



Court File No. **VIC-S-S-2613103**

No. \_\_\_\_\_  
**Victoria Registry**

*In the Supreme Court of British Columbia*

Between

Ministry of Attorney General of British Columbia

**Petitioner**

and

The Tyee and  
Information and Privacy Commissioner of British Columbia

**Respondents**

## **PETITION TO THE COURT**

ON NOTICE TO:

The Tyee  
PO Box 28187  
West Pender Street  
Vancouver, BC V6C 3T7

Information and Privacy Commissioner of British Columbia  
4<sup>th</sup> Floor – 947 Fort Street  
Victoria, BC V8V 2K3

The address of the registry is: 850 Burdett Avenue, Victoria, BC V8W 1B4.

The petitioner estimates that the hearing of the petition will take **one day**.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below, by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must:

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner,

- (a) if you were served the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

<p>(1)</p> <p>The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Trevor Bant and Dario Balca        Ministry of Attorney General        Legal Services Branch        PO Box 9280 Stn Prov Govt        1001 Douglas Street        Victoria, BC V8W 9J7</p> <p>Email address for service of the petitioner: &lt;trevor.bant@gov.bc.ca&gt;</p> <p><b>Service by email preferred</b></p>	<p>(2)</p> <p>The names of the petitioner's lawyers are: Trevor Bant and Dario Balca</p>
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**Part 1: ORDERS SOUGHT**

1. An order in the nature of *certiorari* pursuant to s. 2(2)(a) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [**JRPA**], setting aside Order F25-92 of the Information and Privacy Commissioner of British Columbia (“IPC”) dated December 1, 2025, as varied on December 4, 2025.
2. A declaration pursuant to s. 2(2)(b) of the *JRPA* that pages 126-410, 413-417, 425-427, 438-444, 446-491, 501-503, 515, and 517-519 of the Records, as defined below, and the portions of pages 125, 411, and 412 of the Records that were redacted when disclosed, are protected by solicitor-client privilege.
3. An order pursuant to s. 17 of the *JRPA* requiring the IPC to file the record.

**Part 2: FACTUAL BASIS****Overview**

4. This is a judicial review of a decision of the IPC. It concerns solicitor-client privilege. The records at issue are mostly emails between a team of government lawyers in which the lawyers deliberate and form legal advice on a matter. A delegate of the IPC held that the records are not protected by solicitor-client privilege. This conclusion was driven by a finding that the lawyers had never actually provided any legal advice to their client, the Attorney General of British Columbia (the “**Attorney General**” or “**AGBC**”).
5. Respectfully, the delegate overlooked or misapprehended some important evidence. One of the involved lawyers provided an affidavit in which she deposed that she had given legal advice to the Attorney General and the records all relate to that legal advice. The delegate did not find that the lawyer’s evidence was mistaken or deceitful. For the most part, the delegate did not even refer to the lawyer’s evidence.

6. The records reveal the legal advice the Attorney General received on a matter and every detail of how that legal advice was developed and implemented by the team of lawyers advising the Attorney General. The records are protected by solicitor-client privilege.

## Background

7. *Woodgate et al. v. RCMP* is a proceeding before the Canadian Human Rights Tribunal concerning allegations of discrimination by the RCMP during its investigation of alleged abuse at schools in northern BC.
8. On September 19, 2023, the Attorney General applied to be added as a respondent to *Woodgate* (the “Application”).
9. On November 15, 2023, for reasons indexed as 2023 CHRT 53, the Canadian Human Rights Tribunal dismissed the Application but granted the Attorney General interested person status on certain terms.
10. As of the date of this petition, the Canadian Human Rights Tribunal has not yet released its substantive decision in *Woodgate*.

## Records

11. Shortly after the Attorney General filed the Application, a journalist with the Tyee made a freedom of information or “FOI” request pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 [*FIPPA*]. The journalist requested that the Ministry of Attorney General (the “Ministry”) disclose all of the following documents in its custody or under its control dated between May 1, 2023 and September 27, 2023:

All internal briefing notes, memos, and related communications (e.g. Emails, instant messages, texts, etc.) regarding the Canadian Human Rights Tribunal inquiry into the RCMP’s investigation of historical abuses at schools in Burns Lake and Prince George, formally known as *Woodgate et al v. RCMP*.

12. The Ministry identified 519 pages of responsive records (the “Records”).

In summary, the Records consist of:

- a. internal emails (and related calendar entries) between counsel for the Attorney General in which counsel deliberated and formed legal advice to the Attorney General concerning *Woodgate*;
- b. confidential emails between counsel for the Attorney General and counsel for the RCMP, concerning *Woodgate*, that informed the legal advice that counsel for the Attorney General ultimately gave the Attorney General concerning the Application;
- c. a “decision briefing note” authored by counsel for the Attorney General, providing legal advice to the Attorney General and seeking instructions about whether to bring the Application (the “**Decision Briefing Note**”);
- d. subsequent internal emails (and related calendar entries) between counsel for the Attorney General in which counsel implemented the instructions they had received;
- e. emails with the Canadian Human Rights Tribunal registry and *Woodgate* parties concerning the Application; and,
- f. emails between counsel for the Attorney General and an FOI analyst within the Ministry concerning a separate FOI request, which refer to some of the legal advice in the Decision Briefing Note.

13. The Ministry disclosed the emails with the Canadian Human Rights Tribunal registry and *Woodgate* parties concerning the Application (pages 492-500) with one minor redaction under s. 22 of *FOIPA*. The Ministry took the position that the remaining Records are protected by solicitor-client privilege and litigation privilege, and exempt from disclosure under s. 14 of *FOIPA*.

### **IPC inquiry**

14. On February 21, 2024, the journalist applied to the IPC for a review. The matter proceeded to an inquiry under s. 56 of *FIPIPA*.
15. During the IPC inquiry, the Ministry re-reviewed the Records and determined that some portions were not privileged: the Ministry disclosed pages 418-424, 432, 433, 504-512, and 514, as well as portions of pages 125, 411, and 412 (while redacting other content on those three pages). The remaining pages are referred to below as the “**Disputed Records**”.
16. The Ministry filed an affidavit from one of the lawyers who had provided legal advice to the Attorney General concerning *Woodgate* (the “**Lawyer**”). The Lawyer described the Disputed Records, noting that she could not be more specific “without disclosing, or allowing an individual to accurately infer, information subject to solicitor-client privilege”. She deposed that the emails related to the legal advice she and her colleagues had provided to the Attorney General concerning the Application. She also deposed that the emails with counsel for the RCMP were confidential and necessary for her to provide legal advice to the Attorney General concerning the Application.
17. The Ministry also provided a seven-page table that described the Records in detail, similarly to how they would be described in part 4 on a list of documents in an action in this Court (the “**Table of Records**”).

### **IPC decision**

18. On December 1, 2025, the delegate released her decision: Order F25-92. She concluded that none of the Disputed Records are protected by solicitor-client privilege. Despite that conclusion, she held that almost all of the Disputed Records are protected by litigation privilege. In the result (after a brief addendum released on December 4, 2025), she ordered the Ministry to disclose two pages of the Records to the journalist.

Solicitor-client privilege

19. The delegate's conclusion that none of the Disputed Records are protected by solicitor-client privilege was driven by a finding that counsel had never actually given any legal advice to their client, the Attorney General.
20. It is uncontroversial that most of the Disputed Records are communications between counsel, not communications from counsel to their client. The Ministry invoked the continuum of communications principle. However, the delegate held that the continuum of communications principle is not engaged because she found that counsel had never actually provided any legal advice: "the Ministry has not established there were confidential discussions between the Attorney General and a lawyer where legal advice was sought and given". The delegate referred to the Lawyer's evidence that the Decision Briefing Note constituted legal advice about the Application. However, the delegate said there was no evidence about the recipient of the Decision Briefing Note or the decision to which it pertained.
21. Having reached the conclusion that the Disputed Records are not protected by solicitor-client privilege, the delegate did not need to consider whether the common interest exception to waiver of privilege applied to the emails between counsel for the Attorney General and counsel for the RCMP.

Litigation privilege

22. Despite concluding that none of the Disputed Records are protected by solicitor-client privilege, the delegate held that almost all of the Disputed Records are protected by litigation privilege. She accepted that almost all of the Disputed Records were created for the dominant purpose of the Woodgate litigation. Despite the uncertainty she had earlier expressed about the Decision Briefing Note, in this section of her reasons, the delegate found the Decision Briefing Note "is related to the Application and was created for the dominant purpose of litigation".

### Part 3:      **LEGAL BASIS**

#### **Standard of review is correctness**

23. Because solicitor-client privilege is of central importance to the legal system, the standard of review is correctness: *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 [*Lee*] at para. 28; *British Columbia (Minister of Public Safety) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 345 [*Minister of Public Safety*] at para. 7.

#### **Solicitor-client privilege is of fundamental importance**

24. Solicitor-client privilege is a fundamental and substantive rule of law that “must remain as close to absolute as possible”: *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 at para. 36.
25. A client’s fundamental right to solicitor-client privilege applies equally to government as it does to private parties: *Lee* at para. 19. Indeed, solicitor-client privilege is an essential component of good governance: it is what ensures that government can receive candid legal advice before deciding on courses of action.

#### **Disputed Records are protected by solicitor-client privilege**

26. In finding that counsel had never actually given any legal advice to their client, the delegate overlooked or misapprehended important aspects of the Lawyer’s evidence. The Lawyer deposed that she gave legal advice relating to the Application and that the Decision Briefing Note constitutes legal advice relating to the Application. The delegate did not find that the Lawyer’s evidence was mistaken or deceitful. For the most part, the delegate did not even refer to the Lawyer’s evidence.
27. As developed below, the Decision Briefing Note was a confidential communication in which the Lawyer and her colleagues gave legal advice to their client, the Attorney General, and sought instructions about whether to

bring the Application. The emails between counsel that were sent before the Decision Briefing Note, in which counsel deliberated and formed the legal advice they ultimately gave their client in the Decision Briefing Note, are within the continuum of privileged communications. The subsequent emails between counsel, in which counsel implemented the instructions they had received, are also within the continuum of privileged communications. In short, the Disputed Records reveal the legal advice the Attorney General received and every detail of how that legal advice was developed over time and implemented by the team of lawyers advising the Attorney General. The Disputed Records are protected by solicitor-client privilege.

28. The delegate expressed her key finding (that counsel had never actually given any legal advice to the Attorney General) in a few different ways, including the following:
  - a. “none of the records at issue in this inquiry are communications between a lawyer and the Attorney General or their representative”;
  - b. “the Ministry has not established there were confidential discussions between the Attorney General and a lawyer where legal advice was sought and given”;
  - c. “[t]he Ministry’s description of the s. 14 records and the Lawyer’s evidence indicate the LSB lawyers were providing legal services to the Attorney General by making the Application rather than giving legal advice to the Attorney General, which in my view are two distinct things”; and,
  - d. “[w]hat is missing in the Ministry’s submissions and the Lawyer’s evidence is a connection between the records at issue in this inquiry and a privileged communication between a lawyer and their client”.
29. With respect, the delegate overlooked or misapprehended the Lawyer’s evidence that:

- a. “[she] provided legal advice relating to the Application”;
- b. she emailed herself as a reminder “to review the attachment for the purpose of legal advice [she] was providing to the AGBC”;
- c. her emails with counsel for the RCMP were “necessary [for her] to provide legal advice to the AGBC relating to the Application”; and,
- d. the Decision Briefing Note, which she co-authored, “constitutes legal advice relating to the Application”.

30. The delegate never referred to the evidence quoted in (a), (b), or (c) above.

31. The delegate referred to the evidence quoted in (d) on two occasions, but she reached two different and inconsistent conclusions. In the section of her reasons about litigation privilege, she found that the Decision Briefing Note was related to the Application and prepared for the *Woodgate* litigation:

The Ministry withheld a document attached to an email that it describes as a Decision Briefing Note. The Lawyer says they co-authored this document and that it “constitutes legal advice relating to the Application.” Therefore, I accept the Decision Briefing Note is related to the Application and was created for the dominant purpose of litigation.

32. However, earlier in her reasons, in the section about solicitor-client privilege, the delegate dismissed this evidence because the Lawyer did not specifically identify the recipient of the Decision Briefing Note or expressly identify the decision to which it pertained:

The Lawyer says they co-authored [the Decision Briefing Note] and it “constitutes legal advice relating to the Application.” However, the Lawyer does not identify the intended recipient of the document or its purpose. It likely relates to a decision of some sort, but I was not provided with any evidence or information that allows me to understand that decision, the intended decision-maker or how it relates to the Application.

33. With respect, these conclusions are inconsistent and the second-quoted passage is illogical. The delegate accepted that the Decision Briefing Note relates to the Application and was created for the dominant purpose of litigation. To make those findings, the delegate must have accepted the Lawyer's evidence that the Decision Briefing Note "constitutes legal advice relating to the Application". It is true that the Lawyer does not specifically identify the recipient of the Decision Briefing Note, nor expressly depose that it pertained to the decision of whether to bring the Application. However, legal advice is by definition provided to a client and the Lawyer deposes that her client was the Attorney General. Elsewhere in her affidavit the Lawyer refers to "legal advice [she] was providing to the AGBC". The Table of Records shows that the Decision Briefing Note was dated shortly before the Attorney General brought the Application. The upshot of this evidence is that the Decision Briefing Note contained legal advice to the Attorney General and was the mechanism through which counsel sought instructions about whether to bring the Application.
34. In other words, the Decision Briefing Note is the legal advice to the Attorney General the delegate held was "missing". The delegate focused unduly on the fact that the Lawyer does not specifically identify the recipient of the Decision Briefing Note. However, when the entirety of the Lawyer's evidence is read as a whole, it leaves no doubt that the Lawyer and her colleagues gave legal advice about the Application to the Attorney General and that legal advice was contained in the Decision Briefing Note.
35. Ultimately, however, the Decision Briefing Note is something of a red herring: it does not matter whether the legal advice can be specifically pinpointed within the Records (which respond to a date range the journalist chose), nor whether the legal advice was even in writing. The Lawyer's evidence that "[she] provided legal advice relating to the Application", in combination with her evidence that the Disputed Records all relate to that legal advice and are privileged, is sufficient to establish privilege.

36. This Court has held that “it is not open to the IPC to treat a claim of privilege as they would any other claim of an exception to disclosure”. Rather, “some weight has to be given to the judgement of counsel when the IPC is adjudicating claims of solicitor-client privilege”: *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 [**Minister of Finance**] at para. 86. This does not mean the IPC should automatically accept any evidence from a lawyer that documents relate to legal advice and are privileged: *Minister of Public Safety* at paras. 23-25. It means that, when scrutinizing such evidence, the IPC should be mindful that lawyers have a professional obligation to assert privilege only when justified after careful consideration: *Minister of Finance* at para. 86.
37. The delegate did not adopt this approach. In finding that “the Ministry has not established there were confidential discussions between the Attorney General and a lawyer where legal advice was sought and given”, the delegate did not even refer to the Lawyer’s evidence that she had “provide[d] legal advice to the AGBC relating to the Application”.
38. Although most of the Disputed Records are communications between counsel, not communications from counsel to their client, they are privileged nonetheless. As other delegates of the IPC have repeatedly held, it is “well established that communications between lawyers who are working together to provide legal advice to a client fall within the scope of a communication between a legal advisor and client” (*British Columbia (Attorney General) (Re)*, 2024 BCIPC 61 at para. 33; see also *Lululemon Athletica Canada Inc (Re)*, 2024 BCIPC 43 at para. 64; *Insurance Corporation Of British Columbia (Re)*, 2024 BCIPC 96 at para. 35; *Thompson Rivers University (Re)*, 2023 BCIPC 87 at para. 32; *DLA Piper (Canada) LLP (Re)*, 2023 BCIPC 63 at para. 45; *British Columbia (Attorney General) (Re)*, 2023 BCIPC 123 at para. 55; *British Columbia (Attorney General) (Re)*, 2020 BCIPC 18 at para. 65; *British Columbia (Attorney General) (Re)*, 2020 BCIPC 1 at paras. 34-36.

39. This principle was explained and applied by a delegate of the IPC in 2020 BCIPC 18, for example, as follows (at para. 65):

[...] communications between lawyers who were working together to give legal advice to a client fall within the scope of a communication between a legal advisor and client. Applying these principles, and based on the evidence provided by the Ministry and the description of the records set out in Table of Records #2, I am satisfied that Records 6 and 7 consist of confidential email communications between legal counsel involved in formulating and providing legal advice, and that these emails fall under the protection of legal advice privilege.

40. By the same token, the continuum of communications captures communications between client representatives, without their lawyer, discussing the implications of the lawyer's advice: *Lee* at para. 50; *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 at paras. 22-24. That principle is not directly engaged here, but it illustrates how the continuum includes internal communication on both sides of the actual provision of legal advice: when the lawyers (without the client) are developing the advice, and when client representatives (without the lawyer) are deciding what to do in light of the advice.
41. Applying the correct approach to the continuum of communications principle, the Disputed Records are within the continuum of privileged communications. The Lawyer's evidence is that she and her colleagues gave legal advice to the Attorney General regarding the Application. Earlier emails between those lawyers, deliberating and refining the advice they ultimately gave, are within the continuum. Subsequent emails between those lawyers, implementing the instructions they received, are also within the continuum.

#### **Remedy**

42. If the submissions above are accepted, the appropriate remedy is:

- a. an order in the nature of *certiorari* pursuant to s. 2(2)(a) of the *JRPA* setting aside Order F25-92 dated December 1, 2025, as varied on December 4, 2025; and,
- b. a declaration pursuant to s. 2(2)(b) of the *JRPA* that pages 126-410, 413-417, 425-427, 438-444, 446-491, 501-503, 515, and 517-519 of the Records, and the portions of pages 125, 411, and 412 of the Records that were redacted when disclosed to the journalist, are protected by solicitor-client privilege.

43. This declaration is appropriate because there is only one possible outcome in respect of those pages: they are protected by solicitor-client privilege. See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 142; *Minister of Public Safety* at para. 81.

44. Pages 1-124, 428-431, 434-437, 445, 513, and 516 are subject to a possible waiver of privilege argument the delegate should have an opportunity to reconsider. These pages contain the emails between counsel for the Attorney General and counsel for the RCMP. Given her conclusion that none of the Records are protected by solicitor-client privilege, it was unnecessary for the delegate to consider the common interest exception to waiver of privilege. She should now have an opportunity to do so.

### **Costs**

45. The Ministry does not seek costs.

### **Part 4: MATERIAL TO BE RELIED ON**

46. Affidavit #1 of Karin Kehoe, made January 13, 2026.

47. Record affidavit to be prepared by the IPC.

Date: January 14, 2026



Trevor Bant and Dario Balca  
Counsel to the Ministry of Attorney General

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....

.....

.....

Date: .....

Signature of  Judge  Associate Judge