



The Law Society of  
Upper Canada

Barreau  
du Haut-Canada

**SUBMISSION TO THE  
STANDING COMMITTEE ON  
GENERAL GOVERNMENT ON  
BILL 150, THE *GREEN ENERGY ACT***

**APRIL 22, 2009**

## INTRODUCTION

1. Good afternoon. My name is Derry Millar, and I am the Treasurer of the Law Society of Upper Canada. Thank you for the opportunity to be here today; the Law Society appreciates the opportunity to comment on Bill 150.
2. For 212 years, the Law Society of Upper Canada has regulated Ontario's lawyers in the public interest. Since 2007, it has also regulated licensed paralegals in Ontario. Currently the Law Society regulates 40,000 lawyers and 2,300 paralegals.
3. The Law Society has a broad public policy mandate with respect to matters touching on the practice of law by lawyers and the provision of legal services by paralegals.
4. The underlying objective of Bill 150 to protect the environment and promote renewable energy initiatives is a laudable one, and the Law Society has no objection to it. However, the Law Society is concerned that the public may believe that the broader powers of inspection contained in section 15 of the Bill have the potential to violate solicitor-client privilege.
5. Section 15 provides that an inspector may, at any reasonable time, enter any place where the inspector has reasonable grounds to believe that there are documents relating to an offer to sell or lease a property that is subject to a mandatory energy audit under section 2 of the Bill. While this power appears very sweeping, the Law Society's position is that this search power is subject to all the rules regarding the protection of solicitor-client privilege.
6. The paramount nature of solicitor-client privilege in Canadian law has been the subject of numerous cases in the Supreme Court of Canada.<sup>1</sup> It has been clearly established in this jurisprudence that, "solicitor-client privilege is a principle of fundamental justice ... that must be as close to absolute as possible to ensure public confidence."<sup>2</sup>

7. In 2002, in the course of considering the constitutionality of *Criminal Code* provisions that permitted the search of law offices, the Supreme Court of Canada held that clients have a reasonable expectation of privacy in all documents in possession of the client's lawyer.<sup>3</sup>
8. In the Law Society's view, it is clear that documents subject to solicitor-client privilege are not subject to being inspected pursuant to s. 15 of Bill 150. In discussions with government officials, it was indicated that, as with other Ontario statutes that contain powers of search and inspection, the common law protection of solicitor-client privilege would overrule the search powers in Bill 150, in keeping with the jurisprudence mentioned above.
9. We are here today to underscore that it is critical to the public interest that the public understand that the sweeping inspection powers contained in section 15 of Bill 150 are limited by the law protecting solicitor-client privilege.
10. We further recommend that the ministry undertake to educate their inspectors as to the limitations of their search powers when it comes to matters subject to solicitor-client privilege, to recognize the special nature of the relationship between solicitor and client.
11. Thank you for your attention.

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<sup>1</sup> *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* 2008 SCC 44, *Maranda v. Richer* 2003 SCC 67, *Lavallee, Rackel & Heintz v. Canada* 2002 SCC 61, *R v. Brown* 2002 SCC 32, *R v. McClure*, [2001] 1 S.C.R. 445

<sup>2</sup> *Lavallee, Rackel & Heintz v. Canada* 2002 SCC 61, at paras. 36 and 49

<sup>3</sup> *Ibid.* at para. 16