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ONTARIO COURT OF APPEAL CLARIFIES THE SCOPE OF SOLICITOR-CLIENT PRIVILEGE IN CIVIL FRAUD CLAIMS AND BEYOND

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In *Sakab Saudi Holding Company v. Al Jabri*, 2026 ONCA 586, the Ontario Court of Appeal provided important guidance on the scope of solicitor-client privilege in the context of a civil fraud claim, the principles of which apply more broadly. The Court affirmed that lawyers' trust ledgers are presumptively privileged because release of that information could result in privileged information being deduced from the records.¹ Importantly, the court held that this presumption applies regardless of the procedural context in which disclosure is sought, including contested civil motions.²

Background

The Action

The underlying action concerns the alleged misappropriation of funds from private corporations established and funded to carry out counterterrorism activities in the Kingdom of Saudi Arabia.³ The appellants allege that the respondent, Saad Khalid Al Jabri ("Al Jabri"), a former high-ranking Saudi government official, siphoned funds to himself, his son, and the other defendants.⁴

The Mareva Orders

On January 22, 2021, the Ontario court issued a *Mareva* injunction against Al Jabri, effectively freezing access to any asset in his name or in which he has any interest.⁵ An *ex parte Norwich* order was also granted, requiring a list of Canadian and foreign banking institutions to disclose financial documents relating to the respondents.⁶

¹ *Sakab Saudi Holding Company v. Al Jabri*, 2026 ONCA 586, at [para 9](#).

² *Ibid*, at [para 9](#).

³ *Ibid*, at [para 13](#).

⁴ *Ibid*.

⁵ *Ibid*, at [para 16](#).

⁶ *Ibid*, at [para 17](#).

The Motion

On August 22, 2023, the appellants sought additional financial disclosure. The appellants brought a motion seeking an order for production of two further sources of information:

- 1) Trust ledgers from law firms that currently represent or had previously represented the respondents; and
- 2) Unredacted bank statements from foreign banks.⁷

Decisions from the Courts Below

Applying the Supreme Court of Canada's decision in *Canada (Attorney General) v. Chambre des Notaires du Québec*, 2016 SCC 20, [2016] 1 S.C.R. 336, the motion judge held that a lawyer's accounting records are presumptively privileged and the test for rebutting the presumption established in *Kaiser (Re)*, 2012 ONCA 838, 113 O.R. was not satisfied.⁸ Unredacted bank statements are the subject of a valid privilege claim and the crime-fraud exception does not apply to cases of civil fraud.⁹

Upon review, the Divisional Court upheld all but one element of the motion judge's decision.¹⁰ The Divisional Court held that the presumption of privilege applied only to lawyers' records, and that the onus remained on the respondents to establish its existence with regard to its own bank statements.¹¹

The Appeal Decision

The Presumption of Privilege

The Court of Appeal highlighted the need for solicitor-client privilege to remain "as close to absolute as possible," which at times requires the presumption that certain documentation contains privileged information.¹² The Court of Appeal affirmed that lawyer's trust ledgers are presumptively privileged.¹³

The Test for Rebutting the Presumption

In relying on *Kaiser*, the Court of Appeal clarified that to effectively rebut the presumption, evidence must be presented that:

- a) there is no reasonable possibility of the information directly, or indirectly, revealing confidential communications; and

⁷ *Ibid*, at [para 24](#).

⁸ *Ibid*, at [para 26](#).

⁹ *Ibid*.

¹⁰ *Ibid*, at [para 27](#).

¹¹ *Ibid*, at [para 30](#).

¹² *Ibid*, at [para 42](#).

¹³ *Ibid*, at [para 54](#).

- b) disclosure of the information would not be tied to the merits of the case and would not prejudice the client.¹⁴

The Court held that the appellants had not rebutted this presumption. The court dismissed the appellants' argument that the presumption applied only to compelled seizures by police or administrative agencies and clarified that its protection extends to the context of contested civil motions.¹⁵

The Crime-Fraud Exception

Despite ultimately holding that the Divisional Court did not err in its conclusion, the Court disagreed with the narrow interpretation of the crime-fraud exception of the courts below.¹⁶ The Court clarified that the exception is less concerned with whether a client is charged criminally or pursued civilly, but rather "turns on the nature and purpose of the communications."¹⁷ Notably, the court highlighted that communications intended to facilitate the breach of a court order can be characterized as criminal in nature and thus would fall within the scope of the exception.¹⁸

Key Takeaways

Frist, lawyers' accounting records are subject to a rebuttable presumption of solicitor-client privilege. This presumption of privilege is not lost based simply on the procedural context in which the records are sought.¹⁹ To rebut the presumption, the moving party must show that disclosure would not reveal privileged communications and would not prejudice the client.

Second, the crime-fraud exception is concerned with the nature and purpose of the communications, not the label attached to the proceeding (i.e. not simply whether a client was charged criminally or pursued civilly).²⁰ The evidence must, however, establish a *prima facie* case that connects the communications to the unlawful conduct to satisfy the exception.²¹

This decision is particularly relevant for litigators in identifying what information may be appropriate in a civil fraud case versus information for which there is sufficient evidentiary foundation to overcome privilege.

¹⁴ *Ibid*, at [para 55](#).

¹⁵ *Ibid*, at [paras 51-52](#).

¹⁶ *Ibid*, at [para 93](#).

¹⁷ *Ibid*, at [para 94](#).

¹⁸ *Ibid*, at [para 92](#).

¹⁹ *Ibid*, at [para 9](#).

²⁰ *Ibid*, at [para 10](#).

²¹ *Ibid*, at [para 11](#).