



Case in Brief: **R. v. Fox**

Judgment of February 6, 2026 | On appeal from the Court of Appeal for Saskatchewan
Neutral citation: 2026 SCC 4

The Supreme Court of Canada rules that an exception to solicitor-client privilege may be available to lawyers in order to fully defend themselves against criminal charges.

This case involved a recorded phone call between a lawyer and her client. Such communications are normally protected by solicitor-client privilege, which plays an important role in the justice system. Solicitor-client privilege encourages clients to speak openly with their lawyers for them to receive appropriate legal advice, by making their conversations confidential. Because the privilege is meant to protect the client, only the client can waive it. However, the law recognizes some exceptions, one of which is known as the innocence at stake exception. It allows courts to give an accused person access to a client's privileged communications to allow the accused person to defend themselves.

As part of a police investigation into drug trafficking, a judge authorized police to intercept the phone calls of several individuals. However, the police were required to stop listening if a lawyer was reasonably believed to be part of the call. During the investigation, the police intercepted and recorded a call between a criminal defence lawyer and her client; however, a civilian monitor employed by police kept listening to the call after it became clear that the conversation might be protected by solicitor-client privilege. After reviewing the recording, a judge ruled that the first part of the call was not protected by solicitor-client privilege, but that the rest was and could not be accessed by anyone without a further court order. Based on the non-privileged portion of the call, the lawyer was charged with obstruction of justice. The Crown alleged that the lawyer had warned her client about possible police searches and had advised the client to remove or destroy evidence.

At trial, the lawyer argued that the police had violated her right to privacy by continuing to listen to the portion of the call protected by solicitor-client privilege. She also argued that it was unfair for the Crown to rely on the non-privileged portion of the call, given that she herself could not access the privileged portion and use it in her defence. The trial judge agreed, excluded the non-privileged portion of the call from evidence and acquitted the lawyer. A majority of the Court of Appeal dismissed the Crown's appeal.

The Supreme Court dismissed the appeal.

Lawyers can apply to access their clients' communications protected by solicitor-client privilege to defend themselves.

Writing for a majority of the Court, Justice Jamal said that a lawyer charged with a criminal offence may ask a court for access to their client's privileged communications if this is necessary to defend themselves. In this case, however, the lawyer did not make such a request. Justice Jamal also concluded that in this case, the non-privileged portion of the call should still be excluded from evidence, because the police breached the lawyer's privacy rights by monitoring the call too long. The privacy breach was serious because it involved listening to a private communication between a lawyer and a client. Such intrusions can undermine trust in the justice system.

In this case, the seriousness of the breach and its impact outweighed the normally strong public interest in having criminal cases decided on their merits. As a result, the exclusion of the evidence was upheld and the appeal was dismissed.

Breakdown of the decision: *Majority:* Justice [Jamal](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#) and [Moreau](#) agreed) | *Dissenting:* Justice [O'Bonsawin](#) would have allowed the appeal and ordered a new trial (Justice [Rowe](#) agreed)

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