SCC File No. 41215

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

BETWEEN:

HIS MAJESTY THE KING

APPELLANT
(Appellant)

- and -

SHARON FOX

RESPONDENT
(Respondent)

- and -

ATTORNEY GENERAL OF ALBERTA
DIRECTOR OF PUBLIC PROSECUTIONS
CANADIAN CIVIL LIBERTIES ASSOCIATION
ATTORNEY GENERAL OF ONTARIO
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENERS
(Interveners)

FACTUM OF THE INTERVENER, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

PRINGLE LAW
Suite 1200 – 1111 Melville Street
Vancouver, BC V6E 3V6
Telephone: 604-669-7447
Facsimile: 604-259-6171
Email: djsong@pringlelaw.ca

DANIEL J. SONG, K.C.
SAFIYYA AHMAD
Counsel for the Intervener,
British Columbia Civil Liberties Association

ATTORNEY GENERAL FOR SASKATCHEWAN
Suite 300, 1874 Scarth Street
Regina, SK S4P 4B3
Telephone: 306-787-5490
Facsimile: 306-787-8878
Email: pouria.tabrizireardigan@gov.sk.ca

POURIA TABRIZI-REARDIGAN
Counsel For the Appellant

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON K1P 1C3
Telephone: 613-786-8695
Facsimile: 613-788-3509
Email: lynne.watt@gowlingwlg.com

D. LYNNE WATT
Ottawa Agent for the Counsel of the Appellant

BAYFORD SHAPIRO LAW OFFICE
Suite 311, 21st Street East
Saskatoon, SK S7K 0C1
Telephone: 306-244-5656
Facsimile: 306-244-5644
Email: mark@brayfordlaw.ca

MARK BRAYFORD, K.C.
BRIAN PFEFFERLE, K.C.
THOMAS HYNES
Counsel for the Respondent

SUPREME LAW GROUP
Suite 200, 440 Laurier Avenue West
Ottawa, ON K1R 7X6
Telephone: 613-691-1224
Facsimile: 613-691-1338
Email: mdillon@supremelawgroup.ca

MOIRA DILLON
Ottawa Agent for the Counsel of the Respondent

JUSTICE AND SOLICITOR GENERAL
Appeals, Education & Prosecutions Policy Branch
3rd Floor, Centrium Place
Suite 300, 332 - 6 Avenue SW
Calgary, AB T2P 0B2
Telephone: 403-297-6005
Facsimile: 403-297-3453
Email: tom.spark@gov.ab.ca

TOM SPARK
Counsel for the Intervener, Attorney General of Alberta

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON K1P 1C3
Telephone: 613-786-8695
Facsimile: 613-788-3509
Email: lynne.watt@gowlingwlg.com

D. LYNNE WATT
Ottawa Agent for Counsel for the Intervener, Attorney General of Alberta

PUBLIC PROSECUTION SERVICE OF CANADA
Ontario Regional Office
Suite 2400, 130 King Street West
Brampton, ON M5X 2A2

Telephone: 647-638-9162
Facsimile: 204-984-1350
Email: amber.pashuk@ppsc-sppc.gc.ca

AMBER PASHUK
ALEXIS GAUTHIER
Counsel for the Intervener, Director of Public Prosecutions

PUBLIC PROSECUTION SERVICE OF CANADA
160 Elgin Street, 12th Floor
Ottawa, ON K1A 0H8
Telephone: 867-336-0762
Facsimile: 613-941-7865
Email: eric.marcoux@ppsc-sppc.gc.ca

ÉRIC MARCOUX
Ottawa Agent for Counsel for the Intervener, Director of Public Prosecutions

KAPOOR BARRISTERS
Suite 400, 26 Wellington Street East
Toronto, ON M5E 1S2
Telephone: 416-363-2700
Facsimile: 416-363-2787
Email: akk@kapoorbarristers.com

ANIL K. KAPOOR
Counsel for the Intervener, Canadian Civil Liberties Association

GOWLING WLG (CANADA) LLP
Suite 2000, 160 Elgin Street
Ottawa, ON K1P 1C3
Telephone: 613-786-0189
Facsimile: 613-563-9869
E-mail: catherine.ouellet@gowlingwlg.com

CATHERINE OUELLET
Ottawa Agent for Counsel for the Intervener, Canadian Civil Liberties Association

MINISTRY OF ATTORNEY GENERAL (ONTARIO)
720 Bay Street, 10th Floor
Toronto, ON M7A 2S9
Telephone: 416-326-4600
Facsimile: 416-326-4656
Email: dana.achtemichuk2@ontario.ca

DANA ACHTEMICHUK
Counsel for the Intervener, Attorney General of Ontario

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PARTS I & II: OVERVIEW AND INTERVENER'S POSITION ON APPEAL

1. Public trust in the legal profession is stubbornly fragile. It drops precipitously when the public perceives lawyers prioritizing their own interests over serving their clients with fidelity. Like anyone else, a lawyer charged with an offence must certainly receive the full protections promised under sections 7 and 11(d) of the *Charter*. But the "innocence at stake" exception to solicitor-client privilege cannot operate indiscriminately to weaken the bond between lawyer and client, or indeed, compel them to become adversaries. No matter how principled the reasons, a lawyer who betrays their client's secrets for their own purposes risks wounding public confidence in us all.

2. Without taking any position on the outcome of the appeal, the British Columbia Civil Liberties Association ("BCCLA") advances the following three submissions as an intervener:

a) Where a criminally accused lawyer invokes the "innocence at stake" exception to pierce their own client's solicitor-client privilege, they place themselves in an *ethically impossible situation* creating a conflict between their duties to their client and their ability to make full answer and defence. Allowing a lawyer to reveal their own client's confidences *to serve their own interests* may permanently damage public confidence in the legal profession and the justice system as a whole.

b) If a ***McClure*** hearing is, in fact, possible when an accused lawyer seeks to rely on their own client's communications at trial, then this Court should fashion a framework that ensures *the client's voice is always heard* at each stage of the process. The framework should also recognize that the privilege-holder's interests might *preclude the court* from reviewing the privileged communications at all.

c) In the event that an accused lawyer can demonstrate that the privileged communications are likely to raise a reasonable doubt, then the reviewing judge should consider whether a *judicial stay of proceedings* should be ordered when the severity of prejudice to the client arising from anticipated disclosure of the privileged communications demands no other remedy. The judge should consider whether a stay is appropriate *before* ordering that the accused lawyer can use the communications at trial.

PART III: STATEMENT OF ARGUMENT

A. The Ethical Conflict of Invoking Innocence at Stake Against Own Client

3. The majority of the Court of Appeal in this case concluded that Ms. Fox could not advance an evidentiary foundation in a ***McClure*** hearing because of her duty of loyalty and confidentiality to her client.[1] In the unique circumstances where the accused is a lawyer who was a party to the relevant privileged communications, the lawyer invoking the innocence at stake exception *against their own client's refusal to waive privilege* places that lawyer in an *ethical dilemma and conflict*: they must choose to breach their abiding duty to maintain their client's confidentiality or stand pat and risk being wrongfully convicted.

4. A lawyer cannot facilitate the discovery or disclosure of information protected by solicitor-client privilege, and "acts a gatekeeper, ethically bound to protect the privileged information that belongs to his or her client."[2] Any unjustified infringement of the privilege would erode public confidence in the justice system.[3]

5. Lawyers across Canada are also bound by ethical codes of conduct which impose a duty of confidentiality that is broader than solicitor-client privilege. For example, the Law Society of Saskatchewan's *Annotated Code of Professional Conduct* highlights the nexus between the duty of confidentiality with the lawyer's ability to provide effective legal services:

> A lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.
>
> This rule must be distinguished from the evidentiary rule of lawyer and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between the client and the lawyer. The ethical

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[1] ***R. v. Fox***, 2024 SKCA 26 at para 65.
[2] ***Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General)***; ***R. v. Fink***, 2002 SCC 61 at paras 24 and 49 ["***Lavallee***"].
[3] *Ibid* at para 49.

> rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.[4]

6. Hence, counsel should not be compelled to abdicate the very role and responsibilities they swore to uphold as lawyers, by revealing their own client's guarded secrets in order to serve their own interests. This is not merely an "extremely difficult situation," as noted by Tholl J.A. for the majority of the Court of Appeal.[5] It is an *ethically impossible situation*, irreconcilable with this Court's identification of the lawyer as a "gatekeeper" of their client's privileged information.

7. Moreover, if an accused lawyer could override their own client's refusal to waive solicitor-client privilege by invoking the "innocence at stake" exception, it would create a risk that the client's *other self-incriminating information* may be revealed. This concern may not arise where the client's self-incriminating information directly exculpates the accused, as in ***R. v. Brown***.[6] But the risk of revealing other potentially self-incriminating information is highly prejudicial, even if use immunity could apply in any subsequent prosecution against the client. Use immunity offers a trifling measure of solace when the revelation of self-incriminating information itself turns police attention onto the client and leads to a criminal investigation. The damage is done by the very disclosure of that information.

8. Public distrust of lawyers and the courts risks metastasizing if the law were to permit lawyers to lay bare their client's protected communications in service of their own interests. Clients would be reluctant to share sensitive information with their lawyers, mindful that *their own lawyer* could betray their trust, because the law privileges the lawyer's right to make full answer and defence over the client's right to confidentiality. Constitutional considerations aside, such betrayal would contribute to long term decline in the proper functioning of the justice system. Indeed, no one would fault the public from concluding that the aspirational language of loyalty and confidentiality embedded in law society codes across the country reads as a hollow promise.

9. Furthermore, if an accused lawyer were forced to stand before a jury and testify about their own client's most sensitive secrets in an effort to save their own skin at trial, then one can easily imagine

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[4] Law Society of Saskatchewan, *Annotated Code of Professional Conduct*, (amended November 2024) at p. 44, Rule 3.3-1[1] & [2] (emphasis added).
[5] ***R. v. Fox***, 2024 SKCA 26 at para 69.
[6] ***R. v. Brown***, 2002 SCC 32.

the severity of the reputational damage that the lawyer would suffer in the eyes of other potential clients. It would not be hyperbole to describe such an extraordinary act as professional suicide.

10. Granted, there are some notable exceptions to the lawyer's duty of confidentiality. For example, the future harm or public safety exception can be found in most provincial codes of conduct, and was discussed in ***Smith v. Jones***.[7] Lawyers may disclose their client's confidential information if they believe on reasonable grounds that it is necessary to prevent imminent death or serious bodily harm.[8] But the type of confidence disclosed, and the extent of the information disclosed, is carefully circumscribed by the codes of conduct and jurisprudence. And more importantly, the public policy considerations animating this exception do not pit the lawyer's *self-interest* against the client's interests.

11. The Crown has argued that the legal profession's codes of conduct specifically endorse a "criminal defence exception" to solicitor-client privilege, permitting a lawyer to disclose confidential information to defend against allegations that the lawyer or their associates "have committed a criminal offence involving a client's affairs."[9] This, the Crown argues, demonstrates that the lawyer is under no obligation to maintain their duty of confidentiality to their clients when charged with a criminal offence and can rely on privileged communications in their defence.

12. However, this is an incorrect reading of this exception to confidentiality. The question of whether a lawyer has committed a criminal offence *regarding their client's affairs* is markedly different from whether the lawyer is separately charged with a criminal offence and must rely on solicitor-client communications to establish their own innocence. In the former circumstance, the lawyer is alleged to have committed a crime *against* their client, which sets the lawyer in opposition to the client. Moreover, even in these circumstances, access to the information would have to be closely controlled, as explained by David Layton (writing extra-judicially) and the Honourable Michel Proulx:

> Most jurisdictions recognize that a lawyer has the right to use or disclose confidential information to the extent necessary to defend against an allegation of wrongdoing. The best

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[7] ***Smith v. Jones***, [1999] 1 SCR 455, 169 DLR (4th) 385 at para 75.
[8] David Layton & Michel Proulx, *Ethics and Criminal Law*, 2nd ed., (Toronto: Irwin Law, 2015) at 227 [Layton & Proulx, *Ethics and Criminal Law*][**Book of Authorities of the Intervener, British Columbia Civil Liberties Association ("BOA"), Tab 1**]
[9] Appellant Factum, paras 68 & 72.

> rationale for this exception is that lawyers would otherwise be defenceless against groundless charges of impropriety and that where it is a client who makes the allegation, the duty of confidentiality has been waived. Yet where the information in question is solicitor-client privileged and where it cannot be said that waiver or any other exception to the privilege applies, it is difficult to justify allowing the lawyer to release the information**.** Such dispensation would provide lawyers with a benefit not available to anyone else, which hardly seems fair.[10]

13. Thus, this is not a sweeping "criminal defence exception" to confidentiality. It applies when the client levels a criminal allegation against their own lawyer. In those narrow circumstances, the client cannot then weaponize solicitor-client privilege to preclude the lawyer from defending themselves. In effect, there is an implied waiver of privilege with respect to all solicitor-client communications relevant to the client's allegations.

14. For these reasons, the majority of the Court of Appeal was correct in concluding that a lawyer in Ms. Fox's position is in the "untenable position" of being bound by an ethical duty to protect solicitor-client privilege in a manner that interferes with their right to make full answer and defence.[11] The client's position on solicitor-client privilege must not be ignored or diminished—especially when the innocence at stake exception is invoked by the client's own lawyer.

B. The Privilege-Holder's Voice Must Always Be Heard

15. If this Court concludes that a ***McClure*** hearing is feasible when a lawyer seeks to rely on their own client's communications, then the procedure must ensure that the client's voice is not muted at any stage in the process.

16. The BCCLA largely agrees with the framework proposed in the intervener factum of the Canadian Civil Liberties Association ("CCLA") regarding the procedure to be adopted in a ***McClure*** hearing. An innocence at stake application to pierce solicitor-client privilege should require a two-part process: (1) an "open" proceeding in which all parties, including the Crown, participate; and (2) a "closed" proceeding that occurs *ex parte* the Crown, and *in camera* with only the parties in the "circle of privilege."

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[10] Layton & Proulx, *Ethics and Criminal Law* at 217 (emphasis added)[**BOA, Tab 1**]
[11] ***R. v. Fox***, 2024 SKCA 26 at paras 65 and 68.

17. This would be consonant with this Court's approach in ***R. v. Basi***.[12] In the context of a challenge to the Crown's claim of informer privilege, this Court held that "[n]o one outside the circle of privilege may access information over which the privilege has been claimed until a judge has determined that the privilege does not exist or that an exception applies."[13] The Crown is clearly outside the circle of privilege between a solicitor and their client, and as such, should be excluded from proceedings which determine the privileged nature of such communications and whether those communications are likely to raise a reasonable doubt. As the CCLA has described, an adversarial context could be presented by *amicus curiae* if the judge deems it necessary.[14]

18. The BCCLA further adds that the Crown *and court* are outside the circle of privilege, and that whenever there is a challenge to the presumptively privileged nature of a lawyer-client communication, the privilege-holder (the client) or their counsel *must be present* to advance their interests. While not directly at issue in this appeal, the Crown in this case applied *ex parte* to have a reviewing judge of the trial court to determine which portions of the phone calls between Ms. Fox and A.Y. were subject to solicitor-client privilege.[15] Proceeding *ex parte* without Ms. Fox was understandable and permissible. But proceeding without A.Y. and preventing him from advancing any position on the Crown's application was wrong. In effect, the judge rendered a decision on the privileged or non-privileged nature of the communications in an empty room. The *ex parte* hearing to determine which communications were privileged should not have excluded the privilege-holder. And the judge could have addressed any concerns about preserving the integrity of the investigation by ordering the privilege-holder not to reveal the existence of the application to the lawyer under investigation.

19. Similarly, in his dissenting opinion, Leurer C.J.S. held that the trial judge should have "listened to the recording of the privileged parts" of the solicitor-client communication to determine whether they might raise a reasonable doubt about the appellant's guilt,[16] and if so, to order disclosure in manner that limited the consequences to the privilege holder.[17] Yet Leurer

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[12] ***R. v. Basi***, 2009 SCC 52
[13] *Ibid* at para 44.
[14] See para 11(f) of the Factum of the Canadian Civil Liberties Association, citing ***R. v. Basi***, 2009 SCC 52 at paras 38 and 57, and ***R. v. Kahsai***, 2023 SCC 20 at paras 35-39, 46-47.
[15] ***R. v. Fox***, 2024 SKCA 26 at para 9.
[16] *Ibid* at para 121.
[17] *Ibid* at para 186.

C.J.S. did not consider the possibility that the privilege holder might oppose disclosing sensitive communications *to the court*.

20. We cannot assume that a privilege holder would consent to the court reviewing their confidential discussions with their lawyer, or that a court is entitled to review privileged communications in all circumstances. There is value in ensuring that the court's ability to review presumptively privileged solicitor-client communications is carefully circumscribed. Indeed, even though the second part of a ***McClure*** hearing would be closed, the client may adamantly oppose the disclosure of privileged information to the court and ultimately give rise to a potential violation of the accused lawyer's right to a fair trial under ss. 7 and 11(d) of the *Charter*. This issue would have to be resolved before determining whether there is an "evidentiary basis" for the innocence at stake exception.

21. Some interveners have relied heavily on comparing innocence at stake as it arises in the context of informer privilege. While this Court has previously compared solicitor-client privilege to the near-impenetrable scope of informer privilege,[18] the two types of privilege are different in nature. The differing objectives of informer privilege and solicitor-client privilege warrant a more nuanced approach to applying the innocence at stake exception.

22. More specifically, the dual objectives that underlie informer privilege are (1) to protect the confidential informant's safety and (2) to encourage others to cooperate with law enforcement in the investigation and prevention of crime.[19] *The court* has a duty not to breach informer privilege, and that duty is of the same nature as the duty held by the police and Crown.[20] In other words, informer privilege is protected by entities that are responsible for discharging their duties in the public interest.

23. In contrast, although there is a public interest in protecting solicitor-client privilege,[21] solicitor-client privilege is a "fundamental and substantive rule of law"[22] that protects a *private*

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[18] ***R. v. McClure***, 2001 SCC 14 at para 40; ***R. v. Brown***, 2002 SCC 32 at para 2.
[19] ***Named Person v. Vancouver Sun***, 2007 SCC 43 at para 18.
[20] *Ibid* at para 21.
[21] ***Alberta (Information and Privacy Commissioner) v. University of Calgary***, 2016 SCC 53 at para 34.
[22] ***R. v. McClure***, 2001 SCC 14 at para 17.

relationship between the lawyer and client in order to maintain the integrity of the justice system as a whole.[23] These communications should remain protected from disclosure to anyone—the Crown, the police, and even the courts. And lawyers, not the courts, are the primary "gatekeepers" tasked with maintaining those protections.[24]

24. Hence, courts must exercise care to ensure that the privilege holder's interests remain paramount in any process that challenges the *privileged nature* of lawyer-client communications or invades the *private nature* of the protected information—even where a lawyer's innocence is at stake. As the BCCLA discusses below, in some instances, an impasse arising from competing interests may leave the court no choice but to order a stay of proceedings.

C. Remedying Prospective Prejudice with a Stay of Proceedings

25. The BCCLA departs from the CCLA in one respect: in the highly unusual circumstances where a lawyer is charged with a crime and their only opportunity to defend themselves is to pierce *their own client's* solicitor-client privilege, they should *not* be treated the same as an accused seeking to pierce privileged communications between another lawyer and that lawyer's client.

26. First, despite advocating for a ***Basi***-like process in a ***McClure*** hearing, the BCCLA agrees with Ms. Fox that solicitor-client privilege operates to preclude an accused lawyer from divulging privileged information to the court—ethically preventing the lawyer from attempting to pierce that privilege, even at the first evidentiary stage. As stated above, the court should not have unfettered access to lawyer-client communications. An unfair trial would result from the lawyer's inability to make full answer and defence, and violations of sections 7 and 11(d) should follow, as the majority of the Court of Appeal concluded.[25]

27. However, in endorsing a procedure akin to that in ***Basi***, this Court might conclude that a ***McClure*** hearing is indeed possible where a judge presides over the hearing *in camera* and *ex parte*, with only the parties to the privileged communications present: the accused lawyer and the privilege holder (the client). If the accused lawyer in the *in camera* ***McClure*** hearing establishes

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[23] See ***R. v. McClure***, 2001 SCC 14 at para 41; ***Lavallee***, 2002 SCC 61 at paras 36 and 49.
[24] ***Lavallee***, 2002 SCC 61 at para 24.
[25] ***R. v. Fox***, 2024 SKCA 26 at paras 82-85.

that the privileged communications are *likely* to raise a reasonable doubt as to the lawyer's guilt,[26] then *before* authorizing the accused lawyer to rely on the communications in open court in furtherance of their defence at trial, the judge should consider whether the magnitude of prejudice to the client arising from public disclosure might require a stay of proceedings as the only reasonable remedy.

28. The spectrum of sensitivity of privileged information is naturally wide. For example, privileged information might be relatively mundane—such as the client owning shares in a company that he hitherto kept secret from his spouse. In those circumstances, the client might concede that the disclosure in the lawyer's criminal trial, while undesirable, might cause relatively minor prejudice. On the other hand, the content of the relevant privileged communications might be explosive—such as the client's involvement in other criminality—and its disclosure to the Crown and public would cause irreparable prejudice to that client (irrespective of any applicable use immunity). In the latter case, a stay of proceedings may be the only remedy that would protect against the serious prejudice that would befall the client, while recognizing that the privileged communication is the only evidence that will likely raise a reasonable doubt.

29. At least one appellate court has applied the ***McClure*** framework for the innocence at stake exception to informer privilege and affirmed a judicial stay of proceedings after the accused demonstrated that the exception properly applied. The trial judge in ***R. v. Matthews***[27] moved to an *in camera* and *ex parte* hearing after the Crown mistakenly provided the judge with unvetted Source Debriefing Reports (SDRs) containing confidential source information related to the homicide for which the respondents were criminally charged. The Crown asserted informer privilege over the documents and the trial judge agreed that the privilege applied. However, he also held that the innocence at stake exception applied to the SDRs and ordered their disclosure to both respondents. The Crown refused to disclose the SDRs or enter a stay of proceedings. Faced with the *dilemma* of ordering disclosure of information that both imperilled the confidential informant's safety and exposed the respondents to the risk of wrongful convictions, the trial judge

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[26] ***R. v. McClure***, 2001 SCC 14 at para 51.
[27] ***R. v. Matthews***, 2022 ABCA 115.

entered a judicial stay of proceedings.[28] The Alberta Court of Appeal upheld the judicial stay for the respondent Matthews.[29]

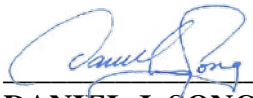
30. Thus, when this tension between competing but highly protected interests cannot be resolved, the trial judge should consider whether a stay of proceedings is the only appropriate remedy in the circumstances. That tension would invariably arise where a lawyer's innocence tugs against their duty to maintain client confidentiality. Whether the judge should order a stay of proceedings will depend on the severity of that tension, and only in the clearest of cases.

31. The Crown argues that a "criminal defence exception" to confidentiality is justified because the public is committed to preventing wrongful convictions and miscarriages of justice, and that rules of confidentiality should yield to the constitutional right to a fair trial.[30] This submission has surface appeal. But the long-term effect of allowing lawyers to share their clients' secrets—for their own purposes—will breed public distrust in lawyers and *stifle* the free exchange of information with defence counsel that is *critical in preventing wrongful convictions in the first place*. Only a defence lawyer, *fully informed by their client*, can marshal a complete and comprehensive stand against state forces that threaten to converge into a miscarriage of justice. The harm to solicitor-client relationships will be greatest when the client's deepest confidences are unearthed for public consumption. This is why a judicial stay of proceedings in such circumstances is a far stronger response to ensure that a lawyer is protected against a wrongful conviction while preserving the integrity of that lawyer's existing solicitor-client relationship.

PARTS IV & V: COSTS, ORDERS SOUGHT AND CASE SENSITIVITY

32. The BCCLA seeks no costs or orders and makes no submissions on case sensitivity.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of January 2025.



DANIEL J. SONG, K.C.
SAFIYYA AHMAD
Counsel for the Intervener, British Columbia Civil Liberties Association

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[28] *Ibid* at paras 29-31.
[29] *Ibid* at para 82.
[30] Appellant Factum, paras 70-71.

PART VI: TABLE OF AUTHORITIES

CASES

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