

SUPREME COURT OF NOVA SCOTIA

Citation: *Hope v. Comeau*, 2026 NSSC 107

Date: 20260409

Docket: Hfx No. 478563

Registry: Halifax

Between:

Natashia Lee Hope and Jeffrey Robert Hope

Plaintiffs

v.

Jordan James Robert Comeau

Defendant

Decision on Solicitor-Client Privilege and Production

Judge: The Honourable Justice Diane Rowe
Heard: February 9, 2026, in Halifax, Nova Scotia
Final Written Submissions: April 1 and 7, 2026
Counsel: Danette Cashman for Jeffrey Hope (Respondent)
Craig Arsenault, for Natashia Hope (Respondent)
Thomas (Tipper) McEwan for Jordan Comeau
(Moving Party)

By the Court:

[1] This action was started by Mr. Jeffrey Hope and Ms. Natasha Hope on July 20, 2018 against Mr. Jordan Comeau. The pleadings allege Ms. Hope suffered injuries as a result of an accident on July 23, 2016, which occurred when Mr. Hope and Mr. Comeau were respectively operating their motor vehicles. The claim alleges negligence.

[2] The Notice of Action was renewed on July 19, 2019, with service effected on July 16, 2020.

[3] The Notice of Defence and Statement of Defence was filed on November 5, 2020, with the Defendant, Mr. Comeau pleading that Ms. Hope's alleged injuries were caused by or contributed to by the Plaintiff's negligence.

[4] Mr. Comeau has initiated a motion to amend the defence, currently scheduled for hearing on April 20, 2026. That motion is for an Order permitting Mr. Comeau to amend the Notice of Defence and Statement of Defence to add a Counterclaim specifically against Jeffrey Hope for contribution and indemnity; however, this would be beyond the limitation period for making a claim (as per the *Limitations of Action Act*, SNS 2014, c.35, or "LAA").

[5] In terms of this action's procedural history, Mr. Comeau filed his motion for an Order permitting filing of an amended defence and counterclaim in July 2024, about four years after Mr. Comeau was served with the Claim and filed his Defence and three years after discovery examinations were held, of which Mr. Hope was present with Ms. Hope.

[6] It was the Plaintiffs' response to the Comeau's motion to amend the pleadings which engendered this further motion by Mr. Comeau seeking a production order for communications between the Plaintiff, Jeffrey Hope, and his solicitor, Craig Arsenault.

[7] The Plaintiffs opposed the amendment of pleadings motion, relying on s. 22 of the LAA. The LAA provides that an individual being added to the litigation must have "... received, before or within the limitation period applicable to the added claim plus the time provided by law for service of the process, sufficient knowledge of the assessed claim that the [person] will not be prejudiced in defending against the added claim on the merits." (underline added)

[8] Mr. Jeffrey Hope filed an Affidavit, dated July 18, 2025 (the Hope Affidavit) as part of the Plaintiffs' response to the amendment motion. In the Hope Affidavit, he made a series of statements concerning his awareness of the potential claim by Mr. Comeau, referencing some communication with his counsel.

[9] Mr. Comeau now directs the Court to consider these portions of the Hope Affidavit as constituting an implied waiver of solicitor-client privilege by Mr. Hope.

[10] Mr. Comeau will be submitting in the separate motion to amend the pleadings that Mr. Hope is not prejudiced by the addition of the counterclaim, as Mr. Hope had constructive knowledge of a potential claim to be able to form a defence within the applicable time period, as per the Hope Affidavit, within the LAA bar. To that end, Mr. Comeau is requesting that the Court to make an Order compelling production of the communications between Mr. Hope and his solicitor, presumably in the expectation that the contents of these communications will reveal evidence relevant to the motion to amend the pleadings and will address the timing of Mr. Hope's "sufficient knowledge".

[11] The scope of the production order sought by Mr. Comeau is for:

- Mr. Hope's instructions to bring a claim for personal injuries;
- Discussions with Mr. Hope regarding the filing of a Statement of Claim as a plaintiff;
- Discussions with Mr. Hope regarding allegations of contributory negligence against the plaintiff driver in the Statement of Defence;
- Discussions with Mr. Hope before his discovery examination, including to his role in the litigation, the issue of fault, and contributory negligence in the pleadings;
- Discussions with Mr. Hope after discovery regarding the issues of fault, contributory negligence and a counterclaim;
- Discussions with Mr. Hope at any time advising him he was a Plaintiff;
- Discussions with Mr. Hope at any time regarding Mr. Hope's knowledge of his bodily injury claim.

[12] Mr. Comeau also seeks an order that Mr. Arsenault is competent and compellable as a witness in the areas sought for production.

[13] The moving party relies on *Civil Procedure Rule (CPR)* 1.01, 14, (specifically 14.12), and 16 and the common law concerning implied waiver of privilege. This motion was heard on February 9, 2026.

[14] Counsel for Mr. Hope's insurer, Aviva, appeared on his behalf, solely in regard to the issue of the production order and the proposed counterclaim. Mr. Hope's counsel was clear to state that their involvement was predicated on the potential for a divergence of interests between the Plaintiffs if an amendment to the pleadings was granted in the other pending motion.

[15] Jeffrey Hope denies there has been any waiver of privilege, either express or implied.

[16] Mr. Hope did draw the Court's attention to the circumstance that the solicitor-client privilege of Mr. Hope may be inextricably linked with Mr. Arsenault's communications with Ms. Natasha Hope. Ms. Hope has definitely not waived her solicitor-client privilege, and Mr. Hope cannot do so on her behalf.

[17] In the event that the Court finds that there has been an implied waiver, Mr. Hope seeks in the alternative an order striking portions of his Affidavit or withdrawing his Affidavit altogether. This alternative is opposed by Mr. Comeau.

[18] Ms. Hope's counsel, Mr. Arsenault, appeared but with limited participation.

Issues

1. Was there an implied waiver of solicitor-client privilege by Mr. Hope?
2. If there was an implied waiver, then can all or portions of the Hope Affidavit be struck or withdrawn?

Law

[19] The Supreme Court of Canada recently stated the following concerning solicitor-client privilege in *R. v. Fox*, 2026 SCC 4 (decided on February 6, 2026) at paras. 37-40:

[37] Although solicitor-client privilege has been part of the common law since the 16th century (*Solosky*, at p. 834; *McClure*, at para. 19; *Dodek*, at §1.4; *Lederman, Fuerst and Stewart*, at ¶14.47; *Hubbard and Doherty*, at § 11:4), it has been transformed under Canadian law over the past 50 years, evolving from a mere rule of evidence, to a substantive right, to a right with constitutional dimensions

(*University of Calgary*, at para. 20; *Canada (National Revenue) v. Thompson*, 2016 SCC 21, [2016] 1 S.C.R. 381, at para. 17; *Canada (Attorney General) v. Chambre des notaires du Québec*, 2016 SCC 20, [2016] 1 S.C.R. 336, at para. 28; *Dodek*, at §§2.2-2.12; *Vauclair, Desjardins and Lachance*, at para. 43.6).

[38] Before 1980, solicitor-client privilege was simply a rule of evidence, acting “as a shield to prevent privileged materials from being tendered in evidence in a court room” (*Solosky*, at p. 836; see also *McClure*, at para. 22). In *Solosky*, this Court recognized that recent judicial decisions had placed the privilege “on a new plane”, such that the privilege had become a “fundamental civil and legal right, founded upon the unique relationship of solicitor and client”, including a “right to privacy in solicitor-client correspondence” (pp. 836 and 839-40). A few years later, in *Descôteaux*, the Court confirmed that solicitor-client privilege had become a substantive right. This Court stated that “the fundamental right of a lawyer’s client to have [their] communications kept confidential” extends beyond the courtroom and “follows a citizen throughout [their] dealings with others” (pp. 871 and 888).

[39] Almost 20 years later, in *McClure*, solicitor-client privilege crossed the Rubicon into constitutional territory and was recognized as a principle of fundamental justice under s. 7 of the *Charter* (para. 41; see also *Lavallee*, at paras. 24 and 49; *University of Calgary*, at para. 20; *Thompson*, at para. 17; *Chambre des notaires du Québec*, at para. 28). The next year, in *Lavallee*, the Court ruled that solicitor-client privilege is also protected as part of a client’s fundamental right to privacy under s. 8 of the *Charter* (para. 46; see also *University of Calgary*, at para. 20). Since then, this Court has affirmed that “the reasonable expectation of privacy in relation to communications subject to solicitor-client privilege is invariably high, regardless of the context” (*Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401, at para. 38; see also *Chambre des notaires du Québec*, at paras. 30 and 39; *Maranda v. Richer*, 2003 SCC 67, [2003] 3 S.C.R. 193, at para. 57).

[40] Today, solicitor-client privilege is recognized as “the strongest privilege protected by law” (*Dodek*, at p. xlix, citing *Smith v. Jones*, 1999 CanLII 674 (SCC), [1999] 1 S.C.R. 455, at para. 44; *Vauclair, Desjardins and Lachance*, at para. 43.13). As this Court has underscored, “[t]he protection of solicitor-client confidences is a matter of high importance” (*Celanese*, at para. 54). The privilege is “near-absolute” (*Blank*, at para. 23), and must be “jealously guarded” (*Pritchard*, at para. 17). It may be set aside “only in the most unusual cases”, because if people cannot “be certain that their communications with their solicitors will remain entirely confidential, their ability to speak freely will be undermined” (*McClure*, at para. 46). The privilege must be “as close to absolute as possible to ensure public confidence and retain relevance” (para. 35; *Lavallee*, at para. 36).

[20] The bar is high, for compelling societal reasons, for this Court to find there is a waiver of the class privilege between a solicitor and their client.

[21] McLachlin, J, in *S. & K. Processors Ltd. v. Campbell Ave. Herring Producers Ltd.* 219, 1983 CanLII 407 indicated that implied waiver of solicitor-client privilege would only be found in circumstances in which the enforcement of the privilege would confer an unfair advantage to the holder of the privilege. The Court is required to consider whether a party had implicitly waived their privilege by their conduct on the basis of “fairness and consistency” in the manner in which they had used their privilege for confidential communications.

[22] As per Farrar, JA, in *Nova Scotia (Attorney General) v. Cameron*, 2019 NSCA 38, at paras. 50 and 51, waiver involves conduct that is inconsistent with confidentiality, and whether the person has done something inconsistent with protecting the confidentiality. In *AGNS v. Cameron*, the Appeal Court restates *S & K*, regarding implied waiver with a Court required to consider both fairness and the consistency by the privilege holder in protecting the privileged nature of communication on subject matter material to the issue at dispute to determine if waiver had occurred.

[23] On March 24, 2026 the Court received correspondence from counsel for the Defendant, Mr. Comeau, attaching the decision of the Ontario Court of Appeal in *One York Street Inc. v. 2360083 Ontario Ltd.*, 2026 ONCA 176 for the purposes of informing the Court.

[24] The Court extended an opportunity for the parties to make submissions on the contents of the *One York* decision by April 1, 2026.

[25] Mr. Comeau highlights to the Court that in *One York* a two-part test was set out by the Court on a consideration of an implied waiver of solicitor-client privilege: (1) the presence or absence of legal advice is to be material to the lawsuit and (2) the party who received the advice has made the receipt of it an issue in the lawsuit.

[26] The *One York* decision concerns a claim in contract, in which the Defendant pleaded *non est factum* and *contra proferentum*, with the court considering how the Defendant’s conduct in the case specific to the matter constituted an implied waiver of privilege.

[27] Mr. Hope submits that the *One York* decision can be distinguished from the current matter, as the Hope Affidavit was filed by Mr. Hope in response to Mr. Comeau’s motion to amend. The Hope Affidavit contents were put forward only to address the issue that Mr. Comeau raised in his motion concerning timing of Mr.

Hope's "state of mind" to address a potential LAA limitation, on Mr. Comeau's ability to file a counterclaim.

Analysis

[28] The impugned paragraphs of the Hope Affidavit are as follows:

2. After the accident, I contacted my insurance company, Aviva... to make a claim for damage to my vehicle arising out the accident. Initially, the adjuster with whom I was dealing at Aviva communicated to me that Aviva though that I was 75% at fault for the accident. Because I was struck from behind by a vehicle attempting to pass me, I disputed the suggestion that I was in anyway at fault for the accident and retained Criag Arsenault to help me deal with Aviva. Ultimately, with Craig's help, Aviva changed its mind and determined that I was not at fault for the accident. At this point, I believed that all issues related to who was at fault for the accident had not been completely resolved.

...

6. I cannot remember whether I was ever told that I was being added as a Plaintiff to the proceeding commenced by Craig Arsenault, but, to the extent that I might have been told, I would have assumed that this was because I was Natasha's husband and was driving the vehicle at the time of the accident, but that was my only involvement in the claim. I have never been involved in this type of litigation and did not completely understand the process.

7. When I attended the examination for discovery, I only did so to support Natasha's claim and because I was told by Craig Arsenault that I needed to attend and for no other purpose. During the examination, I was asked whether I was injured in the accident, and I confirmed to the other lawyer that I was not.

8. At no time was it ever suggested to me that I, myself, might be sued as a result of this accident since, in my mind, fault for the accident had resolved once my dispute with Aviva had ended. When I attended the examination for discovery, I was not aware that there was any ongoing suggestion by anyone that I might bear some fault or responsibility for the accident.

9. It was not until July 2024 that I was told by Craig Arsenault that the Defendant has retained new counsel who was now suggesting that I was at fault for the accident and that this lawyer was going to commence a lawsuit against me. It was, at this point, that Craig told me t hat he could no longer speak to me about Natasha's case.

[29] Mr. Comeau pleads that since allegations of negligence raised in the defence that was filed are the same as the allegations of negligence in the intended counterclaim he will request the Court to approve, it follows that Mr. Hope had knowledge of an intended claim within the limitation period. It would then not be

unfair to Mr. Hope should the Court make an order setting aside the claimed solicitor-client privilege, as the Hope Affidavit alludes to communications with his solicitor about the potential of a claim against him at an earlier time. This communication may be relevant, Mr. Comeau submits, to the potential issue of contributory negligence and he seeks production in advance of the amending motion being brought.

[30] Mr. Comeau states that the Hope Affidavit shows that Mr. Hope voluntarily disclosed information, advice and communication with his counsel, Mr. Arsenault, which he says was relied on by Mr. Hope to justify his opposition to the motion for an amendment by representing he had no knowledge of potential or actual liability.

[31] Mr. Comeau further submits that Mr. Hope's state of mind was placed at issue when Mr. Hope made statements concerning communications with counsel to support his denial of knowledge of any potential claim until after 2024.

[32] One of the cases relied upon by Mr. Comeau is *Conrad v. Arichat Metal Fabrication Ltd.*, 2022 NSSC 278. I will note that in *Conrad* at para. 33, McDougall, J. quotes from Professor Adam Dodek in *Solicitor-Client Privilege* (Markham: LexisNexis Canada Inc., 2014):

33 ... (McDougall, J. quoting) When a party places its state of mind in issue and has received legal advice to help form that state of mind, privilege will be deemed to be waived with respect to such legal advice.

[33] And he continues at para. 34:

34 The state of mind that is formed as a result of the legal advice must be material to the lawsuit.

[34] My review of the Hope Affidavit, and the context in which it was filed, indicate that Mr. Hope's statements in the Affidavit were made to be responsive to Mr. Comeau's motion to add a counterclaim solely, and to give context to his lack of knowledge concerning any claim against him arising from the motor vehicle accident.

[35] I do not agree with Mr. Comeau that Mr. Hope's affidavit constitutes evidence of an implied waiver of solicitor-client privilege in the action. It is not evidence of an inconsistent approach to preserving the solicitor-client privilege concerning material evidence, but was solely evidence elicited from Mr. Hope by Mr. Comeau in response to Mr. Comeau's impending motion to amend the pleadings.

[36] Mr. Hope's statements in his affidavit sets out his evidence concerning his knowledge of when he became aware of a potential claim against him being filed by the Defendant. In doing so, he refers to Mr. Arsenault assisting him with communication with his insurer, Aviva, and his attendance of discovery and inclusion of the lawsuit as a party, in keeping with his obligation to identify the sources for his information or belief.

[37] Counsel brought the Court's attention to the discovery transcript of Mr. Hope in which he responded to questions concerning whether he was or was not aware of Mr. Comeau's vehicle driving behind him when the accident occurred. Mr. Comeau requests that the Court infer that Mr. Hope's responses to the questions asked at his discovery examination should permit the Court to make an inference that Mr. Hope had at that time then formed a positive knowledge of a potential lawsuit against him, personally. I do not agree that is the effect of those portions of the discovery. His responses posed were brief and factual only, with nothing to indicate he had formed any knowledge of a potential or actual claim against himself.

[38] This action concerns a claim for damages incurred in the course of a motor vehicle accident. It is qualitatively different from a claim in which the litigant's "state of mind" is an element of the claim itself, for example, in the breach of contract case as per *One York*. As per *Conrad, supra*, it is the "state of mind" formed as a result of the legal advice that is material to the lawsuit in order for the court to find an implied waiver, when the party puts this in issue.

[39] An implied waiver of solicitor-client privilege in this motion would result in the legal doctrine being used as a sword, rather than as a shield; in this case, compelling production of materials that may or may not be relevant to the LAA issue on the amendment motion but would be unfair to the Plaintiffs on the action.

[40] As per *Conrad, supra*, at paras. 57-58, a mere reference to communications with counsel is insufficient to waive solicitor-client privilege. That is the case, here, as there is nothing in the Hope Affidavit which conveys any detail on the contents of the privileged communication, and there is no indication of reliance on certain legal advice by Mr. Arsenault, that would lead the Court to set aside this privilege, to effect fairness

[41] As an aside, I am also concerned about the solicitor-client privilege of Ms. Hope. Although there was very limited submission by Mr. Arsenault in this motion, clearly to continue to preserve solicitor-client privilege for Ms. Hope, it is also apparent that the two plaintiffs interacted with Mr. Arsenault as a couple receiving

legal advice together. It is prejudicial to Ms. Hope for this Court to waive solicitor-client privilege as between Mr. Hope and Mr. Arsenault, effectively allowing the disclosure of privileged communications that may have been shared jointly with the two plaintiffs up until the point of the filing of the motion seeking an amendment of the pleadings.

Conclusion

[42] The motion is dismissed. I do not find that there has been an implied waiver of privilege.

[43] Mr. Hope's affidavit is responsive to Mr. Comeau's motion to amend the pleadings to add a counterclaim and was made for no other purpose. It was not intended to be relied on as evidence that is supportive of the subject matter of Ms. Hope's claim for damages incurred in a motor vehicle accident.

[44] As I have determined that there is no waiver of solicitor-client privilege in this matter, I do not intend to make an order concerning the striking of the contents of Mr. Hope's affidavit or its removal from the filed materials in the proceeding.

[45] If counsel cannot agree on costs for the motion, I will receive written submissions of no more than 10 pages from the parties no more than three weeks after the date of this decision.

Rowe, J.