

Solicitor-Client Privilege (Attorney General of Canada v. Chambre des notaires du Québec)

BACKGROUND

- An appeal to the Supreme Court of Canada from a Quebec CA decision that s. 232(1) of the *Income Tax Act* (and related compliance provisions) contravenes s. 8 of the *Charter* in that it fails to adequately safeguard the professional secrecy of legal advisers (akin to solicitor-client privilege in Quebec). The issues in the appeal are parallel to those in *MNR v. Thompson* ([see separate note](#)) with the added s. 8 argument that was not part of the *Thompson* appeal.
- The federal government says the Income Tax Act gives it access to records protected by the professional secrecy of legal advisers. The Quebec Court of Appeal said some provisions in the Act infringe s. 8 of the Charter of rights and freedoms.

CURRENT STATUS

- The CBA was granted leave to intervene by the Supreme Court. Mahmud Jamal, Alexandre Fallon and David Rankin of Osler act as counsel on a pro bono basis.
- The CBA will argue that:
 - The statutory definition of "solicitor-client privilege" in s. 232(1) incorporates the immunity from disclosure under provincial law (under the common law of solicitor-client privilege or the principles of professional secrecy of legal advisers in Quebec) that applies to communications between legal advisers and their clients, together with any records disclosing those communications. The Income Tax Act does not abrogate this privilege and, therefore, does not breach the Charter.
 - If the Court finds that the Income Tax Act does, in fact, abrogate solicitor-client privilege over a class of "accounting records," then this abrogation breaches s. 8 of the Charter.
 - The scheme created by ss. 232(1) and 231.7 breaches s. 8 of the Charter because it does not provide adequate procedural safeguards to protect communications with legal advisers.

NEXT STEPS

- Supreme Court of Canada hearing scheduled for November 3, 2015.