SCC File No 35892

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE QUÉBEC COURT OF APPEAL)

B E T W E E N:

ATTORNEY GENERAL OF CANADA,
CANADA REVENUE AGENCY

Appellant

- and -

CHAMBRE DES NOTAIRES DU QUÉBEC

Respondent

- and –

BARREAU DU QUÉBEC

Respondent

- and –

ADVOCATES' SOCIETY, CANADIAN BAR ASSOCIATION, FEDERATION OF LAW SOCIETIES OF CANADA, CRIMINAL LAWYERS' ASSOCIATION

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PART I - OVERVIEW

1. This appeal concerns the protection of solicitor-client privilege – something this Court has long recognized must be as close to absolute as possible to ensure the proper functioning of our legal system. In *Lavallee*, and again more recently in *Federation of Law Societies of Canada*, this Court affirmed that "all information protected by solicitor-client privilege is out of reach for the state."[1] Accordingly, where a seizure by the state includes potentially privileged material, section 8 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") requires that stringent measures are taken to ensure the privilege is adequately protected.

2. Section 232(1) of the *Income Tax Act* (**"ITA"**) undermines this protection by purporting to abrogate any solicitor-client privilege that exists in "accounting records" – a broad and ill-defined category of documents that the Attorney General concedes includes some material that is, in fact, privileged. As a result, these documents are subject to seizure by the state without any statutory or constitutional protections. This attempt to circumvent s. 8 is unconstitutional. The scope of protection afforded to the privilege under the *Charter* cannot be narrowed via statute.

3. The document production regime ("**DPR**") in ss. 231.2 and 231.7 of the ITA also fails to pass constitutional muster. This scheme for seizing potentially privileged material from lawyers falls well short of the *Lavallee* principles relating to client notice, the duty to minimize any impairment privilege and judicial discretion. The Attorney General's reliance on the "regulatory context" of the ITA to defend the DPR is misplaced. Given the nature of the solicitor-client relationship, the reasonable expectation of privacy in privileged material is invariably high, in any context. The *Lavallee* principles set the constitutional standard to be met under s. 8.

4. The DPR violates s. 7 of the *Charter* as well. A failure to produce the requested material – including any "accounting records" that the lawyer believes are privileged – puts the lawyer at risk of criminal prosecution and imprisonment. This threatened deprivation of liberty offends the principle of fundamental justice that the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes.

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[1] *Lavallee, Rackel & Heintz v Canada (Attorney General)*, [2002] 3 SCR 209 ["*Lavallee*"], Book of Authorities of the Chambre des Notaires ["Chambre BOA"] Vol. III, Tab 54 at ¶36; *Canada (Attorney General) v Federation of Law Societies of Canada,* 2015 SCC 7 ["*FLSC*"], Criminal Lawyers' Association Book of Authorities ["CLA BOA"], Tab 1 at ¶38

PART II - QUESTIONS IN ISSUE

5. The CLA takes the following positions on the issues in this appeal:

(a) the definition of solicitor-client privilege in s. 232(1) violates s. 8 of the *Charter* because Parliament cannot seek to avoid constitutional protections by abrogating the scope of solicitor-client privilege[2];

(b) the DPR established in ss. 231.2 and 231.7 violates s. 8 of the *Charter* because those provisions fail to satisfy the basic *Lavallee* principles of client notice, minimal impairment and judicial discretion; and

(c) the DPR violates s. 7 of the *Charter* because it imposes duties on lawyers that undermine their commitment to their clients' causes.

PART III - STATEMENT OF ARGUMENT

A. Parliament's abrogation of solicitor-client privilege violates s. 8 of the *Charter*

i. The "accounting record" exception raises a significant risk that some privileged documents will be seized under the DPR

6. At the centre of the debate in this appeal is the restrictive definition of "solicitor-client privilege" in s. 232(1) of the ITA. Pursuant to s. 231.7, information or documents falling within this definition cannot be ordered to be provided to the state. However, Parliament has sought to exclude an entire category of potentially privileged documents – "accounting records" – from the definition of solicitor-client privilege, and thus from the limited protections that would follow under the ITA and, presumably, the broader protections that would follow under the *Charter*.

7. There is no debate that s. 232(1) marks an intrusion upon the privilege. The Attorney General acknowledges that the definition of solicitor-client privilege in s. 232(1) includes certain documents and information falling within the scope of solicitor-client privilege, as has been

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[2] *MNR v Thompson*, SCC File No 35590 (decision pending), is an appeal dealing with the proper interpretation of s. 232(1) of the ITA. In that case, the CLA intervened and argued that the term "accounting record" in the definition of "solicitor-client privilege" in s. 232(1) should be read restrictively, such that it excludes any documents or information that is subject to solicitor-client privilege. Should this Court accept the CLA's statutory interpretation arguments in *Thompson*, then it need not address the constitutionality of s. 232(1) (although the constitutionality of the DPR set out in ss. 231.2 and 231.7 remain live issues).

defined by this Court and others.[3] In attempting to defend s. 232(1), however, the Attorney General argues that the risk of accounting records containing privileged documents is sufficiently low so as to be constitutionally permissible without meeting the *Lavallee* principles.[4]

8. This argument must fail. In *FLSC,* this Court held if there is a significant risk that at least some information or documents protected by solicitor-client privilege will be seized and examined, then the basic constitutional requirements set out in *Lavallee* will apply in order to guard against that result.[5] A significant risk is one that is real and not speculative. That threshold is crossed when the government admits that a statutory definition includes privileged documents—even if the ultimate number of such documents seized under the provision may be small. The level of constitutional protection afforded to a category known to include some privileged documents should not be reduced merely because those documents may constitute a low percentage of the total category. The need to maintain robust protections for the privilege, and to guard against its erosion, precludes such an approach.

9. In this case, there is a significant risk that at least some privileged material will be seized. The accounting records at issue are coming from within a law firm, they include client-related information, and they include material that courts have previously recognized as privileged.

10. The risk of privileged documents falling within the scope of s. 232(1) is further heightened by the vagueness and malleability of the term "accounting record". One need look no further than the CRA's own demands for documents in this case to see how far some may stretch the definition.[6] The case law offers little clarity on this issue, with one court finding that there are "at least five possible meanings" of the term, several of which involved privileged documents.[7] The erosion of the distinction between "facts" (having an independent existence)

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[3] Appellant's Factum, ¶1, 42-44. This Court has previously held that accounts containing the gross amount of fees and disbursements billed to a client is generally privileged: see *Maranda v Richer,* [2003] 2 SCR 193 ["*Maranda*"], Chambre BOA Vol. III, Tab 57

[4] Appellant's Factum, ¶55

[5] *FLSC*, CLA BOA, Tab 1 at ¶42

[6] See Quebec Court of Appeal's Reasons for Judgment at ¶8-14

[7] *Organic Research Inc v MNR*, [1990] AJ no 1026 (QB), CLA BOA, Tab 2 at p 11 (QL). See also: *Heath v The Queen* (1989), 90 DTC 6009 (BCSC), CLA BOA, Tab 3; *Cox v AG Canada* [1988] 2 CTC 365 (BCSC),

and "communications" (exchanged between client and counsel) for the purposes of determining privilege is yet another factor increasing the risk of privileged material falling within the accounting records exception in s. 232(1).[8] All of these factors contribute to a significant risk that some accounting records may in fact be conveying information that is central to the lawyer-client relationship and thus would be protected by solicitor-client privilege.

ii. This Court has not held that abrogating the privilege is constitutional

11. In arguing that s. 232(1) is constitutional, the Attorney General cites *Blood Tribe* for the principle that Parliament can abrogate solicitor-client privilege, as long as it uses clear language and tailors the incursion to the objectives of the law.[9]

12. In fact, the question of whether it is constitutional for Parliament to abrogate solicitor-client privilege is a matter of first impression for this Court. *Blood Tribe* was a statutory interpretation case.[10] It does not shed any light on whether and under what circumstances it is constitutional for the state to seize documents that may be subject to solicitor-client privilege. What Justice Binnie said in *obiter* in *Blood Tribe* is that express language is necessary to reach a conclusion that there has been a statutory piercing of the privilege. What Justice Binnie did not say was that a statutory piercing of privilege is constitutionally acceptable in every case.

13. Neither *Blood Tribe,* nor any decision since, has held that Parliament has the constitutional ability to abrogate solicitor-client privilege. In fact, in *Pritchard* – a case cited in *Blood Tribe* and decided merely four years earlier – this Court expressly described the issue of Parliament abrogating solicitor-client privilege via express intention as "controversial".[11]

CLA BOA, Tab 4, *Re Romeo's Place Victoria Ltd* (1982), 128 DLR (3d) 279 (FC), CLA BOA, Tab 5; *Re Helman* (1970), 15 DLR (3d) 753 (Alta SC). CLA BOA, Tab 6

[8] *Maranda*, Chambre BOA Vol. III, Tab 57 at ¶31, 33

[9] Appellant's Factum, ¶4, 42-43

[10] [2008] 2 SCR 574 ["*Blood Tribe*"], Attorney General's Book of Authorities ["AG BOA"] Vol. I, Tab 7. In *Blood Tribe,* the issue before the Court was the proper interpretation of a provision in the *Personal Information Protection and Electronic Documents Act.* The Privacy Commissioner argued that the impugned provision provided her with access to privileged documents. After reviewing this Court's jurisprudence regarding solicitor-client privilege, Justice Binnie referred to and applied the principle of statutory interpretation that legislation purporting to infringe solicitor-client privilege should be narrowly interpreted.

[11] *Pritchard v Ontario (Human Rights Commission)*, [2004] 1 SCR 809, AG BOA Vol. I, Tab 36 at ¶34

iii. Abrogating solicitor-client privilege is unconstitutional, except in rare cases

14. Parliament cannot abrogate solicitor-client privilege, apart from exceptional circumstances that would have to be justified under s. 1 of the *Charter*. Any other conclusion runs contrary to decades of settled jurisprudence from this Court recognizing the sacrosanct nature of the privilege and the need to ensure it is only compromised as little as possible.

15. This Court has recognized solicitor-client privilege as a "principle of fundamental justice and civil right of supreme importance in Canadian law" that is "fundamentally important to our judicial system".[12] The rationale for the privilege is clear: without an assurance of confidentiality that is "as close to absolute as possible", clients will not seek counsel or be completely candid with their lawyers, thereby undermining their legal entitlements and affecting the quality of the advice they deserve.[13]

16. The importance of preserving solicitor-client privilege is a particularly pressing concern for those involved in the criminal justice system. It is these individuals who find themselves in an ongoing antagonistic relationship with the state, who are often facing the most serious legal and penal consequences, and who may have to share highly sensitive information and documents with their lawyers to receive proper advice. Erosion of solicitor-client privilege in these circumstances can have dire effects on the judicial system.[14]

17. Consequently, the exceptions to solicitor-client privilege that will be tolerated are limited, clearly defined and strictly controlled.[15] Only in very rare circumstances, evaluated on a case-by-case basis, will the privilege yield – either to a greater good, like where the innocence of an accused is at stake, or where the safety of an individual or clearly defined group is at risk, or where solicitor-client communications are being used to advance a criminal purpose.[16]

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[12] *Lavallee,* Chambre BOA Vol. III, Tab 54 at ¶36; *Smith v Jones*, [1999] 1 SCR 455 ["*Smith*"], Chambre BOA Vol. IV, Tab 81 at ¶45. See also: *R v McClure,* [2001] 1 SCR 445 ["*McClure*"], Chambre BOA Vol. III, Tab 71 at ¶32; *Solosky v The Queen*, [1980] 1 SCR 821, Chambre BOA Vol. IV, Tab 84

[13] *Lavallee,* Chambre BOA Vol. III, Tab 54 at ¶36; *Blood Tribe,* AG BOA Vol. I, Tab 7 at ¶9. See also: *McClure*, Chambre BOA Vol. III, Tab 71 at ¶35

[14] *Maranda*, Chambre BOA Vol. III, Tab 57 at ¶12, 29

[15] *Maranda*, Chambre BOA Vol. III, Tab 57 at ¶12

[16] *McClure,* Chambre BOA Vol. III, Tab 71 at ¶47-56; *Smith*, Chambre BOA Vol. IV, Tab 81 at ¶51-58; *Descôteaux v Mierzwinski,* [1982] 1 SCR 860, Chambre BOA Vol. II, Tab 44 at p 881

18. Excluding "accounting records" from the definition of "solicitor-client privilege" in s. 232(1) is wholly inconsistent with these principles. The exclusion does not fall into any of the recognized exceptions to solicitor-client privilege. Nor is it even remotely analogous to those exceptions. Rather than adopt a case-by-case approach to when solicitor-client privilege may be compromised in order to address certain rare and extraordinary circumstances, s. 232(1) abrogates privilege over an entire broad and ill-defined category of material, simply to allow for the more effective enforcement of a tax collection and verification regime.

19. Such an unprecedented and expansive incursion into the scope of solicitor-client privilege fails to pass constitutional muster. Under s. 8 of the *Charter*, where a seizure by the state includes potentially privileged documents or information, stringent protections – the *Lavallee* principles – must be respected to ensure that the privileged material is "out of reach" for the state, while recognizing that the state may have a legitimate interest in seizing relevant, non-privileged information.[17] Section 232(1) of the ITA effectively seeks to circumvent the *Lavallee* principles by defining "solicitor-client privilege" to exclude an entire category of documents known to include privileged material. That is impermissible. The *Charter*'s scope of protection cannot be limited by using legislation to redefine and circumscribe solicitor-client privilege.

20. Ultimately, in this case, there is a significant risk that some of this privileged material will be seized by the state. It follows that the wholesale exclusion of any and all accounting records from the definition of "solicitor-client privilege" in s. 232(1) of ITA – with the result being that potentially privileged material is subject to seizure by the state without any protections – is unconstitutional.

B. The DPR fails to meet *Lavallee* principles and violates s. 8 of the *Charter*

i. Regulatory context does not affect this analysis

21. The DPR set out in ss. 231.2 and 231.7 of the ITA constitutes a seizure within the meaning of s. 8 of the *Charter*. Because the seizure raises a real risk of including at least some documents and information protected by solicitor-client privilege, this regime must satisfy the principles articulated by this Court in *Lavallee* in order to pass *Charter* scrutiny.

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[17] *Lavallee*, Chambre BOA Vol. III, Tab 54 at ¶36; *FLSC*, CLA BOA, Tab 1 at ¶38

22. In an attempt to avoid compliance with the *Lavallee* principles, the Attorney General argues that the seizures at issue in this case arise in a "regulatory context", such that a lower expectation of privacy applies and a lesser degree of constitutional protection is appropriate.[18]

23. This argument misunderstands the proper analysis required to determine the level of constitutional protection required under s. 8. There is "no magic" to a claim that a search took place in an administrative or regulatory context.[19] As this Court has recognized, what is ultimately important are not "labels", but the "values at stake in the particular context".[20] The greater the intrusion into the privacy interests of an individual, the more likely that constitutional "safeguards" will be required.[21] Consistent with these principles, where this Court has held that a lower expectation of privacy applies to regulatory searches and seizures, it has done so not because of the regulatory context *per se*, but because the values that tend to be implicated in such searches have a low expectation of privacy (*e.g.* the seizure of non-privileged documents created and maintained under a regulatory regime).[22]

24. The values at stake in this case are fundamentally different. As this Court recently affirmed in *FLSC,* the expectation of privacy in relation to solicitor-client privilege is "invariably high, regardless of context". This expectation is rooted in the nature of the solicitor-client relationship, and not the context in which the state seeks to seize privileged material.[23] Accordingly, there is nothing about the regulatory context of the ITA that diminishes "in any way" the high expectation of privacy in privileged documents and information.[24]

25. Given the invariably high expectation of privacy that attaches to solicitor-client privilege, the CLA submits that the *Lavallee* principles set the constitutional standard that must be met by any state regime that raises a real risk of intruding upon solicitor-client privilege – no matter the context or purpose. The ITA is not entitled to any different treatment in this regard.

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[18] Appellant's Factum, ¶75-84

[19] S Hutchison, *et al*, *Search and Seizure Law in Canada* (loose leaf), CLA BOA, Tab 8 at 5-30.9

[20] *Baron v Canada*, [1993] 1 SCR 416, CLA BOA, Tab 7 at ¶37

[21] *R v McKinlay Transport Ltd*, [1990] 1 SCR 627, AG BOA Vol. I, Tab 42 at 649

[22] See *Thompson Newspapers Ltd v Canada*, [1990] 1 SCR 425, AG BOA Vol. I, Tab 55 at 506-507

[23] *FLSC*, CLA BOA, Tab 1 at ¶38

[24] *FLSC*, CLA BOA, Tab 1 at ¶38, 41

ii. The DPR fails to satisfy *Lavallee* principles

26. The DPR falls well short of meeting the *Lavallee* principles, including the requirement to put the holders of solicitor-client privilege on notice that the privilege may be under threat, the duty to minimize any impairment to the privilege, and the need to have meaningful judicial discretion to prevent a breach of the privilege.

27. The DPR includes no requirement to notify the actual privilege holders: the clients. Under s. 231.2, a lawyer may be required to provide the CRA with a solicitor-client privileged document without his/her client being aware. Similarly, under s. 231.7, it is possible for an application to be heard and a judge to order the production of potentially privileged documents without providing any notice to the client. *Lavallee* is clear that as the holders of the privilege, clients must be notified and given the opportunity to assert their privilege before documents are turned over to the state. Parliament cannot shift the burden of guaranteeing respect for this *Charter* right to the client's lawyer.[25]

28. The DPR also fails to minimize any impairment on solicitor-client privilege. This "duty to minimize" requires that before the state can seize potentially privileged documents, there must be a basis for believing the seizure of such documents is necessary and all reasonable alternatives to the seizure must be exhausted.[26] The CLA submits that prior to sending out a requirement under s. 231.2, the CRA's duty to minimize should be the subject of prior judicial authorization – a measure this Court declared to be "an important protection against improper search and seizure of privileged material."[27] At the very least, the CRA should be required to establish that it has met the duty to minimize before an order is issued under s. 231.7.

29. However, the DPR does not place any such restrictions on the CRA at either stage. Instead, ss. 231.2 and 231.7 give the CRA a blunt and powerful tool to obtain potentially privileged information from lawyers, even where reasonable alternatives may exist or where the information sought is ultimately unnecessary to achieving the ITA's statutory objectives.

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[25] *Lavallee,* Chambre BOA Vol. III, Tab 54 at ¶40; *FLSC*, CLA BOA, Tab 1 at ¶48-49

[26] *Lavallee,* Chambre BOA Vol. III, Tab 54 at ¶49; *FLSC*, CLA BOA, Tab 1 at ¶55; *Maranda*, Chambre BOA Vol. III, Tab 57 at ¶14

[27] *FLSC*, CLA BOA, Tab 1 at ¶56

30. Finally, the DPR does not include adequate judicial discretion to prevent or remedy a breach of privilege.[28] Although s. 231.7 provides for a hearing where a judge must decide whether the requested documents are privileged before ordering them to be produced, the applicable definition of "solicitor-client privilege" excludes accounting records. Moreover, even though the judge enjoys a residual discretion to deny the order sought or to impose conditions, that discretion will often be exercised without the benefit of argument from the privilege holder, who may have a unique perspective as to why the documents are privileged, and even without the benefit of a lawyer who is fully committed to representing his/her client's cause (as discussed in the following section of these submissions).

C. The DPR violates s. 7 of the *Charter*

31. The impugned provisions engage the liberty interests of lawyers through the threat of imprisonment for non-compliance.[29] Under s. 238(1) of the ITA, a lawyer who refuses to comply with a requirement under s. 231.2 to produce documents and information is subject to a fine of up to $25,000 and a term of imprisonment of up to 12 months.

32. This threatened deprivation of liberty is not in accordance with the principles of fundamental justice. More specifically, it offends the principle that this Court recently recognized in *FLSC*: the state cannot impose duties on lawyers that undermine their duty of commitment to their clients' causes. Whether a lawyer's duty of commitment has been undermined may be assessed based on the perception of a reasonable person, fully apprised of the relevant facts.[30]

33. A reasonable person would conclude that the DPR undermines a lawyer's commitment to his/her client's cause, particularly in light of three important factors. First, ss. 231.2 and 231.7 impose a duty on lawyers to produce documents and information relating to their clients under a process that fails to meet even the most basic constitutional requirements for protecting solicitor-client privilege.[31] Second, the DPR has nothing to do with ensuring ethical or effective

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[28] *Lavallee*, Chambre BOA Vol. III, Tab 54 at ¶31, 43; *FLSC*, CLA BOA, Tab 1 at ¶51-52

[29] *FLSC*, CLA BOA, Tab 1 at ¶71-72

[30] *FLSC*, CLA BOA, Tab 1 at ¶103

[31] *FLSC*, CLA BOA, Tab 1 at ¶105

representation of the client.[32] Finally, a failure to comply with the DPR puts lawyers under the threat of criminal prosecution and potential imprisonment.[33]

34. As in *FLSC,* these factors create an unacceptable tension between a lawyer's obligation to protect his/her clients' legitimate interests with respect to privileged information, and a lawyer's motivation to avoid criminal prosecution for non-compliance with the DPR. It is this dynamic that undermines a lawyer's commitment to his/her clients' cause, and results in the s. 7 violation.[34]

35. The Attorney General may argue that the DPR does not violate s. 7 because it provides lawyers with a defence under s. 232(2) where a lawyer has "reasonable grounds" to believe that the requested document contains privileged information. This defence is illusory, however, because it is based on the unconstitutional definition of "solicitor-client privilege" found in s. 232(1). Moreover, it may reasonably be perceived that lawyers would be unwilling to risk imprisonment to protect their clients' legitimate interest in protecting privileged documents, even with the availability of the reasonable grounds defence.

PART IV - SUBMISSIONS ON COSTS

36. The CLA does not seek costs and requests that no order as to costs be made against it.

PART V - ORDER SOUGHT

37. The CLA requests permission to make oral submissions of no more than 10 minutes, and asks that its submissions be taken into account in the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of August, 2015

Brian Gover / Justin Safayeni / Carlo Di Carlo

STOCKWOODS LLP
Lawyers for the Intervener,
the Criminal Lawyers' Association

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[32] *FLSC*, CLA BOA, Tab 1 at ¶108
[33] *FLSC*, CLA BOA, Tab 1 at ¶104
[34] *FLSC*, CLA BOA, Tab 1 at ¶109-110

PART VI - TABLE OF AUTHORITIES

	CASE LAW	REFERRING PARA
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PART VII - STATUTORY PROVISIONS

1. *Income Tax Act*, RSC, 1985, c 1

REQUIREMENT TO PROVIDE DOCUMENTS OR INFORMATION

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(*a*) any information or additional information, including a return of income or a supplementary return; or

(*b*) any document.

Unnamed Persons

(2) The Minister shall not impose on any person (in this section referred to as a "third party") a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection 231.2(3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") if the judge is satisfied by information on oath that

(*a*) the person or group is ascertainable; and

(*b*) the requirement is made to verify compliance

PRODUCTION DE DOCUMENTS OU FOURNITURE DE RENSEIGNEMENTS

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l'application ou l'exécution de la présente loi (y compris la perception d'un montant payable par une personne en vertu de la présente loi), d'un accord international désigné ou d'un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d'une personne, dans le délai raisonnable que précise l'avis :

a) qu'elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu'elle produise des documents.

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d'une personne non désignée nommément — appelée « groupe » au présent article —, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

by the person or persons in the group with any duty or obligation under this Act.

(*c*) and (*d*) [Repealed, 1996, c. 21, s. 58(1)]

(4) to (6) [Repealed, 2013, c. 33, s. 21]

COMPLIANCE ORDER

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(*a*) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(*b*) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

Definitions

232. (1) In this section,

"solicitor-client privilege"

« privilège des communications entre client et avocat »

"solicitor-client privilege" means the right, if any, that a person has in a superior court in the province where the matter arises to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence, except that for the purposes of this section an accounting record of a lawyer, including any supporting voucher or cheque, shall be deemed not to be such a communication.

a) cette personne ou ce groupe est identifiable;

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi;

c) et *d*) [Abrogés, 1996, ch. 21, art. 58(1)]

(4) à (6) [Abrogés, 2013, ch. 33, art. 21]

ORDONNANCE

231.7 (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

Définitions

232. (1)

« privilège des communications entre client et avocat »

"solicitor-client privilege"

« privilège des communications entre client et avocat » Droit qu'une personne peut posséder, devant une cour supérieure de la province où la question a pris naissance, de refuser de divulguer une communication orale ou documentaire pour le motif que celle-ci est une communication entre elle et son avocat en confidence professionnelle sauf que, pour l'application du présent article, un relevé comptable d'un avocat,

OFFENCES AND PUNISHMENT

238. (1) Every person who has failed to file or make a return as and when required by or under this Act or a regulation or who has failed to comply with subsection 116(3), 127(3.1) or (3.2), 147.1(7) or 153(1), any of sections 230 to 232, 244.7 and 267 or a regulation made under subsection 147.1(18) or with an order made under subsection (2) is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to

(*a*) a fine of not less than $1,000 and not more than $25,000; or

(*b*) both the fine described in paragraph 238(1)(*a*) and imprisonment for a term not exceeding 12 months.

y compris toute pièces justificative out tout chèque, ne peut être considéré comme une communication de cette nature.

INFRACTIONS ET PEINES

238. (1) Toute personne qui omet de produire, de présenter ou de remplir une déclaration de la manière et dans le délai prévus par la présente loi ou par une disposition réglementaire, qui contrevient aux paragraphes 116(3), 127(3.1) ou (3.2), 147.1(7) ou 153(1), à l'un des articles 230 à 232, 244.7 et 267 ou à une disposition réglementaire prise en vertu du paragraphe 147.1(18) ou qui contrevient à une ordonnance rendue en application du paragraphe (2) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire et outre toute pénalité prévue par ailleurs :

a) soit une amende de 1 000 $ à 25 000 $;

b) soit une telle amende et un emprisonnement maximal de 12 mois.