

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

The Law of Privilege in Canada Robert W. Hubbard and Katie Doherty Release No. 6, December 2024
--

The Law of Privilege in Canada is a comprehensive guide to privilege and confidentiality. It includes chapters on each type of privilege with “key points”, case law and commentary as well as a table of cases, relevant legislation, and an index.

What's New in this Update:

The authors have updated the commentary and case law in chapters 10 (The Privilege Against Self-Incrimination), 11 (Solicitor-Client Privilege), 12 (Litigation Privilege) and 13 (Press Privilege).

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights

Solicitor-client Privilege — In General- Does Solicitor — Intention to Maintain Confidentiality — In *Axion Ventures Inc. v. Bonner*, the court considered a series of applications brought by the defendant in relation to an ongoing “corporate battle for control of the plaintiff Axion Ventures Inc., its assets and its confidential information”. In particular, the applications related to assertions of privilege by the defendant, Mr. Bonner (the former CEO and Director of the plaintiff company) over various email threads and communications. Considering the Solosky test, the plaintiffs argued that there was no expectation of confidentiality regarding the communications. Mr. Bonner swore an affidavit outlining that he believed his Axion emails would be confidential. The plaintiffs argued that the mere fact that a client considered particular information to be confidential “will not suffice for it to be protected by solicitor-client privilege.” They asserted that the Court was required to “look behind” the defendant’s statement and apply an objective element to the test. In considering these arguments, the Court applied a test “similar to the test for police officers to conduct an arrest without warrant”. The Court articulated and applied the test. Applying the test to the facts of this case, the Court was satisfied that it was clear the defendant intended the communications at issue to be confidential. He assessed the content of the potentially privileged documents and concluded that as disclosure of the content of the communications would have damaged the defendant’s position, “it would be incongruous to find that there was no intent for those communications to be confidential”. The Court further noted “the emails may have been handled foolishly, but foolish clients still need the protection of solicitor-client privilege”. Where no such intention to maintain confidentiality is evidenced, the privilege claim will fail.

Solicitor-client Privilege — Does Solicitor-Client Privilege Protect Communications and Documents in the Context of Access to Information Requests? — The Right of a Commissioner or Auditor-General to View Documents Over Which Privilege Has Been Claimed — In the appeal of *British Columbia (Children and Family Development) v. British Columbia (Information and Privacy Commissioner)*, the British Columbia Court of Appeal concluded that the Adjudicator erred in concluding that s. 25 of FIPPA “unambiguously ‘overrides’ solicitor-client privilege in that it compels public bodies to disclose information subject to solicitor-client privilege”. Consequently, the Adjudicator’s decision ought to have been set aside on judicial review. The Court of Appeal consequently made an order quashing the portion of the Commissioner’s order that addressed s. 25 and 44 of FIPPA: *British Columbia (Children and Family Development) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 190, 2024 CarswellBC 1382 (B.C. C.A.).