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## CASE SUMMARY: EMAILS AMONGST CLIENTS WHERE LAWYERS WERE NOT INCLUDED ON THREAD BUT THEIR PRIVILEGED WORK PRODUCT WAS BEING DISCUSSED WERE CONSIDERED PROTECTED BY SOLICITOR-CLIENT PRIVILEGE

Court determined that email chains that did not include the clients' lawyers, but wherein the clients discussed the lawyers' privileged opinions and work products, were protected by solicitor-client privilege.

**Administrative law – Judicial review – Applications – Freedom of information and protection of privacy – Access to information – Solicitor-client privilege – Government**

*Alberta (Minister of Municipal Affairs) v. Alberta (Information and Privacy Commissioner)*, [2019] A.J. No. 466, 2019 ABQB 274, Alberta Court of Queen's Bench, April 17, 2019, S.N. Mandziuk J.

As part of a judicial review application concerning the Office of the Information and Privacy Commissioner, the court was asked by the Minister of Municipal Affairs to determine whether certain sealed records were properly subject to solicitor-client privilege. The sealed records consisted of (1) emails and executive summaries disseminated among members of the internal government client groups or departments relaying information about ongoing arbitration proceedings and/or advice about arbitration, experts, legal strategy and related matters with legal counsel included on the email string; (2) emails between legal counsel, and between counsel and their client groups or departments, regarding legal advice or information sharing related to legal advice; (3) briefing notes and analogous reports with legal counsel input concerning arbitration and legal proceedings, and; (4) correspondence between internal legal counsel and counsel for arbitration parties.

The court reviewed each document individually and found they were all covered by solicitor-client privilege, including some email chains that were not directly between lawyer and client, or lawyer and lawyer, but were sent and received by members of the client group or department. The court found those communications consisted of requesting and giving information which related topically to those matters in which legal counsel was directly involved; they essentially transmitted or commented on privileged work products. As those emails formed "part of a discrete body of communications that includes clearly privileged material", the court, applying a holistic approach to the privilege question, considered them to be "part of the continuum in which legal advice was given" and thus protected by solicitor-client privilege.

This case was digested by [Kara Hill](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at [khill@harpergrey.com](mailto:khill@harpergrey.com).