

Lawyers and Anti Money Laundering Laws

Author : admin

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Canada (Attorney General) v. Federation of Law Societies of Canada, [2015 SCC 7](#)

The SCC had read down provisions of [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act, S.C. 2000, c. 17](#), and the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Regulations, SOR/2002?184](#), that impose reporting obligations on lawyers and law firms (paragraphs 5(i) and (j), and sections 62, 63, 63.1 of the Act) to exclude legal counsel and law firms.

The majority of the Court stated:

[1] Lawyers must keep their clients' confidences and act with commitment to serving and protecting their clients' legitimate interests. Both of these duties are essential to the due administration of justice. However, some provisions of Canada's anti-money laundering and anti-terrorist financing legislation are repugnant to these duties. They require lawyers, on pain of imprisonment, to obtain and retain information that is not necessary for ethical legal representation and provide inadequate protection for the client's confidences subject to solicitor-client privilege. I agree with the British Columbia courts that these provisions are therefore unconstitutional. They unjustifiably limit the right to be free of unreasonable searches and seizures under [s. 8](#) of the [Canadian Charter of Rights and Freedoms](#) and the right under [s. 7](#) of the [Charter](#) not to be deprived of liberty otherwise than in accordance with the principles of fundamental justice.

[...]

[59] I accept, of course, that the objectives of combating money laundering and terrorist financing are pressing and substantial as both the application judge and the Court of Appeal held.

[60] With respect to the proportionality analysis, the appellant has the burden of proving that (i) the objective is rationally connected to the limit; (ii) the limit impairs the right as little as possible; and (iii) there is proportionality between the effects of the limitation of the [Charter](#) right and the objective. The rational connection does not impose a particularly onerous threshold: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000 SCC 69](#), [2000] 2 S.C.R. 1120, at para. 228. There is a logical and direct link between, on one hand, the combating of money laundering and terrorist financing (in which lawyers may unbeknownst to them be participating) and, on the

other, governmental supervision through searches conducted at law offices.

[61] In my view, however, the justification fails the minimal impairment test. There are other less drastic means of pursuing the same identified objectives. The Court has previously outlined the sorts of protections that are required in order to meet the constitutional standard of protection for solicitor-client privilege: *Lavallee*.

[62] I am therefore of the view that [s. 64](#), and to the extent that they operate in relation to lawyers' offices, ss. 62, 63 and 63.1 of the Act, cannot be justified.

- Sas Ansari, JD LLM PhD (exp)

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