

CANADA / JUDGMENT

Burns v. Hall

2018 BCSC 968

COURT

Supreme Court of British Columbia

DECIDED

13 June 2018

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2018 BCSC 968 Burns v. Hall

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Burns v. Hall,

2018 BCSC 968

Date: 20180613

Docket: S107692

Registry: Kelowna

Between:

Mark Burns

Plaintiff

And

Brenton C. Hall in his capacity as co-Executor and co-Trustee under
the Last Will and Testament of Coleman Hall, deceased,

Maxwell E. Hall in his capacity as co-Executor and co-Trustee under
the Last Will and Testament of Coleman Hall, deceased, Brenton C. Hall
and Devonshire Hall Ltd.

Defendants

Corrected Judgment: The text of the judgment was corrected
on the front page on August 16, 2018.

Before: Master Wilson

Reasons for Judgment

The Plaintiff, appearing in person:

M. Burns

Counsel for the Defendants, Brenton C. Hall and Devonshire Hall Ltd.:

M.C. Ohama-Darcus

Place and Date of Hearing:

Kelowna, B.C.

May 29, 2018

Place and Date of Judgment:

Kelowna, B.C.

June 13, 2018

- [1] This application is concerned with the defendants' claim for privilege over approximately 150 documents that are currently listed in Part 1 of the plaintiff's list of documents. The defendants seek an order that the plaintiff amend his list by moving those documents to Part 4 where privileged documents are listed.
- [2] The plaintiff is a former lawyer who retired from practice on November 30, 2010. During his practice, he provided legal services to the defendant Devonshire Hall Ltd. and the Hall family. For several years prior to the plaintiff's retirement, the Hall family had been involved in an estate litigation matter involving the last will and testament of Coleman Hall, who was the father of the defendant, Brenton Hall. The British Columbia Court of Appeal issued its decision on the various appeals on July 16, 2009.
- [3] The Hall family and Devonshire Hall Ltd. had been the plaintiff's primary or sole client and he decided to retire from practice following conclusion of the litigation. The plaintiff practiced as a solicitor and was not litigation counsel.
- [4] However, certain issues arose as to the interpretation of the Court of Appeal's decision and as a result the order was not entered. While the substance of those uncertainties are not entirely clear to me and are not important for the purposes of this application, I understand they involved the calculation of interest and consideration of certain tax implications, and that the magnitude of the disagreement was in the range of \$1,000,000 or more.

- [5] The plaintiff continued to be involved in assisting the defendants following his retirement, although the parties disagree regarding the nature of the relationship between them. The plaintiff says that the defendants agreed to hire him as a consultant and that he would be compensated at a rate of \$350 per hour, which was consistent with his billing rate prior to retirement.
- [6] The defendants by way of their response to civil claim deny that such an agreement was ever entered into. They say that the plaintiff volunteered his time to assist, that he communicated with the defendants' lawyers from time to time, and that he occasionally provided useful advice and information. They plead that the value of the services rendered by the plaintiff does not exceed \$20,000.
- [7] The estate litigation matter was concluded by way of supplementary reasons from the Court of Appeal dated November 20, 2012 (2012 BCCA 460). The plaintiff subsequently issued an account to the defendants based upon what he says was the agreement between the parties. The plaintiff remains unpaid and filed this claim, seeking damages in the amount of \$127,880, based upon his claim for breach of contract. In the alternative, he pleads unjust enrichment and quantum meruit.
- [8] Generally stated, the plaintiff was involved in discussions and communications between the defendants and their professional advisors, primarily but not exclusively legal advisors, regarding both the substantive and strategic considerations regarding the unresolved matters arising from the July 16, 2009 decision of the Court of Appeal. When the plaintiff prepared his list of documents for this litigation, he listed each document that he had accumulated in his file. His list included 209 documents. The defendants initially objected to more of the documents that are currently in issue but have withdrawn the claim of privilege with respect to some of them. However, there remains over 150 documents in issue on this application.
- [9] The defendants have broken the disputed documents into nine categories which are set out as follows in the plaintiff's argument:
- (a) copies of email correspondence, including some attachments, between Mr. Hall or his personal secretary [sic] and the defendants' legal counsel at Farris, Blakes and Stikeman Elliott, where Mr. Burns was included as an email recipient (52 documents) [at para. 15(a)];
 - (b) copies of email correspondence, including some attachments, between Mr. Burns and Mr. Hall's legal counsel, where Mr. Hall was not included as an email recipient (9 documents) [at para. 15(b)];
 - (c) copies of faxes between Mr. Hall and Mr. Burns, attaching copies of email correspondence between Mr. Hall and his legal counsel, some of which include handwritten notes (2 documents) [at para. 15(c)];

- (d) copies of faxes or fax transmission sheets between Mr. Hall and Mr. Burns, attaching copies of or referring to other correspondence or documents related to the wills variation litigation, some of which include handwritten notes (15 documents) [at para. 15(d)];
 - (e) copies of faxes between Mr. Burns and Mr. Hall's legal counsel, related to the wills variation litigation (44 documents) [at para. 15(e)];
 - (f) copies of faxes from Mr. Hall's legal counsel, addressed to both Mr. Burns and Mr. Hall, related to the wills variation litigation (3 documents) [at para. 15(f)];
 - (g) other correspondence from Mr. Hall's legal counsel, related to the wills variation litigation (3 documents) [at paras. 15(g) and (h)];
 - (h) Mr. Burns' handwritten notes related to the wills variation litigation (24 documents) [at paras. 15(i), (j) and (k)]; and
 - (i) invoices for legal services rendered by Farris and Stikeman Elliott, with substantive descriptions of those services (2 documents) [at para. 15(l)].
- [10] I do not intend to go into great detail with regard to the various categories of documents. However, I will make a few comments.
- [11] The reference to "handwritten notes" in the categories identified by the defendants arise because a number of the documents are not themselves subject to a claim of privilege (for example, a letter between the defendants' lawyers and the opposing party's lawyer). Rather, the claim for privilege pertains to handwritten notes made by the plaintiff or by someone else on a copy of that document.
- [12] There are a number of documents in the possession of the plaintiff in which he is not identified as either a sender or a recipient. However, there is no suggestion that the plaintiff ought not to have received the document and it appears that he was routinely provided with documents either by the defendant Hall or by counsel acting for the defendants.
- [13] There is also no suggestion that any documents were provided to the plaintiff in error or that anything was sent to the plaintiff absent the defendants' express or implied consent.
- [14] This is an unusual application regarding the claim for privilege over documents to the extent that both parties already have the documents and know their contents.
- [15] The defendants say that all of the documents in issue are subject to solicitor client privilege. The plaintiff says they are not because they were disclosed to him as a third party and not as a lawyer. He says the documents were likely subject to litigation privilege during the case, but such privilege expired upon conclusion of the litigation.

- [16] The plaintiff says he needs the documents to prove his case, and that it would be unfair to expect him to be able to do so absent what is essentially the contents of his file. He further says that even if the files were subject to solicitor client privilege, the defendants by virtue of the pleadings have waived that privilege.
- [17] The defendants say that the plaintiff will be able to prove his case without the privileged documents because the primary basis for his claim is the time he spent and no privilege is sought over the plaintiff's bill or over his time recordings. The defendants deny waiver, because the pleadings are in their essence a denial of the plaintiff's claims and contradicting a claim does not constitute waiver.

Solicitor client privilege

- [18] The test for whether a communication is subject to solicitor client privilege is well-known and was articulated in *Canada v. Solosky*, [1980] 1 S.C.R. 821 at 837, by Dickson J. as follows:
- (i) a communication between solicitor and client;
 - (ii) which entails the seeking or giving of legal advice; and
 - (iii) which is intended to be confidential by the parties.
- [19] The party asserting privilege bears the burden of proof of establishing that the necessary requirements have been met. Once privilege has been established, the party seeking disclosure has the onus of proving that privilege does not apply and that the communication must be disclosed - see *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88:
- [10] The burden of proof rests on the person asserting privilege to establish that the document in question meets the necessary requirements. However, once established, "the onus is on the party seeking to overcome the privilege to establish that the communication should be disclosed": Robert W. Hubbard, Susan Magotiaux and Suzanne M. Duncan, *The Law of Privilege in Canada*, looseleaf (Aurora, ON: Canada Law Book, 2006) at 11-4.1 Once solicitor-client privilege is established "it is not absolute, but it is absolute as possible"; Hubbard at 11-4.1.
- [20] Solicitor client privilege has been described as being as close to absolute as possible, and is a fundamental right under our legal system. In *Camp Development*, Voith J. stated the following in paragraphs 11 to 14:
- [11] In *Solosky*, then Dickson J. recounted the historical evolution of solicitor-client privilege, which began as a rule of evidence that only provided an exemption for lawyers from testimonial compulsion. Dickson J. noted, at 834, that: "Thereafter, in stages, privilege was extended to include communications exchanged during other litigation, those made in contemplation of litigation, and finally, any consultation for legal advice, whether litigious or not". The decision is also noteworthy for its early recognition that privilege had evolved

from a traditional rule of evidence into "a fundamental civil and legal right" (at 839).

- [12] The foregoing points are not controversial. In *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2007 BCSC 1420, 161 A.C.W.S. (3d) 400, at para. 20, Dickson J. cited *Descoteaux v. Mierzewski*, [1982] 1 S.C.R. 860, 141 D.L.R. (3d) 590, and *Goodis v. Ontario (Ministry of Correctional Services)*, 2006 SCC 31, [2006] 2 S.C.R. 32, and said:

The right to communicate in confidence with one's legal adviser is a fundamental and substantive legal right founded upon the unique relationship between solicitor and client. It should be interfered with only to the extent absolutely necessary in order to achieve a just result.

- [13] In *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31, [2004] 1 S.C.R. 809, Major J., for a unanimous Supreme Court of Canada, in explaining the fundamental importance of privilege and its implications, said:

- [17] As stated in *R. v. McClure*, [2001] 1 S.C.R. 445, 2001 SCC 14, at para. 2:

Solicitor-client privilege describes the privilege that exists between a client and his or her lawyer. This privilege is fundamental to the justice system in Canada. The law is a complex web of interests, relationships and rules. The integrity of the administration of justice depends upon the unique role of the solicitor who provides legal advice to clients within this complex system. At the heart of this privilege lies the concept that people must be able to speak candidly with their lawyers and so enable their interests to be fully represented.

The privilege is jealously guarded and should only be set aside in the most unusual circumstances, such as a genuine risk of wrongful conviction.

- [18] In *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209, 2002 SCC 61, this Court confirmed that the privilege must be nearly absolute and that exceptions to it will be rare.

Speaking for the Court on this point, Arbour J. reiterated what was stated in *McClure*:

... solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis. [Emphasis in original.]

(Arbour J. in *Lavallee*, *supra*, at para. 36, citing Major J. in *McClure*, at para. 35.)

- [14] Ultimately, the disclosure of information which is properly subject to solicitor-client privilege is to be ordered only when it is absolutely necessary to achieve the ends of justice; *R. v. McLure*, 2001 SCC 14, [2001] S.C.R. 445 at 459; *Legal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2003 BCCA 278, 14 B.C.L.R. (4th) 67, at para. 29.

- [21] Because the plaintiff was no longer practicing as a lawyer at the time the subject documents were created or disclosed to him, the first part of the test in *Solosky* does not necessarily apply. However, solicitor client privilege has been held to extend to communications to third parties in certain limited circumstances.
- [22] In *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 532, Griffin, J., as she then was, adopted the Ontario Court of Appeal's analysis with regard to solicitor client privilege and third party communications:
- [26] The judgment of Doherty J.A. of the Ontario Court of Appeal in *General Accident Insurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 at 351-359 (C.A.) [Chrusz], thoroughly analyzed when communications with third parties, not the solicitor and not the client, will be covered by solicitor-client privilege, excluding litigation privilege. This judgment in regard to solicitor-client privilege and third party communications has been followed in BC including in *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College of Physicians], *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at para. 15 and in *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at paras. 60-64 [Camp].
- [27] In short, there are three principles which can be distilled from these authorities:
- a) Communications with a third party are not protected by solicitor-client privilege merely because they assist the solicitor in formulating legal advice to the client.
 - b) Where the third party serves as a line of communication between the solicitor and client the communications will be protected by solicitor-client privilege; that is, either:
 - i. where the third party is simply carrying the information between the solicitor and client, or acting as "agent of transmission", or
 - ii. where the third party's expertise is required to interpret the information provided by the client so that the solicitor can understand it;
 - c) There are other situations where the function of the third party is "essential to" or "integral to" the solicitor-client relationship, such that privilege attaches to the communications with the third party. For example:
 - i. if the third party is authorized by the client to seek legal advice from the solicitor on behalf of the client, standing in the shoes of the client, then the third party's function is essential to the solicitor-client relationship and the communications will be privileged; but
 - ii. if the third party is simply authorized to gather information from outside sources and pass it to the solicitor so that the solicitor might advise the client, then the third party's function is not essential but is merely incidental to the giving of legal advice, and will not be protected from privilege. Arguably this is just an example of category (a) above.

[23] The defendants' claim that solicitor client privilege attaches to the disputed documents must be considered with regard to the above principles.

Litigation privilege

[24] Solicitor client privilege is different from litigation privilege, which pertains to documents that are created for the purpose of litigation. Parties are entitled to keep private those communications that pertain to an ongoing legal dispute. The criteria to establish litigation privilege were articulated in *Hamalainen (Committee of) v. Sippola*, [1992] B.C.W.L.D. 144 (C.A.):

- (a) there was a reasonable prospect of litigation at the time the document was created; and
- (b) the litigation was the dominant purpose for its production.

[25] As Warren J. said in *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795:

[84] The purpose of litigation privilege is to ensure the efficacy of the adversarial process by creating a "zone of privacy" that applies to litigation preparation

[26] Litigation privilege and solicitor client privilege are conceptually different and serve different purposes. Documents may be subject to both types of privilege. However, there are important distinctions between the two types of privilege. Significant to this case is that litigation privilege comes to an end upon completion of the litigation whereas solicitor client privilege endures. The claim asserted by the defendants here is for solicitor client privilege, not litigation privilege.

[27] For the reasons that follow, I find that the documents are not subject to solicitor client privilege. They were likely the subject of litigation privilege, but since the litigation has been concluded, the privilege is at an end and the defendants' application must be denied. Because of my conclusion regarding privilege, I need not address the issue of waiver.

Discussion

[28] Since the plaintiff was not a practicing lawyer at the time of the communications, the defendants' claim for solicitor client privilege must be viewed with reference to the Ontario Court of Appeal's analysis in *Chrusz* adopted in British Columbia in *Bilfinger* by Griffin J.

[29] The defendants say that the plaintiff's role fits within both paragraphs (b) and (c) from the principles identified in the *Chrusz* case. I will therefore address those principles first before addressing the first principle identified in paragraph (a) in *Chrusz*.

Did the plaintiff stand as a line of communication between the solicitor and the client, either as an "agent of transmission" or to provide his expertise in order to enable the solicitor to interpret information by the client?

[30] The defendants' evidence in this regard is found at paragraphs 8 and 9 of Affidavit #1 of Brenton C. Hall. Those paragraphs provide as follows:

8. Throughout this period, from his retirement until the issues related to the wills variation litigation concluded around 2013, Mr. Burns would sometimes communicate with the Estate's legal counsel from Farris, Blakes and Stikeman ("Legal Counsel") on my behalf.
9. In respect of this continued involvement in the legal affairs of the Estate following his retirement, I considered Mr. Burns to be an advisor and to sometimes stand in for me for the purpose of receiving legal advice from my Legal Counsel.

[31] I am satisfied that the defendants were fully capable instructing their lawyers directly, and that they did so. From my very general review of the documents in issue on this application, the vast majority of the correspondence was sent by the defendants' lawyers directly to their clients. There is no suggestion that the defendants were unable to receive or understand legal advice from their lawyers, nor that the lawyers were unable to understand information provided to them by the defendants.

[32] While there may have been circumstances when the defendants had the plaintiff communicate with counsel on their behalf, or when the plaintiff stood in for the defendants to receive legal advice, it must be kept in mind that the party asserting the privilege has the burden of proving it. The defendants' evidence per paragraphs 8 and 9 of Mr. Hall's affidavit is that this happened 'sometimes'. The defendants do not refer to any specific examples of when the plaintiff communicated with, or received advice from, their lawyers on their behalf.

[33] The defendants argue that solicitor client privilege applies to the continuum of communications and not just to the solicitor's opinions or advice, authority for which proposition is found in Voith J.'s decision in *Camp Development* at paragraphs 40 to 42:

40] A separate aspect of the Camp submission emphasizes that it is only those communications between solicitor and client that pertain to legal advice which are privileged. The submission as advanced fails to recognize, however, that privilege extends to more than the individual document that actually communicates or proffers legal advice. The reality is that in order for a lawyer to provide advice, he or she will often require history and background from a client. The lawyer will often be asked to provide legal advice that best advances a particular business strategy or objective. He or she may repeatedly contact the client asking for clarification of some issue that is salient to the retainer and to the advice being sought. The first expression of an opinion prepared, whether in a letter or in a commercial document, may elicit further comment from the client and require revision. It is this chain of exchanges or communications and not just the culmination of the lawyer's product or opinion that is privileged.

[41] In *Smith v. Jones*, [1999] 1 S.C.R. 455, 169 D.L.R. (4th) 385, at para. 46, the Court said:

46. Clients seeking advice must be able to speak freely to their lawyers secure in the knowledge that what they say will not be divulged without their consent. It cannot be forgotten that the privilege is that of the client, not the lawyer. The privilege is essential if sound legal advice is to be given in every field. It has a deep significance in almost every situation where legal advice is sought whether it be with regard to corporate and commercial transactions, to family relationships, to civil litigation or to criminal charges. Family secrets, company secrets, personal foibles and indiscretions all must on occasion be revealed to the lawyer by the client. Without this privilege clients could never be candid and furnish all the relevant information that must be provided to lawyers if they are to properly advise their clients. It is an element that is both integral and extremely important to the functioning of the legal system. It is because of the fundamental importance of the privilege that the onus properly rests upon those seeking to set aside the privilege to justify taking such a significant step.
- [42] The recognition that privilege attaches broadly to the "continuum of communications and meetings" that underlie legal advice is widely accepted. In *Blood Tribe*, at para. 26, the Alberta Court of Appeal, relying on *Balabel v. Air India*, [1988] 2 All E.R. 246 at 254, confirmed the claim of privilege over a range of minutes of meetings, e-mails and correspondence between the Department of Justice and the Department of Indian and Northern Affairs. The court considered that all such documents were made in confidence and were part of the necessary exchange of information between solicitor and client for the purpose of providing legal advice.
- [34] This analysis confirms that the scope of solicitor client privilege is very broad and is not limited to individual documents that seek or provide legal advice. However, it does not assist the defendants to establish that the relationship between the plaintiff and the defendants is one to which solicitor client privilege attaches.
- [35] The defendants have not identified any specific communications amongst the over 150 documents that are in issue here as falling within what was described in paragraphs 8 and 9 of the affidavit. They have not identified a single instance of when the plaintiff communicated with counsel on their behalf, nor any example of when the plaintiff received legal advice on the defendants' behalf, despite having had the opportunity to do so. I conclude that the defendants' very general allegations in Mr. Hall's affidavit are insufficient to colour the entire communications received by the plaintiff.
- [36] I do not conclude that the plaintiff was a link in the chain or an agent of transmission in the communications between the defendants and their lawyers, and the argument that the documents are privileged under the second principle in *Chrusz* fails.

Is this a situation where the plaintiff was essential to or integral to the solicitor client relationship such that privilege attaches to the communications between the defendants' solicitors and the plaintiff?

[37] The third situation identified in Chrusz is where the third party is essential or integral to the solicitor and client relationship. The wording of (c) in Chrusz is as follows:

- c) There are other situations where the function of the third party is "essential to" or "integral to" the solicitor-client relationship, such that privilege attaches to the communications with the third party. For example:
 - i. if the third party is authorized by the client to seek legal advice from the solicitor on behalf of the client, standing in the shoes of the client, then the third party's function is essential to the solicitor-client relationship and the communications will be privileged; but
 - ii. if the third party is simply authorized to gather information from outside sources and pass it to the solicitor so that the solicitor might advise the client, then the third party's function is not essential but is merely incidental to the giving of legal advice, and will not be protected from privilege. Arguably this is just an example of category (a) above.

[38] Again, the evidence to support this argument is limited. At paragraph 9 of Mr. Hall's affidavit, it says only that the plaintiff would "sometimes stand in for me for the purpose of receiving legal advice". However, the defendant does not identify a single instance of this occurring. Again, the defendants have all of the documents and are fully versed in the file, so it would have been easy for them to do so. A bald assertion in an affidavit is insufficient to meet the defendants' onus of establishing privilege. I am also not satisfied that even if there was a time when the plaintiff received legal advice on the defendants' behalf, that the single instance would be sufficient to conclude that solicitor client privilege would attach to over 150 documents that were sent over a 12 month period.

[39] The response to civil claim in this action claims that the plaintiff advised the defendants that he would "be available to help out if necessary". At paragraph 12, the defendants plead that "Burns communicated with the defendants' professional advisors from time to time, often at his own behest, and occasionally provided useful advice and information". There is no suggestion the plaintiff had the authority to instruct counsel on behalf of the defendants.

[40] Both the defendants' affidavit and their response to civil claim allege a relatively minor role for the plaintiff. The defendants' argument under the third of the principles in Chrusz fails.

Was the plaintiff's role to assist the defendants' lawyers in formulating legal advice to the defendants?

[41] This is the first principle identified in the Chrusz case and if the third party was merely to assist the solicitor in formulating advice to the client, solicitor client privilege cannot attach:

- a) Communications with a third party are not protected by solicitor-client privilege merely because they assist the solicitor in formulating legal advice to the client.

[42] From my review of the documents to which I was taken and the affidavit evidence, I conclude that this describes precisely the role of the plaintiff in the estate litigation. The plaintiff was not providing legal advice. His contribution was that he had a thorough and

comprehensive knowledge and understanding of how the estate and the business were constituted and organized. He was therefore included in the communications between the defendants and their lawyers in order to assist the lawyers in providing advice to the defendants. He had no authority to instruct, nor was he a necessary link in the chain of communication between solicitor and client.

- [43] The role of the plaintiff and the need to protect his communications with the defendants and their lawyers was addressed in an email sent by one of the defendants' lawyers, Mr. Turriff, to the plaintiff on April 11, 2012, that includes the following paragraph:

I should make it clear that since you ceased to practise law I have been dealing with you as someone who is performing a function on behalf of Brent and Maxwell Hall, as my clients, that is integral to their obtaining legal advice from me and latterly from Ed Kroft. In the circumstances, you stand in their shoes and therefore your communications with me and with Ed are privileged.

- [44] The defendants say that this confirms that communications with the plaintiff would remain the subject of solicitor client privilege. I do not agree.
- [45] The email from Mr. Turriff refers only to the fact that their ongoing communications are privileged, but does not identify whether the basis of the privilege is solicitor client privilege or litigation privilege. Since the plaintiff's role was to assist the defendants and their lawyers in dealing with the unresolved matters arising from the litigation, it is equally reasonable to assume that the privilege referred to by Mr. Turriff is litigation privilege as it was anticipated that the plaintiff would continue to assist while the litigation continued. The email contemplates that the defendants' ongoing legal advice would be provided by Mr. Turriff and Mr. Kroft, and the only matter contemplated was the outstanding litigation.
- [46] The effect of confirming ongoing privilege over the communications from the defendants and their lawyers to the plaintiff was to try to ensure the plaintiff could not be compelled to disclose those communications by the other party. This would be no different from communications the defendants and their lawyers would have had with other professionals, such as the company's accountant. However, there is no equivalent to solicitor client privilege over a party's communications with professionals such as accountants.

Disposition

- [47] I conclude that the plaintiff's role was to assist the defendants and their lawyers based upon his knowledge of the affairs of the company and of the estate during the litigation. The extent to which he assisted and the value of those services will be determined at trial.
- [48] In the result, I find that the privilege that attached to the communications between the plaintiff on the one hand and the defendants and its lawyers on the other was litigation privilege, which ceased to exist once the litigation concluded. The application is dismissed.

"Master Wilson"

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