

CITATION: Will Murray & Associates v. Nader Fakh, 2026 ONSC 657
COURT FILE NO.: CV-24-00098056-0000
DATE: 2026-02-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: WILL MURRAY & ASSOCIATES CRIMINAL DEFENCE PROFESSIONAL CORPORATION, Plaintiff

- and -

NADER FAKIH, Defendant

BEFORE: Associate Justice Kamal

COUNSEL: David Cutler, for the Plaintiff
Kevin Caron, for the Defendant

REASONS FOR DECISION

1. “These peasants owe me money still so I’m taking their bail money.” When a lawyer sends an email like this, it speaks volumes. That lawyer cannot hide behind solicitor-client privilege to avoid discovery in the face of allegations of misconduct.
2. This is a motion about whether the specific documents requested by the Plaintiff law firm should be produced by the Defendant (a former lawyer at the firm), or whether they are subject to solicitor-client privilege.
3. For the reasons that follow, this motion is granted, and the Defendant shall serve a sworn/affirmed affidavit of documents, and the documents requested in the Plaintiff’s motion.

OVERVIEW

4. The action arises from a dispute between a criminal lawyer and his previous law firm.
5. The Defendant, a former partner and employee of the Plaintiff law firm, is being sued in this action for alleged misconduct he committed before leaving the firm in August 2024.
6. The Firm alleges that through a number of improper methods, the Defendant participated in covert transactions whereby client funds owed to the Firm were transferred to the Defendant or organizations connected to the Defendant.

7. The Firm investigated the Defendant's misconduct and uncovered convincing evidence of this misconduct – including an email that contained the quote above.
8. The Firm seeks production of documents that would more fully illustrate the scope of the Defendant's misconduct, given the Defendant's senior and largely independent role at the firm and the clandestine nature of most of the Defendant's misbehavior.
9. In an effort to advance this case and secure the release of relevant records regarding the Defendant's wrongdoing and receipt of client funds, the Firm has been making an effort to participate in the discovery process.
10. However, the Defendant has resisted the Firm's attempts to obtain relevant disclosure, by hiding behind solicitor-client privilege. The Defendant has refused to produce an affidavit of documents or any Schedule A productions.
11. The Defendant takes the position that his counsel cannot even look at the documents initially provided by the Firm, because of client privilege.
12. A list of documents requested by the Firm is attached in Schedule A to this endorsement.

FACTUAL BACKGROUND

13. The Firm, now known as Will Murray & Associate Criminal Defence Professional Corporation, is criminal defence law firm. The Firm was previously known as Murray Fakhri Criminal Defence Professional Corporation. I will refer to the Plaintiff as “the Plaintiff” or “the Firm”.
14. The Defendant, Mr. Fakhri, began working as an associate at the Firm in 2020 and became a partner in 2023. I will refer to the Defendant as “Mr. Fakhri” or “the Defendant”.
15. Mr. Fakhri left the Firm at the end of August 2024.
16. In the summer of 2024, the Firm investigated Mr. Fakhri's billing and accounting matters. That investigation revealed various concerns for the Firm, including the following:
 - a. Mr. Fakhri was billing significantly less in 2024 than he did in 2022 and 2023. Mr. Fakhri says he was slow with his dockets.
 - b. Mr. Fakhri received electronic transfers of client funds to his personal account.
 - c. Mr. Fakhri advised a client that payment should be made by e-transfer to a bank account associated with Mr. Fakhri's own Hotmail email account.
 - d. Mr. Fakhri deposited a cheque meant for legal fees, disbursements, and HST into his own personal bank account.
 - e. Mr. Fakhri asked at least one client to meet him in person and pay him thousands of dollars in cash, despite the client's preference for paying by e-transfer.

- f. Mr. Fakh provided legal services in the areas of tort and personal injury civil litigation on behalf of the Firm, when the Firm was not permitted to provide such services because doing so was contrary to its agreement with its liability insurance provider and its status with the Law Society of Ontario.
 - g. Mr. Fakh directed client funds from the settlement of a tort/personal injury civil litigation file to be sent to another law firm, approximately 10 days before Mr. Fakh's departure from the Firm at the end of August 2024.
 - h. Mr. Fakh asked a client to make payment to him personally, and received the cash payments, despite the fact that Mr. Fakh had agreed to provide legal services based on a Legal Aid Ontario certificate that had been issued to him.
 - i. Mr. Fakh received client bail monies personally, rather than those monies going to the Firm's clients that were entitled to receive those monies (or to the Firm, based upon a proper invoice for legal services rendered).
 - j. Mr. Fakh attempted to retain client funds that he was not entitled to retain, including cash seized and subsequently released by the police, monies which allegedly were never properly invoiced or billed through the Firm.
17. The Firm issued the Statement of Claim in this matter on December 3, 2024.
18. In February 2025, the Firm's counsel provided a proposed a Discovery Plan, suggesting that Mr. Fakh disclose and produce numerous documents, including emails to clients from his personal Hotmail account, personal bank records, copies of his communications with the law firm to which he had directed client funds, copies of the documents contained with Mr. Fakh's portal with Legal Aid, and copies of Mr. Fakh's documents exchanged with the Barreau du Quebec with respect to Mr. Fakh's work performed in that jurisdiction.
19. Mr. Fakh refused to produce any of the requested documents on the basis of solicitor-client privilege. Mr. Fakh says he has not refused to produce non-privileged documents or communications that are relevant to the issues, however, he has not done so. His refusal remains a blanket refusal.

LAW AND ANALYSIS

Issues

20. The issue on this motion whether Mr. Fakh should be ordered to produce the documents request by the Firm.
21. Mr. Fakh articulated the question as whether this court can order a blanket waiver of privilege belonging to over a hundred individuals that have no notice of this motion. Below, I will address why I do not agree with Mr. Fakh's characterization of this issue. This is not about a waiver of privilege.

22. As part of considering whether Mr. Fakhri should be ordered to produce the documents requested by the Firm, I will also consider whether the documents are relevant.

Positions of the Parties

23. The Firm seeks production of the documents listed in their Notice of Motion on the following basis:
- a. The parties already have much of the privileged information as the clients were clients of both the Firm and of Mr. Fakhri.
 - b. The parties and their litigation counsel in this proceeding are within the “circle of privilege”.
 - c. This is not a fishing expedition and these documents are relevant.
24. Mr. Fakhri opposes the request of the Firm on the following basis:
- a. The Firm is essentially seeking a blanket waiver of privilege from the hundreds of clients of Mr. Fakhri and the court cannot order a blanket waiver of privilege. The privilege belongs to third-parties (the clients).
 - b. The documents cannot be produced because the parties’ litigation counsel in the current proceedings should not be permitted to review them as they are privileged.
 - c. There is no circle of privilege.
 - d. The documents sought are not relevant.

Solicitor-Client Privilege: A Journey Through the Jurisprudence

25. It is undisputed that solicitor-client privilege is a fundamental tenet of our legal system.
26. In 1927, the Supreme Court of Canada adopted John Henry Wigmore’s classic formulation of the privilege: (1) where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the privilege be waived. *See Howley v. The King*, [1927] S.C.R. 529 at 533-34.
27. The more modern formulation is that solicitor-client privilege protects communications only when they are between a client and a solicitor/legal advisor, are confidential in nature, and are made for the purpose of seeking, formulating, or giving legal advice or assistance. *See Solosky v. The Queen*, [1980] 1 S.C.R. 821, at p. 837, and *Descôteaux et al. v. Mierzewski*, [1982] 1 SCR 860.
28. In 1980, the SCC elevated the solicitor-client privilege from its evidentiary foundations and recognized it as "a fundamental civil and legal right". *See Solosky v. The Queen*, [1980] 1 S.C.R. 821, at p. at 839

29. In 1982 in *Descôteaux*, at pages 872-873, the court articulated a broad, purposive approach, emphasizing that the privilege applies whenever “legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure...”
30. Since then, the Supreme Court of Canada has repeatedly stated that the solicitor-client relationship is integral to the administration of justice and that privilege encourages the free and full disclosure by the client required to ensure effective legal representation. See *R v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331 at para. 26; *Smith v. Jones*, [1999] 1 S.C.R. 455, at para. 45, *per* Cory J. for the majority; and *R. v. McClure*, 2001 SCC 14, [2001] 1 S.C.R. 445, at paras. 31 and 33, *per* Major J.
31. The court in *McClure*, however, reminds us that not all communications between a lawyer and their client are privileged. In order for the communication to be privileged, it must arise from communication between a lawyer and the client where the latter seeks lawful legal advice: at para. 36.
32. The Supreme Court of Canada has also stated clearly that despite its importance, solicitor-client privilege is not absolute. See *McClure*, at para. 34. That said, solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance: *McClure*, at para. 35.
33. *Smith v. Jones* examined whether the privilege should be displaced in the interest of protecting the safety of the public, *per* Cory J. at para. 51:

Just as no right is absolute so too the privilege, even that between solicitor and client, is subject to clearly defined exceptions. The decision to exclude evidence that would be both relevant and of substantial probative value because it is protected by the solicitor-client privilege represents a policy decision. It is based upon the importance to our legal system in general of the solicitor-client privilege. In certain circumstances, however, other societal values must prevail.
34. Solicitor-client privilege will only yield in certain clearly defined circumstances and does not involve a balancing of interests on a case- by-case basis. See *McClure*, at para. 35.
35. *McClure* was also notable because in it the Supreme Court, for the first time, expressly recognized the Privilege as a principle of fundamental justice under section 7 of the Charter. See *McClure*, at para. 41.
36. *R. v. Brown*, 2002 SCC 32 held that a *McClure* application could also solicitor-client communications through the testimony of the solicitor.

37. In *Lavallee, Rackel and Heintz v. Canada (A.G.)*, [2000] A.J. No. 159, the Supreme Court struck down section 488.1 of the Criminal Code dealing with law office searches as constituting an unreasonable search under section 8 of the Charter that was not justified under section 1. An infringement will only pass Charter scrutiny if it minimally impairs the Privilege.
38. Fees and disbursements charged by a lawyer are generally protected by solicitor-client privilege and are presumptively privileged. See *Maranda v. Richer*, 2003 SCC 67, [2003] 3 S.C.R. 193, at para. 48.
39. Privilege belongs to the client not the lawyer. See *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, [2008] 2 S.C.R. 574, at para. 9.
40. Over time, the Court has found narrow exceptions to solicitor-client privilege.
41. One such exception relates to practical necessity. For example, a lawyer is allowed to disclose privileged communications to members of his or her staff, other associates in the office, expert witnesses, and lawyers with specialized knowledge that might be retained to assist in serving the client. For this reason, there is no prohibition on counsel for the party looking at the files. For the purposes of privilege, there is a unity of interest between the party holding the privileged material, and counsel for that party. See *Alberta (Provincial Treasurer) v. Pocklington Foods Inc.*, 1993 ABCA 69, 8 Alta. L.R. (3d) 429.
42. In 1999, the SCC articulated three limitations on solicitor-client privilege: 1) innocence of the accused; 2) criminal communications; and 3) public safety. See *Smith v. Jones*, at paras. 51-59.
43. Another notable exception is that privilege cannot be used to conceal a fraud or a crime related to the communications. See *R. v. Campbell*, [1999] 1 S.C.R. 565 at para. 55. That is a matter of public policy.
44. In *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815, at para. 53, the SCC stated that solicitor-client privilege will only yield in two clearly defined circumstances: (1) the narrowly guarded public safety exception; and (2) the right to make full answer and defence in criminal proceedings.
45. In *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401, the court ruled that legislation impairing solicitor-client privilege violated s. 7 of the *Charter*, confirming its constitutional dimension.

Analysis

a. *Circle of Privilege*

46. When the Firm served its unredacted Affidavit of Documents and unredacted Schedule A productions in May 2025, Mr. Fakhri took the position that his counsel could not review the solicitor-client privileged documents unless the privilege has been waived, or until this court orders that the privilege does not apply.
47. The concept of “circle of privilege” has been discussed in various case law. See for example: *R. v. Basi*, 2009 SCC 52, [2009] 3 S.C.R. 389, at paras. 30 and 44 and *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, [2014] 2 S.C.R. 33, at paras. 119 and 130.
48. The circle of privilege refers to the limited group of people who can receive privileged legal communications without destroying solicitor-client privilege. To put simply, privilege survives only if the communication stays within a defined, justifiable circle of individuals.
49. In *J.D. Buote Professional Corporation v. McLeod*, 2022 ONSC 7110, this court discussed the idea of “circle of privilege” in circumstances closer to the present case. That case involved a lawyer’s claim against his former client for non-payment of the lawyer’s fee. While that decision focused primarily upon the lawyer having included lawyer-client privileged information in his pleading, the comments in that decision are helpful.
50. The court stated that the “circle of privilege” concept applies in cases where a lawyer decides to sue a client because it is necessary for the lawyer to include privileged information. See *J.D. Buote*, at para. 15.
51. The court even found that judges are within the circle of privilege. See *J.D. Buote*, at para. 16.
52. Even though the present case involves the Firm’s claim against a former partner and employee, and *J.D. Buote* was in the context of a claim by the lawyer against his own former client, in my view, the same considerations apply. In both types of cases, it is necessary for the lawyer to include privileged information in the steps of the litigation.
53. Mr. Fakhri also takes the position that litigation counsel in this proceeding cannot view the documents.
54. In my view, Mr. Fakhri’s position does not make any practical sense when one considers the fact that if the parties were self-represented, no such issue would arise (because the parties themselves have already received the privileged communications).
55. In *Weary v. Ramos*, 2005 ABQB 750, counsel for the party claiming privilege (the Plaintiff in that case) took the position that the privilege is so sacrosanct that even she, although she was counsel for the Plaintiff, could not view the files. However, the Court

held that if the Plaintiff's position were correct, it would create a fundamental element of unfairness in any litigation between a law firm and its partners or associates: at para. 6.

56. The Firm must be able to make its claim against Mr. Fakh for the monies that it says are owed to it. Collecting those amounts has required the Firm to commence civil proceedings. Steps can be taken to protect the information being disclosed beyond the circle of privilege. However, it is not appropriate to completely hide behind privilege as a means to avoid production obligations.
57. Similar to *J.D. Buote*, if the lawyer (or in this case the lawyers as parties) retain counsel, it is appropriate for the parties' litigation counsel to be within the circle of privilege.
58. As the Supreme Court of Canada stated in *Smith v. Jones*, "[c]lients 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": at para. 46.
59. That includes when lawyers hire lawyers.
60. In that regard, the parties' litigation counsel should be considered to be within the circle of privilege. As a result, privilege survives if the communication stays within the circle of privilege.

b. Not a waiver of privilege

61. Mr. Fakh submits that an order requiring production of the requested documents would require a blanket waiver of privilege.
62. As discussed above, the parties (by nature of their relationship as law partners) and the parties' litigation counsel should be considered to be within the circle of privilege. As a result, waiver of privilege would not apply. However, I will consider Mr. Fakh's argument on its own.
63. In this regard, Mr. Fakh submits that the Firm has not laid an evidentiary foundation that would permit this court to consider a privilege waiver. Furthermore, Mr. Fakh relies on *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815, at para. 53 and submits that solicitor-client privilege will only yield in two clearly defined circumstances. (1) the narrowly guarded public safety exception; and (2) the right to make full answer and defence in criminal proceedings.
64. As discussed above, there are other exceptions to privilege. However, I agree that solicitor-client privilege remains near-absolute.
65. Practically speaking, when Mr. Fakh was still working for the Firm, no privilege issue existed between the parties, as they could (and did) freely discuss client matters as

between them. The Firm and Mr. Fakh did not need a waiver of privilege from a given client if they wanted to discuss that client's file with other Firm lawyers or staff.

66. This case then raises the question, does that change when the parties are engaged in this civil litigation?
67. In my view, the simple answer is no.
68. The parties have previously received and shared client-privileged information, when Mr. Fakh was still part of the Firm. At this point, there is nothing fundamentally different in terms of the parties discussing client financial matters in the context of this litigation, as opposed to the prior period when Mr. Fakh was still at the Firm.
69. In *Weary v. Ramos*, at paragraph 6, the Alberta Court of Queen's Bench stated that "[s]ince all those within the firm have an implied authority to look at the file in the first place, this amounts to a somewhat artificial application of the privilege."
70. Similar to *Weary*, the concept of waiver does not apply in this situation. See *Weary v. Ramos*, at para. 7.
71. Mr. Fakh argued that the Firm is seeking to breach (or waive) privilege for their own gain, which is not permitted. Mr. Fakh relied on *O'Donohue v. Owens*, [1995] O.J. No. 2080 (Ont. C.J.), in which a lawyer tried to rely on privileged evidence to support a claim against their former law partner. However, as the court noted in *Weary*, a key consideration in *O'Donohue v. Owens* was an allegation that one former client of the firm was guilty of a fraud against another client of the firm. That changed the analysis significantly, and that consideration is not present in this case.
72. Mr. Fakh also relies on *Kupferstein v. Gottlieb, Hoffman & Kumer*, [1989] O.J. No. 2131, (Ont. Sup. Ct.), at para. 17, wherein the court confirmed that it would be "contrary to all principle and all authority to hold that the solicitor-client privilege of an innocent third party could be destroyed to benefit somebody else with whom he or she has no quarrel". That case concerned the sale of a law practice. The first defendant had sold the practice to the plaintiff, and was allegedly referring clients to the second defendant, contrary to the terms of the agreement of sale. The plaintiff applied to inspect the files of the second defendant in order to ascertain if clients were being referred in breach of the agreement. The Master refused the application on the basis that the clients whose privilege would be violated were innocent third parties who were not parties to the litigation.
73. An important distinction is that the plaintiff in *Kupferstein* never had a solicitor and client relationship with the new clients. He had never had occasion to view their files at all. That contrasts with the present situation, where the parties both had a solicitor and client relationship with the clients in question. In *Kupferstein*, the clients were true third parties. In this case the clients knew, or ought to have known, that the Firm would access their

files. Accordingly, any consideration of the solicitor and client privilege in this case is materially different to the *Kupferstein* case.

74. In *Pomer v. Zeppieri* (1992) 8 O.R. (3d) 215 (S.C), an action between former law partners for an accounting of the profits of the firm, the plaintiff wanted to see the files taken by the defendant in order to determine the profits made from them. The defendant argued that solicitor-client privilege prevented the plaintiff from seeing them. The court distinguished *Kupferstein* because in *Pomer* both parties had at one time been entitled to see the files, and the dissolution of the partnership did not change that. The plaintiff was accordingly entitled to see the files, including the portions of them that accumulated after the dissolution of the partnership.

75. *Lazare v. Bancroft*, [1994] B.C.J. No. 3125 (Prov. Ct.) was an action by a former associate of a law firm for compensation based on a percentage of billings. The defendant refused to produce her billing records, based on privilege. Full production was accordingly ordered, and the Court held:

It struck me as illogical that the documents Mr. Lazare now seeks might be privileged as against him, where many of them would previously have been producible according to the billing arrangement as outlined by the defendant's own affidavit, and the rest would at very least have been accessible to him by virtue of their having shared office space...

Finally, there must in my view be an implied understanding amounting to a waiver by the client that a lawyer's associates (and indeed, accountant or bookkeeper) will have access to the billing information and timesheets pertaining to the file.

76. Following the approaches in *Pomer*, *Lazare*, and *Weary*, I reject Mr. Fakh's argument that the issue is a matter of waiving privilege for the following reasons:

a. The Firm was in a solicitor and client relationship with the clients. If it weren't for Mr. Fakh's inappropriate management of the files, including secretive communications, the Plaintiff would have access to these files already.

b. There is an implied exception to the privilege rule that allows disclosure of the files in the ordinary course of the lawyer's business, as long as there is a reasonable expectation the privilege will be protected, and this is such an occasion.

77. Therefore, in my view, the issue is not one of waiving privilege as between the parties. The privilege will be maintained even though the documents are to be produced as between the parties.

78. The additional consideration in the present case is whether the documents can be reviewed by counsel for the parties in this litigation. As discussed above, in my view, the parties' litigation counsel are within the circle of privilege and therefore, this consideration does not create an issue of waiver of privilege.
79. As a result, I do not consider the issues in this motion to be about a waiver of privilege, a breach of privilege, or the exceptions of privilege. This motion is about production obligations within the circle of privilege.

c. Considering Other Protections

80. In considering the issue of whether privilege will even be breached here, it is logical to consider the safeguards in place for documents that are produced in a litigation.
81. Everyone involved in the present proceeding are subject to the Deemed Undertaking Rule set out in Rule 30.1 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194. This means that information and documents exchanged during discovery are automatically presumed to be subject to an undertaking: they must only be used for that specific case, not for any other purpose, protecting privacy and encouraging full disclosure.
82. The Court of Appeal for Ontario stated that when there is a proceeding against a lawyer, the parties should ensure that adequate steps are taken to ensure that the proceedings are conducted in a fashion that fully respects the procedural rights of the lawyer and the substantive legal rights of the client. See *Wilder v. Ontario Securities Commission* (2001) 53 O.R. (3d) 519 (C.A), at para. 34.
83. In the present case, the Firm recently provided further disclosure, now redacting all client-identifying information. These are the types of additional measure that respects the procedural rights of the lawyer and the substantive legal rights of the client. The Firm is also willing to agree to any other reasonably necessary steps to protect the interests of the Firm's present or former clients.
84. Furthermore, the lawyers are bound by the Law Society's Rules of Professional Conduct. This means that they have ethical obligations to protect privileged information as well as confidential information.
85. Finally, where it is necessary for the lawyer to include privileged information in court documents, the lawyer should request that the document containing privileged communications be filed under seal. The lawyer may also seek directions from the court, especially if the claim will be served on anyone outside the circle of privilege (see, for example, *Mathews, Dinsdale & Clark LLP v. 1772887 Ontario Limited et al.*, 2021 ONSC 2563, and *J.D. Buote*, at para. 15.

86. However, at this stage, the contemplation does not include what documents will be filed with the court. This motion is about the production of the documents between the parties. Sealing is a safeguard that can be considered as the litigation proceeds and when the time is appropriate.
87. A lawyer should still avoid disclosing any more information than is necessary in the pleadings even if the document is sealed. *J.D. Buote*, at para. 16.
88. All of these additional considerations and measures may be used as appropriate. They further lead to the conclusion that the productions can be made without a waiver of privilege.

d. Not all of the information sought is privileged

89. The Firm set out a proposed Discovery Plan in which the Firm is seeking production of Mr. Fakhri's relevant documents. These are essentially the documents being requested in this motion. Some of those documents are clearly subject to solicitor-client privilege.
90. However, the Firm is also seeking Mr. Fakhri's personal bank records, given that evidence shows that he received and client funds in his personal account, received cash payments, directed a client to pay him in cash (not e-transfer), and his reluctance to report the holding of client funds in his personal account to the Law Society of Ontario.
91. I reiterate, as the Supreme Court found in *Solosky* and *Descôteaux*, that for a communication to be protected by solicitor-client privilege, the following must be established:
- a. A communication between a client and a solicitor/legal advisor;
 - b. The communication must be of a confidential nature; and
 - c. The communication must be made for the purpose of seeking, formulating, or giving legal advice or assistance.
92. Not all communications with a lawyer will be protected by privilege. Not all documents in a lawyer's file will be protected by privilege. Not every document created by a lawyer will be protected by privilege.
93. In other words, it is not the capacity in which the person is a party to the communication that gives rise to the privilege. It is the context in which the communication takes place that justifies characterizing it as privileged. The mere fact that a client considers certain information to be confidential will not suffice for it to be protected by solicitor-client privilege. See *Maranda*, at para. 42.
94. While all privileged information is confidential, not all confidential information is privileged.

95. Mr. Fakh's resistance to production must be based on privilege, not just on confidentiality. See *Weary v. Ramos*, at para. 8.
96. Some of the documents requested by the Firm are not subject to solicitor-client privilege. Mr. Fakh's position that the parties cannot produce *any* documents is not appropriate.
97. Upon being served with the Firm's Affidavit of Documents and Schedule "A" productions, Mr. Fakh objected to the disclosure of those documents on the basis of client privilege, taking the position that Mr. Fakh's counsel was not able to review those documents because of the privilege enjoyed by the Firm's clients in respect of those documents.
98. The Firm attempted to address Mr. Fakh's concern, including suggesting that any privileged documents be partly redacted or anonymized. However, Mr. Fakh rejected those efforts.
99. While some documents may be subject to solicitor-client privilege, not every document that is required to be produced in this proceeding is subject to solicitor-client privilege. For example, while there is a presumption that lawyer billing amounts are privileged, it has been recognized that information that does not reveal anything in the nature of a privileged communication is not covered by solicitor-client privilege. See *Maranda*.
100. The blanket approach to refusing both the Firm's productions that have been provided and Mr. Fakh's obligation to produce documents is not appropriate.

e. The documents are relevant

101. Aside from hiding behind privilege, Mr. Fakh also argues that the requested documents are not relevant.
102. Mr. Fakh submits the Firm's request is a fishing expedition.
103. Disclosure under r. 30.02 requires that a document be "relevant to any matter at issue in an action". A document is relevant if it is logically connected to and tending to prove or disprove any matter in issue. See *Sycor Technology Incorporated v. Kiaer*, 2012 ONSC 5285, at para. 23.
104. Rule 29.2.03 imposes a requirement of proportionality in discovery. In determining whether to order a party to produce a document, courts must consider whether:
 - (a) the time required for the party to produce the document would be unreasonable;
 - (b) the expense associated with producing the document would be unjustified;
 - (c) requiring the party to produce the document would cause him or her undue

prejudice;

(d) requiring the party to produce the document would unduly interfere with the orderly progress of the action; and

(e) the information or the document is readily available to the party requesting it from another source.

105. Mr. Fakih submits that the issues in the proceeding are financial, and that the Firm's primary allegation is that Mr. Fakih accepted or took funds from clients. As a result, Mr. Fakih submits that information in the documents being requested by the Firm will not tend to prove or disprove that allegation. In particular, the advice given to the clients is of no probative value in this regard.
106. In my view the evidence before me establishes that:
- a. It is not a fishing expedition when Mr. Fakih himself admits to depositing client money into his personal account, on at least two occasions, and he acknowledges that he should not have done so. As in *Cicalese v. SSMPG Integrating Services Inc.*, 2020 ABQB 605, "[i]t was his choice to run the money through his personal bank records": at para. 76.
 - b. Additionally, it is not a fishing expedition because the allegations involve a party who took bail monies owed to clients, stating "[t]hese peasants owe me money so I'm taking their bail money."
 - c. It is also not a fishing expedition when Mr. Fakih told a client to pay him personally by e-transfer, and then to pay him in cash instead.
107. The relevance of documents requested, including the bank records, is determined by reference to the pleadings. In this case, the circumstances whereby client funds were deposited into Mr. Fakih's account are directly implicated by the pleadings.
108. The documents requested are relevant both on the basis of the pleadings, and the conduct of Mr. Fakih.

CONCLUSION

109. The Firm's motion is granted. The documents requested appear to be relevant and material. They do not require a waiver of privilege.
110. The Defendant shall produce the documents set out in the Plaintiff's Notice of Motion and Schedule A to the Notice of Motion within 90 days, or as agreed upon between counsel.
111. Insofar as further safeguards are required, counsel are encouraged to work together to agree on further protections of any privileged information – but that protection does not include a blanket denial or avoidance of production obligations.

112. Counsel are encouraged to agree to costs. If the parties are not able to agree on costs, the Plaintiff may submit costs submissions of no more than 3 pages plus a costs outline and any offers to settle to my judicial assistant within 10 days of the release of this decision, and the Defendant may file responding costs submissions on the same terms within a further 10 days. The Plaintiff's Reply, if any, is limited to one page, to be filed within a further 5 days. If I do not receive submissions within these time limits, I will assume the parties have resolved the issue and will make no costs order.

Associate Justice Kamal

DATE: February 3, 2026

SCHEDULE “A”

- i. All emails from and to the Defendant’s Hotmail account to the Plaintiff, clients of the Plaintiff and/or clients of the Defendant;
- ii. All of the documents contained within the Defendant’s portal with Legal Aid Ontario, including all correspondence and billing documentation;
- iii. All documents exchanged between the Defendant and the Barreau du Quebec with respect to special authorizations obtained by the Defendant;
- iv. All of the emails, text messages, correspondence and documents exchanged between the Defendant and Aham Law, Aham Law Professional Corporation and/or Ahmad Hamzeh;
- v. All of the emails, text messages, correspondence and documents exchanged between the Defendant and the Plaintiff’s former employee, Paulina Klasios;
- vi. All of the emails, text messages, correspondence and documents exchanged between the Defendant and the Plaintiff’s former employee, Rahma Jedidi;
- vii. The Defendant’s personal bank records for all of his bank accounts, for the period from July 16, 2020 to present;
- viii. All of the correspondence (including emails and text messages) and documents with respect to the clients and/or former clients of the Defendant identified in the Plaintiff’s Affidavit of Documents.