we suggested elements we thought would be essential components to a Code of Conduct that would govern patent and trademark agents.

We have since had an opportunity to review the thoughtful submission of the Federation of Law Societies of Canada (the "Federation") with regard to a governance framework for patent and trademark agents. The Federation has raised a number of concerns in its submission that warrant careful attention in the development of any governance framework.

Specifically, the Federation has expressed a concern about the regulatory duplication that would arise in the case of lawyers who are also patent or trademark agents. The Advocates' Society has not considered in depth the different options for the governance of patent and trademark agents. Nevertheless, The Advocates' Society strongly recommends the avoidance of duplicative and potentially inconsistent federal and provincial regulation of lawyers.

The Federation has also raised a concern regarding the protection of information subject to solicitor-client privilege under a governance framework where lawyers who are also patent and trademark agents are regulated by a regulatory body other than a law society. The Advocates'

Society shares this concern. Any new regulatory framework that failed to adequately protect the sanctity of solicitor-client communications would present a significant threat to the proper administration of justice and the rule of law in Canada.

The Federation has also noted the necessary protections which must be in place to properly safeguard the statutory IP agent privilege, and The Advocates' Society agrees with the Federation's comments on that matter as well. As we have previously submitted, the protection of any information subject to privilege must be a key element in any governance framework adopted for patent and trademark agents.

I would be pleased to discuss these issues with you further at your convenience.

Yours very truly,



Bradley E. Berg
President

C: The Honourable Navdeep Bains, Minister of Innovation, Science and Economic Development
Mathieu Bouchard, Senior Advisor, Communication, Prime Minister's Office