File No. 35892

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

BETWEEN:

ATTORNEY GENERAL OF CANADA
CANADA REVENUE AGENCY

Appellants

- and -

CHAMBRE DES NOTAIRES DU QUÉBEC

Respondent

- and -

BARREAU DU QUÉBEC

Intervener

- and -

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

Interveners

FACTUM OF THE INTERVENER FEDERATION OF LAW SOCIETIES OF CANADA
(Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW OF POSITION AND FACTS

Overview of position

1. Under the *Income Tax Act*, the Minister can require a lawyer, on pain of prosecution, to produce information that the common law of solicitor-client privilege would protect from disclosure. Although the *Act* provides for certain safeguards against the disclosure of privileged information, its protection is ultimately limited by the narrow definition of solicitor-client privilege in the *Act*. In particular, the definition wholly excludes "accounting records," even though they may contain information that is privileged at common law.

2. The statutory scheme thus undermines two distinct aspects of the solicitor-client relationship that are protected by the *Charter*.

3. First, in requiring lawyers to provide information that may be subject to solicitor-client privilege under the common law, the *Act* forces lawyers to choose between producing their clients' privileged information, or facing prosecution and penalties, including fines and imprisonment. It thereby compromises a lawyer's duty of commitment to the client's cause, a principle of fundamental justice under section 7 of the *Charter*.

4. Second, the statutory scheme violates the client's rights under section 8 of the *Charter*. It allows the Minister to seize information that may be covered by solicitor-client privilege, through a process that fails to sufficiently protect the privilege. In particular, it fails to meet the minimal impairment standard that this Court set out in *Lavallee*.

5. The appellants do not dispute that the *Act* fails to meet the *Lavallee* standard. Instead, they attempt to avoid it, arguing that because the information at issue is found in "accounting records" the expectation of privacy is somehow diminished, and that the *Lavallee* standard applies only in the criminal context. The appellants are wrong on both counts. A client's expectation of privacy in privileged information is always of the highest order. It cannot be minimized by the form of the document in which the information is found (in this case, an accounting record) – especially when the client has no control over its contents – or by the context in which disclosure is sought (in this case, an administrative as opposed to a criminal context). Rather, as this Court has confirmed, whenever the state seeks information that may be protected by solicitor-client privilege, there must be "stringent norms" to ensure its protection.

6. Contrary to the appellants' arguments, the opportunity for judicial intervention cannot save the scheme. The scheme does not require judicial intervention – it simply allows for it. However, it also gives the Minister the power to demand information without court supervision and to prosecute the lawyer for failing to provide it. In any event, on the appellants' interpretation, the court's discretion to protect solicitor-client privilege is limited by the statutory definition. Accordingly, the court's role in the scheme cannot render it compliant with the standard set out in *Lavallee*.

The Federation

7. The Federation is the coordinating body of Canada's 14 law societies. Its members, the law societies of Canada's provinces and territories, have statutory mandates in their respective jurisdictions to regulate the lawyers in Canada (and paralegals in Ontario) and the notaries in Québec in the public interest. That mandate includes defending core values related to the governance of the legal profession and the administration of justice, including protecting solicitor-client privilege.

The Federation's view of the statutory scheme at issue

8. The Federation adopts the summary of the background facts, the relevant legislation, and the decisions of the courts below as set out in the factum of the respondent and the intervener the Barreau du Québec. In the Federation's view, there are two key aspects of the *Act* that engage sections 7 and 8 of the *Charter*.

9. First, the *Act* provides that a lawyer or notary who refuses to comply with a request for information or documents under subsection 231.2(1) is subject to prosecution. Section 238 provides that a person who has failed to comply with subsection 231.2(1) is guilty of an offence, and "in addition to any penalty otherwise provided, is liable on summary conviction" to a fine up to $25,000 and imprisonment for a term not exceeding 12 months.

10. Second, although section 232 of the *Act* sets out a scheme for the protection of solicitor-client privilege, it defines the privilege as

> 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.

11. This definition was enacted in its current form in 1965, well before a series of important decisions by this Court established the modern definition of solicitor-client privilege. These decisions confirmed that solicitor-client privilege is a substantive, not merely an evidentiary right, and that it is constitutionally guaranteed under the *Charter*. They also clarified the broad scope of solicitor-client privilege. While the statutory definition excludes any document that is classified as an "accounting record of a lawyer," this Court has explained that since a bill of account and its payment arise out of the solicitor-client relationship, the information that they contain is presumptively protected by solicitor-client privilege.[1]

PART II – POSITION ON QUESTIONS RAISED

12. The Federation's position is that the statutory scheme, as it applies to a lawyer or notary,[2] violates lawyers' rights to liberty in a manner that is inconsistent with the lawyer's duty of commitment to the client's cause, a principle of fundamental justice, and more than minimally impairs a client's right to solicitor-client privilege. It therefore infringes rights guaranteed by sections 7 and 8 of the *Charter* and cannot be justified under section 1.

PART III – ARGUMENT

The *Act*'s limited definition of solicitor-client privilege

13. The *Act* authorizes the Minister to require a lawyer to produce information that may be protected by solicitor-client privilege. While it purports to protect solicitor-client privilege, that protection extends only to information that falls within the statutory definition, which is far more restrictive than the common law conception of the privilege.

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[1] *Act to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act*, S.C. 1965, c. 18, s. 26; *Solosky v. The Queen*, [1980] 1 S.C.R. 821 at 836 [*Solosky*] (Respondent's Book of Authorities (RBA), Tab 84); *Smith v. Jones* [1999] 1 S.C.R. 455 at paras. 45-50 [*Smith*] (RBA, Tab 81); *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R v. Fink*, 2006 SCC 61 at para. 21 [*Lavallee*] (Appellants' Book of Authorities (ABA), Tab 29), *Maranda v. Richer*, 2003 SCC 67 at paras. 32-33 [*Maranda*] (ABA, Tab 33)

[2] In this factum, the Federation will refer to both lawyers and notaries as "lawyers."

The common law of solicitor-client privilege: a constitutionally protected right

14. As the parties to this appeal recognize, protection of solicitor-client privilege has long been recognized as fundamental to the administration of justice. The privilege exists because of the unique relationship between a client and his or her lawyer, and is essential to clients receiving sound legal advice. The privilege belongs to the client, not the lawyer, although the lawyer acts as a gatekeeper, and is ethically and professionally bound to protect the privilege.[3]

15. ***The common law approach has evolved.*** Since 1965, when the current statutory definition of solicitor-client privilege was enacted, the common law definition has evolved. It is no longer a simple rule of evidence; it is a substantive rule of law and a fundamental right. This Court has held that solicitor-client privilege is "a principle of fundamental justice within the meaning of section 7 of the *Charter* and the constitutional protection against unreasonable searches and seizures as guaranteed by section 8 of the *Charter*."[4]

16. ***Solicitor-client privilege is broad in scope.*** At common law, all communication made with a view to obtaining legal advice falls within the privilege, whether it is of a substantive or merely an administrative nature. As this Court has recognized, even the name of the client may be protected. Similarly, issues relating to the calculation and payment of fees are an important element of the solicitor-client relationship. This Court has therefore held that the "existence of the fact consisting of the bill of account and its payment arises out of the solicitor-client relationship and of what transpires within it." To keep impairments of solicitor-client privilege to a minimum, lawyers' bills are presumptively considered to be privileged.[5]

The definition of solicitor-client privilege in the Act: form over content

17. In contrast to this Court's expansive and nuanced approach to solicitor-client privilege, the *Act* takes a technical approach to the privilege, emphasizing the form of the document (whether it is an "accounting record") over its content. However, whether communication is

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[3] *Solosky* at 833 (RBA, Tab 84); *Smith* at paras. 45-46 (RBA, Tab 81); *Lavallee* at para. 24 (RBA, Tab 54)

[4] *Solosky* at 836 (RBA, Tab 84); *Smith* at paras. 48-50 (RBA, Tab 81); *R. v. McLure*, 2001 SCC 14 at paras. 22-24 (ABA, Tab 41); *Lavallee* at para. 21 (ABA, Tab 29)

[5] *Lavallee* at para. 28 (RBA, Tab 54); *Maranda* at paras. 32-33 (ABA, Tab 33)

covered by solicitor-client privilege turns on the substance and the circumstances of the communication – not the form of the document that contains it.[6]

18. In the context of "an accounting record of a lawyer," this makes particularly good sense. Although the privilege belongs to the client, it is the lawyer who controls what information his or her own accounting records contain. Courts have held accounting records to include a wide range of documents such as trust account ledgers, cancelled cheques for transactions in which amounts were paid to or on behalf of clients, cheques for disbursements, and invoices for services rendered to the lawyers by third parties on behalf of the client. These documents can include a variety of potentially privileged information, including the name of the client, a description of the matter, descriptions of the services provided, the time and amounts spent, the experts or other consultants retained and the amounts paid.[7]

19. As set out below, in part because of this form-focused approach to solicitor-client privilege, the statutory scheme places lawyers in a position of conflict with their clients, and is contrary to section 7 of the *Charter*. The scheme also fails to adequately protect solicitor-client privilege, in violation of section 8. For the reasons set out in the factum of the respondent and the intervener the Barreau du Québec, neither of these violations can be justified under section 1.

The statutory scheme violates section 7 of the *Charter*

20. The first question under section 7 is whether the statutory scheme at issue engages a deprivation of life, liberty or security of the person. In this case, a lawyer who refuses to provide information to the Minister may be prosecuted, and potentially faces fines and imprisonment. This deprivation of liberty must comply with principles of fundamental justice.[8]

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[6] *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 232(1)

[7] *Canada (Minister of National Revenue - M.N.R.) v. Jakabfy*, 2013 FC 706 at paras. 3, 15 (ABA, Tab 11); *Burnett v. Canada (Minister of National Revenue - M.N.R.)*, [1999] 1 C.T.C. 31 at paras. 8, 10-16 (F.C.T.D.) (QL) (Federation's Book of Authorities (FBA), Tab 1); *Minister of National Revenue v. Reddy*, 2006 FC 277 at paras. 5, 18 (ABA, Tab 12); *Playfair Developments Ltd. v. Deputy Minister of National Revenue*, [1985] 1 C.T.C. 302 at para. 15 (Ont. S.C.) (WL) (FBA, Tab 2)

[8] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 at para. 69 [*Federation*] , RBA, Tab 34

Lawyer's duty of commitment to the client's cause: principle of fundamental justice

21. It is well established that a lawyer's fiduciary duty of loyalty to his or her client is essential to the integrity of the administration of justice. The lawyer's duty of commitment to the client's cause is a fundamental aspect of this broader fiduciary duty. It is "an enduring principle" that is "fundamental to the administration of justice as we understand it."[9]

22. This Court has recently recognized that the lawyer's duty of commitment to the client's cause is a principle of fundamental justice, worthy of protection under the *Charter*. It follows that "the state cannot deprive someone of life, liberty or security of the person otherwise than in accordance with this principle." In particular, it cannot impose duties on lawyers that undermine their commitment to their clients' cause. Rather, lawyers must be free to zealously represent their clients' interests without influence from or fear of the state.[10]

The Act compromises a lawyer's duty of commitment to the client's cause

23. The statutory scheme violates this principle of fundamental justice. By sending a lawyer a demand under subsection 231.2(1) requiring production of information or documents, the Minister immediately puts the lawyer in a position of conflict to the extent that the information sought is protected by solicitor-client privilege. On one hand, to protect the client's right to solicitor-client privilege, the lawyer must refuse to provide the requested information. On the other, in refusing to provide the requested information, the lawyer's own right to liberty is compromised – the lawyer potentially faces imprisonment for up to 12 months. In forcing the lawyer to choose between his or her own interests and those of the client, the statutory scheme undermines the lawyer's duty to be entirely committed to the client's cause.

24. While the *Act* attempts to offer a measure of protection for lawyers, it is insufficient to render the statutory scheme compliant with the *Charter*. Section 232 of the *Act* provides that where a lawyer is prosecuted for failure to comply with a requirement, the lawyer shall be acquitted if the lawyer can establish that he or she believed that a client had a solicitor-client privilege in respect of the information or document, and communicated this belief to the

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[9] *Federation* at para. 96 (RBA, Tab 34); *R. v. Neil,* 2002 SCC 70 at para. 12 [*Neil*] (FBA, Tab 3)

[10] *Federation* at paras. 84, 99-103 (RBA, Tab 34)

Minister. However, this defence is limited by the narrow definition of solicitor-client privilege in the *Act*. Where information is covered by the privilege under the common law, but falls outside the strict statutory definition, the lawyer must either produce it or face the consequences.

25. The appellants argue that no notary has ever been prosecuted for failure to produce documents, implying that any concern about prosecution is theoretical rather than real. This argument must fail, for two reasons. First, the fact that the Minister does not exercise authority given by statute cannot turn an unconstitutional provision into a constitutional one. Second, although the Minister may not actually prosecute the lawyer for failing to provide documents, it is uncontroverted that the Minister routinely threatens to do so. The mere possibility of prosecution, fines and imprisonment may be sufficient to cause the lawyer to produce the privileged information. It thus undermines the lawyer's duty to the client's cause, and renders the scheme noncompliant with section 7.[11]

The statutory scheme violates section 8 of the *Charter*

26. While solicitor-client privilege is also a principle of fundamental justice, this Court has held that in the context of a seizure of information that may be privileged, the proper constitutional analysis is under section 8 of the *Charter*, and there is no need to undertake an independent section 7 analysis. There are two distinct questions that must be answered in a section 8 challenge. The first is whether there is a reasonable expectation of privacy, and the second is whether the search or seizure is an unreasonable intrusion on that right to privacy.[12]

This Court's analysis in Lavallee applies in this case

27. In *Lavallee*, this Court set out a framework to determine whether a search or seizure is reasonable where the information sought may be protected by solicitor-client privilege. This Court recently affirmed this framework in the *Federation of Law Societies* case. As this Court explained, since solicitor-client privilege "must remain as close to absolute as possible to ensure public confidence and retain relevance," the privilege is protected by "labeling as unreasonable any legislative provision that interferes with solicitor-client privilege more than is absolutely

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[11] Appellants' factum, para. 8; *Lavallee* at para. 45 (RBA, Tab 54)

[12] *Lavallee* at paras. 34-35 (RBA, Tab 54); *Federation* at para. 33 (RBA, Tab 34)

necessary." For the reasons explained in the factums of the Chambre des Notaires du Québec and the Barreau du Québec, the statutory scheme in this case does not meet the standard set out in *Lavallee* and is therefore contrary to section 8 of the *Charter*. Most notably, the *Act* does not provide for any notice to the clients, the holders of the privilege, that their privileged information is at risk of being disclosed; nor are clients provided with an opportunity to explain why the information ought to be protected.[13]

28. The appellants do not even attempt to argue that the statutory scheme meets the standard set out in *Lavallee*. Instead, they seek to avoid it, arguing that there is a low expectation of privacy in accounting records, and that *Lavallee* applies exclusively in the criminal, and not the administrative, context. Unable to meet the minimal impairment test set out in *Lavallee*, the appellants argue for a balancing exercise – an approach that this Court has specifically rejected in the context of solicitor-client privilege.[14] The Court should not accept these arguments.

29. ***High expectation of privacy for privileged information in accounting records***. It is uncontroverted that clients' expectation of privacy is "of the highest order" when information is covered by solicitor-client privilege. Yet, the appellants argue that because accounting records are unlikely to reveal privileged information, there is inherently a minimal expectation of privacy in respect of them. Like the definition of solicitor-client privilege in the *Act*, this argument favours form over substance, glossing over the fact that documents labelled as "accounting records" may well contain privileged information. Where they do, the fact that the information is contained in an "accounting record" does not diminish the high expectation of privacy. The client has no control over the lawyer's accounting records, and may have no knowledge of what privileged information they include.[15]

30. Similarly, since clients have neither knowledge of nor control over their privileged information in their lawyer's accounting records, Parliament's exclusion of accounting records from the definition of solicitor-client privilege in the *Act* cannot possibly affect the client's expectation of privacy. The appellants rely on this Court's decision in *Pritchard* for the principle

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[13] *Lavallee* at paras. 36, 42 (RBA, Tab 54); *Federation* at paras. 41-44, 49 (RBA, Tab 34)

[14] *Lavallee* at para. 36 (RBA, Tab 54)

[15] Appellants' factum, para. 54; *Lavallee* at para. 35 (RBA, Tab 54)

that a statute can abrogate a client's expectation of privacy. But the Court's comments in that case were made in a context where the client was an administrative board, well aware of the statutory regime in which it operated. In this case, where the client has no knowledge of or control over the extent to which the lawyer's accounting records contain privileged information, Parliament cannot simply legislate away a client's high expectation of privacy in his or her privileged information.[16]

31. ***Lavallee also applies in the regulatory context.*** The appellants also attempt to avoid the *Lavallee* standard by arguing that the expectation of privacy is reduced in the regulatory, as opposed to the criminal, context. This Court has already rejected this argument, affirming that "the reasonable expectation of privacy in relation to communications subject to solicitor-client privilege is invariably high, **regardless of the context**" [emphasis added]. That is because the high expectation of privacy is driven by the "specially protected nature of the solicitor-client relationship," not the context in which information is sought to be produced.[17]

32. ***The Minister's balancing approach is inappropriate.*** The Minster urges this Court to assess whether the statutory scheme complies with the Charter by balancing the taxpayer's legitimate expectation of privacy with the state's interest in the integrity of the fiscal regime. This argument has also been rejected. This Court has confirmed that for a section 8 analysis where the information sought is protected by solicitor-client privilege, the "usual balancing exercise" is "not particularly helpful." Instead, the correct approach is the minimal impairment test – the statutory scheme will only pass *Charter* scrutiny if it infringes on the privilege no more than absolutely necessary. This standard is required because of the high expectation of privacy in the nature of the information sought. It is therefore not confined to the criminal context.[18]

The judicial process cannot save the statutory scheme

33. In arguing that the *Act* sufficiently protects solicitor-client privilege, the appellants rely heavily on the judicial process set out in section 231.7 of the *Act*. However, since this process is

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[16] Appellant's factum, para. 70; *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 34 (ABA, Tab 36)

[17] Appellants' factum, at paras. 77-78; *Federation* at para. 38 (RBA, Tab 34)

[18] *Lavallee* at para. 36 (ABA, Tab 29)

limited in its application and potentially limited in its scope, it cannot provide an answer to the constitutional failings of the statutory scheme.

34. First, the *Act* simply sets out that a court may order compliance "on summary application by the Minister." However, contrary to the appellants' arguments, the *Act* does not *require* the Minister to apply to a court for a compliance order if a lawyer refuses to provide information on the basis of solicitor-client privilege. Rather, the *Act* also authorizes prosecution for failure to produce and sets out penalties (including imprisonment) applicable on summary conviction. The appellants' argument that no notary has actually been prosecuted for failure to provide information only serves to highlight the fact that the statutory scheme does *not* minimally impair solicitor-client privilege: since the Minister admits that lawyers are not prosecuted for refusing to produce documents, the ability to prosecute must be unnecessary to the administration of the *Act*.

35. Second, although the Federation argued before this Court in *Minister of National Revenue v. Thompson* that section 231.7 of the *Act* provides broad discretionary powers to a court to protect solicitor-client privilege beyond the strict definition of the privilege in the *Act*, on the Minister's interpretation, this grant of judicial discretion is limited by the statutory definition. Indeed, the appellants assert that if the document requested is an accounting record, the judge must order its production, even if it contains privileged information. On this interpretation, section 231.7 certainly fails to render the statutory scheme compliant with section 8 of the *Charter*. [19]

PART IV – COSTS

36. The Federation does not seek costs and asks that no costs be awarded against it.

PART V – REQUEST FOR PERMISSION TO MAKE ORAL ARGUMENT

37. The Federation requests permission to make oral submissions not exceeding 10 minutes.

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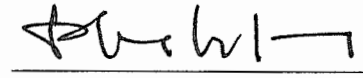
[19] Appellants' factum, paras. 37 and 43

August 11, 2015

ALL OF WHICH IS RESPECTFULLY SUBMITTED



John B. Laskin and Yael S. Bienenstock
Counsel for the Intervener
Federation of Law Societies of Canada

PART VI – TABLE OF AUTHORITIES

Authority	***Paragraph(s) in Parts I & III***
Burnett v. Canada (Minister of National Revenue - M.N.R.), [1999] 1 C.T.C. 31 (F.C.T.D.) (QL)	18
Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7	20, 21, 22, 26, 27, 31
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Playfair Developments Ltd. v. Deputy Minister of National Revenue, [1985] 1 C.T.C. 302 (Ont. S.C.) (WL)	18
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Solosky v. The Queen, [1980] 1 S.C.R. 821	11, 14, 15

PART VII – STATUTORY PROVISIONS

Act to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act, S.C. 1965, c. 18, s. 26

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), ss. 231.7, 232(1) & 2, 238

ACTS OF THE

PARLIAMENT OF CANADA

PASSED IN THE SESSION HELD IN THE

FOURTEENTH YEAR OF THE REIGN OF HER MAJESTY

QUEEN ELIZABETH II

BEING THE

THIRD SESSION OF THE TWENTY-SIXTH PARLIAMENT

Begun and holden at Ottawa, on the Fifth day of April, 1965,
and ended by dissolution on the Eighth day of September, 1965.

HIS EXCELLENCY GENERAL

GEORGES PHILIAS VANIER

GOVERNOR GENERAL

PART I

PUBLIC GENERAL ACTS

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

14 ELIZABETH II.

CHAP. 18

An Act to amend the Income Tax Act and the Federal-Provincial Fiscal Arrangements Act.

[*Assented to 30th June, 1965.*]

R.S., c. 148, 1952-53, c. 40; 1953-54, c. 57; 1955, cc. 54, 55; 1956, c. 39; 1957, c. 29; 1957-58, c. 17; 1958, c. 32; 1959, c. 45; 1960, c. 43; 1960-61, cc. 17, 49; 1962-63, c. 8; 1963, cc. 21, 41; 1964-65, c. 13; 1965, c. 12.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

INCOME TAX ACT.

1. (1) Subparagraph (iii) of paragraph (*b*) of subsection (1) of section 5 of the *Income Tax Act* is repealed and the following substituted therefor:

"(iii) representation or other special allowances received in respect of a period of absence from Canada as a person described in paragraph (*b*), (*c*) or (*ca*) of subsection (3) of section 139,"

(2) This section is applicable to the 1966 and subsequent taxation years.

2. (1) All that portion of paragraph (*u*) of subsection (1) of section 11 of the said Act preceding subparagraph (i) thereof is repealed and the following substituted therefor:

Transfer of superannuation benefits and retiring allowances

"(*u*) such part of any amount included in computing the income of the taxpayer for the year by virtue of subparagraph (iv) or (v) of paragraph (*a*) of subsection (1) of section 6 or subsection (9) of section 79c as does not exceed the amount by which"

or by way of cross-appeal are true; but, notwithstanding anything in this section, a reply may be filed at any time until an application to dispose of the appeal is made under this subsection and thereafter only upon such terms as the court may by order permit."

25. Section 117 of the said Act is amended by adding thereto the following subsection:

"(3) Notwithstanding subsection (1) of section 9 of the *Old Age Security Act*, the Minister of National Health and Welfare may communicate or allow to be communicated to the Minister or any officer or servant employed in connection with the administration or enforcement of this Act, if designated by the Minister for the purpose, upon request of the Minister, information as to the amount of any pension under the *Old Age Security Act* authorized to be paid to a taxpayer for a year." Pension communication authorized.

26. Paragraph (*e*) of subsection (1) of section 126A of the said Act is repealed and the following substituted therefor:

"(*e*) "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 him and his 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." "Solicitor-client privilege."

27. Section 136 of the said Act is amended by adding thereto the following subsection:

"(16) In any prosecution for an offence under this Act an affidavit of an officer of the Department of National Revenue, sworn before a commissioner or other person authorized to take affidavits, setting out that he has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be remitted to the Receiver General of Canada on account of tax for a year has not been received by the Receiver General of Canada, shall be received as *prima facie* evidence of the statements contained therein." Idem.

Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.)	*Loi de l'impôt sur le revenu, L.R.C. (1985), ch. 1 (5e suppl.)*
Compliance order	**Ordonnance**
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	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) 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	(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) 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)).	(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.
Notice required	**Avis**
(2) An application under subsection (1) must not be heard before the end of five clear days from the day the notice of application is served on the person against whom the order is sought.	(2) La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à la personne à l'égard de laquelle l'ordonnance est demandée.
Judge may impose conditions	**Conditions**
(3) A judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.	(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.
Contempt of court	**Outrage**
(4) If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.	(4) Quiconque refuse ou fait défaut de se conformer à une ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

Appeal

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

Appel

(5) L'ordonnance visée au paragraphe (1) est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

Definitions

232. (1) In this section,

"custodian"
« gardien »

"custodian" means a person in whose custody a package is placed pursuant to subsection 232(3);

"judge"
« juge »

"judge" means a judge of a superior court having jurisdiction in the province where the matter arises or a judge of the Federal Court;

"lawyer"
« avocat »

"lawyer" means, in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor;

"officer"
« fonctionnaire »

"officer" means a person acting under the authority conferred by or under sections 231.1 to 231.5;

"solicitor-client privilege"
« privilège des communications entre client et avocat »

Définitions

232. (1) Les définitions qui suivent s'appliquent au présent article.

« avocat »
"lawyer"

« avocat » Dans la province de Québec, un avocat ou notaire et, dans toute autre province, un barrister ou un solicitor.

« fonctionnaire »
"officer"

« fonctionnaire » Personne qui exerce les pouvoirs conférés par les articles 231.1 à 231.5

« gardien »
"custodian"

« gardien » Personne à la garde de qui un colis est confié conformément au paragraphe (3).

« juge »
"judge"

« juge » Juge d'une cour supérieure compétente de la province où l'affaire prend naissance ou juge de la Cour fédérale.

« privilège des communications entre client et avocat »
"solicitor-client privilege"

"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.

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

Solicitor-client privilege defence

232. (2) Where a lawyer is prosecuted for failure to comply with a requirement under section 231.2 with respect to information or a document, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court

(a) that the lawyer, on reasonable grounds, believed that a client of the lawyer had a solicitor-client privilege in respect of the information or document; and

(b) that the lawyer communicated to the Minister, or some person duly authorized to act for the Minister, the lawyer's refusal to comply with the requirement together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or document.

Secret professionnel invoqué en défense

232. (2) L'avocat poursuivi pour n'avoir pas obtempéré à une exigence de fourniture d'un renseignement ou de production d'un document prévue par l'article 231.2 doit être acquitté s'il démontre, à la satisfaction du tribunal, ce qui suit :

a) pour des motifs raisonnables, il croyait qu'un de ses clients bénéficiait du privilege des communications entre client et avocat en ce qui concerne le renseignement ou le document;

b) il a indiqué au ministre ou à une personne régulièrement autorisée à agir pour celui-ci son refus d'obtempérer à cette exigence et a invoqué devant l'un ou l'autre le privilege des communications entre client et avocet dont bénéficiait un des ses client nommément désigné en ce qui concerne le renseignement ou le document.

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

Infractions et Peines

238. (1) Toute personne qui omet de produire, de présenter ou de remplir une declaration 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)

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.

Compliance Orders

(2) Where a person has been convicted by a Court of an offence under subsection 238(1) for a failure to comply with a provision of this Act or a regulation, the court may make such order as it deems proper in order to enforce compliance with the provision.

Saving

(3) Where a person has been convicted under this section of failing to comply with a provision of this Act or a regulation, the person is not liable to pay a penalty imposed under section 162 or 227 for the same failure unless the person was assessed for that penalty or that penalty was demanded from the person before the information or complaint giving rise to the conviction was laid or made.

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 declaration 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.

Ordonnance d'exécution

(2) Le tribunal qui déclare une personne coupable d'une infraction prévue au paragraphe (1) peut rendre toute ordonnance qu'il estime indiquée pour qu'il soit remédié au défaut visé par l'infraction.

Réserve

(3) La personne déclarée coupable, par application du présent article, d'avoir contrevenu à une disposition de la présente loi ou de son règlement n'est passible d'une pénalité prevue à l'article 162 ou 227 pour la même contravention que si une cotisation pour cette pénalité a été établie à son égard ou que si le paiement en a été exigé d'elle avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité ait été déposée ou faite.